

THE
ENGLISH AND EMPIRE DIGEST
WITH
COMPLETE AND EXHAUSTIVE
ANNOTATIONS.

VOLUME XIII.

THE ENGLISH AND EMPIRE DIGEST

WITH
COMPLETE AND EXHAUSTIVE
ANNOTATIONS

BEING

A COMPLETE DIGEST OF EVERY ENGLISH CASE REPORTED
FROM EARLY TIMES TO THE PRESENT DAY, WITH ADDITIONAL
CASES FROM THE COURTS OF SCOTLAND, IRELAND, THE EMPIRE
OF INDIA, AND THE DOMINIONS BEYOND THE SEAS,

AND INCLUDING

COMPLETE AND EXHAUSTIVE ANNOTATIONS GIVING ALL THE
SUBSEQUENT CASES IN WHICH JUDICIAL OPINIONS HAVE BEEN
GIVEN CONCERNING THE ENGLISH CASES DIGESTED.

VOLUME XIII.

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A. R.	...	...	Ontario Appeals	...	...	...	...	...	Can.
Act.	...	...	Acton's Reports, Prize Causes, 2 vols., 1809—1841	...	...	...	...	...	Eng.
Ad. & El.	...	...	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 12 vols., 1834—1842	...	...	...	...	...	Eng.
Adam	...	...	Adam's Justiciary Reports (Scotland), 1893—(current)	...	...	...	...	...	Scot.
Add.	...	...	Addams' Ecclesiastical Reports, 3 vols., 1822—1826	...	...	...	...	...	Eng.
Agra	...	...	Agra High Court	...	...	...	...	...	Ind.
Agra F. B.	...	...	Agra High Court, Full Bench	...	...	...	...	...	Ind.
Alc. & N.	...	...	Alcock and Napier's Reports, King's Bench (Ireland), 1 vol., 1813—1833	...	...	...	...	...	Ir.
Alc. Reg. Cas.	...	...	Alcock's Registry Cases (Ireland), 1 vol., 1832—1841	...	...	...	...	...	Ir.
Aleyn	...	...	Aleyn's Reports, King's Bench, fol., 1 vol., 1646—1649	...	...	...	...	...	Eng.
All.	...	...	New Brunswick Reports (Allen)	...	...	...	...	...	Can.
Alta. L. R.	...	...	Alberta Law Reports	...	...	...	...	...	Can.
Amb.	...	...	Ambler's Reports, Chancery, 2 vols., 1725—1783	...	...	...	...	...	Eng.
And.	...	...	Anderson's Reports, Common Pleas, fol., 2 parts in one vol., 1535—1605	...	...	...	...	...	Eng.
Andr.	...	...	Andrews' Reports, King's Bench, fol., 1 vol., 1737—1740	...	...	...	...	...	Eng.
Anst.	...	...	Anstruther's Reports, Exchequer, 3 vols., 1792—1797	...	...	...	...	...	Eng.
App. Cas.	...	...	Law Reports. Appeal Cases, House of Lords, 15 vols., 1875—	...	...	...	...	...	
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Arm. M. & O.	...	...	Armstrong, Macartney, and Ogle's Civil and Criminal Reports (Ireland), 1840—1842	...	...	...	...	...	Ir.
Arn.	...	...	Arnold's Reports, Common Pleas, 2 vols., 1838—1839	...	...	...	...	...	Eng.
Arn. & H.	...	...	Arnold and Hodges' Reports, Queen's Bench, 1 vol., 1840—1841	...	...	...	...	...	Eng.
Ashb.	...	...	Ashburner's Principles of Equity, 1902	...	...	...	...	...	Eng.
Asp. M. L. O.	...	...	Aspinall's Maritime Law Cases, 1870—(current)	...	...	...	...	...	Eng.
Atk.	...	...	Atkins' Reports, Chancery, 3 vols., 1736—1754	...	...	...	...	...	Eng.
Ayl. Pan	...	...	Ayliffe's New Pandect of Roman Civil Law	...	...	...	...	...	Eng.
Ayl. Par.	...	...	Ayliffe's Parergon Juris Canonici Anglicani	...	...	...	...	...	Eng.
B.	...	...	Barber's Gold Law	...	...	...	...	...	S. Af.
B. & Ad.	...	...	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830—1834	...	...	...	...	...	Eng.
B. & Ald.	...	...	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817—1822	...	...	...	...	...	Eng.
B. & C.	...	...	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822—1830	...	...	...	...	...	Eng.
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B. & S.	...	...	Best and Smith's Reports, Queen's Bench, 10 vols., 1861—1870	...	...	...	...	...	Eng.
B. C. R.	...	...	British Columbia Reports	...	...	...	...	...	Can.
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B. W. O. C.	...	...	Butterworths' Workmen's Compensation Cases, 1907—(current)	...	...	...	...	...	Eng.
Bac. Abr.	...	...	Bacon's Abridgment	...	...	...	...	...	Eng.
Bail Ct. Cas	...	...	Bail Court Cases (Lowndes and Maxwell), 1 vol., 1852—1854	...	...	...	...	...	Eng.

Baild. ...	...	Baildon's Select Cases in Chancery (Selden Society, Vol. X.) ...	Eng.
Ball & B. ...	...	Ball and Beatty's Reports, Chancery (Ireland), 2 vols., 1807—	-
Bankr. & Ins. R. ...	...	Bankruptcy and Insolvency Reports, 2 vols., 1853—1855 ...	Eng.
Bar. & Arn. ...	...	Barron and Arnold's Election Cases, 1 vol., 1843—1846 ...	Eng.
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Barn. K. B. ...	...	Barnardiston's Reports, King's Bench, fol., 2 vols., 1726—1734 ...	Eng.
Barnes ...	...	Barnes' Notes of Cases of Practice, Common Pleas, 1 vol., 1732—	
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Batt. ...	...	Batty's Reports, King's Bench (Ireland), 1 vol., 1825—1826 ...	Ir.
Beat. ...	...	Beatty's Reports, Chancery (Ireland), 1 vol., 1813—1830 ...	Ir.
Beav. ...	...	Beavan's Reports, Rolls Court, 36 vols., 1838—1866 ...	Eng.
Beav. & Wal. ...	...	Beavan and Walford's Railway Parliamentary Cases, 1 vol.,	
Beaw. ...	...	Beawes's Lex Mercatoria ...	Eng.
Bell, C. C. ...	...	T. Bell's Crown Cases Reserved, 1 vol., 1858—1860 ...	Eng.
Bell, Ct. of Sess. ...	...	R. Bell's Decisions, Court of Session (Scotland), 1 vol., 1790—	
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Bell, Ct. of Sess. fol. ...	...	R. Bell's Decisions, Court of Session (Scotland), fol., 1 vol., 1794	
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Bell, Dict. Dec. ...	...	S. S. Bell's Dictionary of Decisions, Court of Session (Scotland),	
		2 vols., 1808—1833 ...	Scot.
Bell, Sc. App. ...	...	S. S. Bell's Scotch Appeals, House of Lords, 7 vols., 1842—1850	Scot.
Bellewe ...	...	Bellewe's Cases <i>temp.</i> Richard II., King's Bench, 1 vol. ...	Eng.
Belt's Sup. ...	...	Belt's Supplement to Vesey Sen., Chancery, 1 vol., 1746—1756	Eng.
Ben. & D. ...	...	Benloe and Dalison's Reports, Common Pleas, fol., 1 vol., 1357—	
		1579 ...	
Benl. ...	...	Benloe's (or Bendloe's) Reports, King's Bench and Common	
		Pleas, fol., 1 vol., 1515—1627 ...	Eng.
Ber. ...	...	New Brunswick Reports (Berton) ...	Can.
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Bitt. Prac. Cas. ...	...	Bittleston's Practice Cases in Chambers under the Judicature	
		Acts, 1873 and 1875, 1 vol., 1875—1876 ...	Eng.
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		1 vol., 1883—1884 ...	Eng.
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Bli. N. S. ...	...	Bligh's Reports, House of Lords, New Series 11 vols., 1827—	
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Bluett ...	...	Bluett's Isle of Man Cases ...	I. of M.
Bom. ...	...	Bombay High Court Reports ...	Ind.
Bom. A. C. ...	...	Bombay Reports, Appellate Jurisdiction ...	Ind.
Bom. O. C. ...	...	Bombay Reports, Original Civil Jurisdiction ...	Ind.
Bos. & P. ...	...	Bosanquet and Puller's Reports, Common Pleas, 3 vols., 1796—	
Bos. & P. N. R. ...	...	Bosanquet and Puller's New Reports, Common Pleas, 2 vols.,	
		1804—1807 ...	Eng.
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Bro. Abr. ...	...	Sir J. Brooke's Abridgement ...	Eng.
Bro. C. C. ...	...	W. Brown's Chancery Reports, 4 vols., 1778—1794 ...	Eng.
Bro. Ecc. Rep. ...	...	W. G. Brooke's Ecclesiastical Reports, Privy Council, 1 vol.,	
		1850—1872 ...	Eng.
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		Court of Session (Scotland), 5 vols. ...	Scot.
Bro. Synop. ...	...	M. P. Brown's Synopsis of Decisions, Court of Session (Scotland),	
		4 vols., 1532—1827 ...	Scot.
Brod. & Bing. ...	...	Broderip and Bingham's Reports, Common Pleas, 3 vols., 1819—	
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Brod. & F. ...	...	Broderick and Fremantle's Ecclesiastical Reports, Privy	
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Broun ...	...	Broun's Justiciary Reports (Scotland), 2 vols., 1842—1845 ...	Scot.
Brown. & Lush. ...	...	Browning and Lushington's Reports, Admiralty, 1 vol., 1863—	
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Brownl. ...	...	Brownlow and Goldesborough's Reports, Common Pleas, 2 parts,	
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Buck	...	Buck's Cases in Bankruptcy, 1 vol., 1816—1820	...	Eng.
Bull. N. P.	...	Buller's Nisi Prius (published, London, 1772)	...	Eng.
Bulst.	...	Bulstrode's Reports, King's Bench, fol., 3 parts in 1 vol., 1610—1626	...	Eng.
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C. L. T. Occ. N.	...	Canadian Law Times, Occasional Notes	...	Can.
C. P.	...	Upper Canada Common Pleas	...	Can.
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Cab. & El.	...	Cababé and Ellis's Reports, Queen's Bench Division, 1 vol., 1882—1885	...	Eng.
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Can. Com. Cas.	...	Commercial Law Reports of Canada	...	Can.
Can. Crim. Cas.	...	Canadian Criminal Cases, Annotated	...	Can.
Can. Ry. Cas.	...	Canadian Railway Cases	...	Can.
Car. & Kir.	...	Carrington and Kirwan's Reports, Nisi Prius, 3 vols., 1843—1853	...	Eng.
Car. & M.	...	Carrington and Marshman's Reports, Nisi Prius, 1 vol., 1841—	...	
Car. C. L.	...	Carrington's Treatise on Criminal Law	...	Eng.
Carp. Pat. Cas.	...	Carpmael's Patent Cases, 2 vols., 1602—1842	...	Eng.
Cart.	...	Carter's Reports, Common Pleas, fol., 1 vol., 1664—1673	...	Eng.
Cart.	...	Cases on British North America Act (Cartwright)	...	Can.
Carth.	...	Carthew's Reports, King's Bench, fol., 1 vol., 1687—1700	...	Eng.
Cary	...	Cary's Reports, Chancery, 1 vol.	...	Eng.
Cas. in Ch.	...	Cases in Chancery, fol., 3 parts, 1660—1697	...	Eng.
Cas. Pract. K. B.	...	Cases of Practice, King's Bench, 1 vol., 1655—1775	...	Eng.
Cas. Sett.	...	Cases of Settlements and Removals, 1 vol., 1685—1727	...	Eng.
Cas. temp. Finch	...	Cases temp. Finch, Chancery, fol., 1 vol., 1673—1680	...	Eng.
Cas. temp. King	...	Select Cases temp. King, Chancery, fol., 1 vol., 1724—1733	...	Eng.
Cas. temp. Talb.	...	Cases in Equity temp. Talbot, fol., 1 vol., 1730—1737	...	Eng.
Cass. Dig.	...	Cassells' Digest	...	Can.
Ch. (preceded by date)	...	Law Reports, Chancery Division, since 1890 (e.g., [1891] 1 Ch.)	...	Eng.
Ch. App.	...	Law Reports, Chancery Appeals, 10 vols., 1865—1875	...	Eng.
Ch. Cas. in Ch.	...	Choyce Cases in Chancery, 1557—1608	...	Eng.
Ch. Ch.	...	Upper Canada Chancery Chambers Reports	...	Can.
Ch. D.	...	Law Reports, Chancery Division, 45 vols., 1875—1890	...	Eng.
Ch. Rob.	...	Christopher Robinson's Reports, Admiralty, 6 vols., 1798—1808	...	Eng.
Char. Cham. Cas.	...	Charley's Chamber Cases, 1 vol., 1875—1876	...	Eng.
Char. Pr. Cas.	...	Charley's New Practice Reports, 3 vols., 1875—1876	...	Eng.
Chip.	...	New Brunswick Reports (Chipman)	...	Can.
Chit.	...	Chitty's Practice Reports, King's Bench, 2 vols., 1770—1822	...	Eng.
Cl. & Fin.	...	Clark and Finnelly's Reports, House of Lords, 12 vols., 1831—1846	...	
Cl & Sc. Dr. Cas.	...	Clark and Scully's Drainage Cases	...	
Clay.	...	Clayton's Reports and Pleas of Assizes at Yorke, 1 vol., 1631—1650	...	

xviii REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

Clif. & Rick.	...	...	Clifford and Rickards' Locus Standi Reports, 3 vols., 1873—1884	Eng.
Clif. & Steph.	...	...	Clifford and Stephens' Locus Standi Reports, 2 vols., 1867—1872	Eng.
Co. A.	...	...	Cook's Lower Canada Admiralty Court Cases	Can.
Co. Ent.	...	...	Coke's Entries	Eng.
Co. Inst.	...	...	Coke's Institutes	Eng.
Co. L. J.	...	...	Colonial Law Journal	N.Z.
Co. Litt.	...	...	Coke on Littleton (1 Inst.)	Eng.
Co. Rep.	...	...	Coke's Reports, 13 parts, 1572—1616	Eng.
Cochran	...	...	Nova Scotia Law Reports	Can.
Cockb. & Rowe	...	...	Cockburn and Rowe's Election Cases, 1 vol., 1833	Eng.
Coll.	...	...	Collyer's Reports, Chancery, 2 vols., 1844—1846	Eng.
Coll. Jurid.	...	...	Collectanea Juridica, 2 vols.	Eng.
Colles	...	...	Colles' Cases in Parliament, 1 vol., 1697—1713	Eng.
Colt.	...	...	Coltman's Registration Cases, 1 vol., 1879—1885	Eng.
Com.	...	...	Comyns' Reports, King's Bench, Common Pleas, and Exchequer, fol., 2 vols., 1695—1740	Eng.
Com. Cas.	...	...	Commercial Cases, 1895—(current)	Eng.
Com. Dig.	...	...	Comyns' Digest	Eng.
Comb.	...	...	Comberbach's Reports, King's Bench, fol., 1 vol., 1685—1698	Eng.
Con. & Law.	...	...	Connor and Lawson's Reports, Chancery (Ireland), 2 vols., 1841—1843	Ir.
Cong. Dig.	...	...	Congdon's Digest	Can.
Cooke & Al.	...	...	Cooke and Alcock's Reports, King's Bench (Ireland), 1 vol., 1833—1834	Ir.
Cooke, Pr. Cas.	...	...	Cooke's Practice Reports, Common Pleas, 1 vol., 1706—1747	Eng.
Cooke, Pr. Reg.	...	...	Cooke's Practical Register of the Common Pleas, 1 vol., 1702—1742	Eng.
Coop. G.	...	...	G. Cooper's Reports, Chancery, 1 vol., 1792—1815	Eng.
Coop. Pr. Cas.	...	...	C. P. Cooper's Reports, Chancery Practice, 1 vol., 1837—1838	Eng.
Coop. temp. Brough.	...	...	C. P. Cooper's Cases temp. Brougham, Chancery, 1 vol., 1833—	Eng.
Coop. temp. Cott.	...	...	C. P. Cooper's Cases temp. Cottenham, Chancery, 2 vols., 1846—1848 (and miscellaneous earlier cases)	Eng.
Cor.	...	...	Coryton's Reports	Ind.
Corb. & D.	...	...	Corbett and Daniell's Election Cases, 1 vol., 1819	Eng.
Correspondances Jud.	...	...	Correspondances Judiciaires	Can.
Couper	...	...	Couper's Justiciary Reports (Scotland), 5 vols., 1868—1885	Scot.
Cout.	...	...	Coutlees' Unreported Cases	Can.
Cout. Dig.	...	...	Coutlees' Digest	Can.
Cowp.	...	...	Cowper's Reports, King's Bench, 2 vols., 1774—1778	Eng.
Cox & Atk.	...	...	Cox and Atkinson's Registration Appeal Cases, 1 vol., 1843—1846	Eng.
Cox, C. C.	...	...	E. W. Cox's Criminal Law Cases, 1843—(current)	Eng.
Cox, Eq. Cas.	...	...	S. C. Cox's Equity Cases, 2 vols., 1745—1797	Eng.
Cox, M. & H.	...	...	Cox, Macrae, and Hertslet's County Courts Cases and Appeals, 1 vol., 1846—1852	Eng.
Cr. & J.	...	...	Crompton and Jervis's Reports, Exchequer, 2 vols., 1830—1832	Eng.
Cr. & M.	...	...	Crompton and Meeson's Reports, Exchequer, 2 vols., 1832—1834	Eng.
Cr. & Ph.	...	...	Craig and Phillips' Reports, Chancery, 1 vol., 1840—1841	Eng.
Cr. App. Rep.	...	...	Cohen's Criminal Appeal Reports, 1908—(current)	Eng.
Cr. M. & R.	...	...	Crompton, Meeson, and Roscoe's Reports, Exchequer, 2 vols., 1834—1835	Eng.
Craw. & D.	...	...	Crawford and Dix's Circuit Cases (Ireland), 3 vols., 1838—1846	Ir.
Craw. & D. Abr. C.	...	...	Crawford and Dix's Abridged Cases (Ireland), 1 vol., 1837—1838	Ir.
Cress. Insolv. Cas.	...	...	Cresswell's Insolvency Cases, 1 vol., 1827—1829	Eng.
Cripps' Church Cas.	...	...	Cripps' Church and Clergy Cases, 2 parts, 1847—1850	Eng.
Cro. Car.	...	...	Croke's Reports temp. Charles I., King's Bench and Common Pleas, 1 vol., 1625—1641	Eng.
Cro. Eliz.	...	...	Croke's Reports temp. Elizabeth, King's Bench and Common Pleas, 1 vol., 1582—1603	Eng.
Cro. Jac.	...	...	Croke's Reports temp. James I., King's Bench and Common Pleas, 1 vol., 1603—1625	Eng.
Cru. Dig.	...	...	Cruise's Digest of the Law of Real Property, 7 vols.	Eng.
Cunn.	...	...	Cunningham's Reports, King's Bench, fol., 1 vol., 1734—1735	Eng.
Curt.	...	...	Curteis' Ecclesiastical Reports, 3 vols., 1834—1844	Eng.
D.	...	...	Duxbury's Reports of the High Court of the South African Republic	S. Af.
D. O. A.	...	...	Dorion's Queen's Bench Reports	Can.
D. L. R.	...	...	Dominion Law Reports	Can.
Dalr.	...	...	Dalrymple's Decisions, Court of Session (Scotland), fol., 1 vol., 1698—1720	Scot.
Dan.	...	...	Daniell's Reports, Exchequer in Equity, 1 vol., 1817—1823	Eng.
Dan. & Ll.	...	...	Danson and Lloyd's Mercantile Cases, 1 vol., 1828—1829	Eng.

REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

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Dav. & Mer.	...	...	Davison and Merivale's Reports, Queen's Bench, 1 vol., 1843—	
Dav. Ir.	...	...	Davy's (or Davis' or Davy's) Reports (Ireland), 1 vol. 1604—	Eng.
			1611...	
Dav. Pat. Cas.	...	...	Davies' Patent Cases, 1 vol., 1785—1816	Ir.
Day	...	...	Day's Election Cases, 1 vol., 1892—1893	Eng.
Dea. & Sw.	...	...	Deane and Swabey's Ecclesiastical Reports, 1 vol., 1855—1857	Eng.
Deac.	...	...	Deacon's Reports, Bankruptcy, 4 vols., 1834—1840	Eng.
Deac. & Ch.	...	...	Deacon and Chitty's Reports, Bankruptcy, 4 vols., 1832—1835	Eng.
Dears. & B.	...	...	Dearsley and Bell's Crown Cases Reserved, 1 vol., 1856—1858	Eng.
Dears. C. C.	...	...	Dearsly's Crown Cases Reserved, 1 vol., 1852—1856	Eng.
Deas & And.	...	...	Deas and Anderson's Decisions (Scotland), 5 vols., 1829—	
			1832...	Scot.
De G.	...	...	De Gex's Reports, Bankruptcy, 2 vols., 1844—1848	Eng.
De G. & J.	...	...	De Gex and Jones's Reports, Chancery, 4 vols., 1857—1859	Eng.
De G. & Sm.	...	...	De Gex and Smale's Reports, Chancery, 5 vols., 1846—1852	Eng.
De G. F. & J.	...	...	De Gex, Fisher and Jones's Reports, Chancery, 4 vols., 1859—	
			1862...	Eng.
De G. J. & Sm.	...	...	De Gex, Jones, and Smith's Reports, Chancery, 4 vols., 1862	
			1865...	Eng.
De G. M. & G.	...	...	De Gex, Macnaghten and Gordon's Reports, Chancery, 8 vols	
			1851—1857...	Eng.
Delane	...	...	Delane's Decisions, Revision Courts, 1 vol., 1832—1835	Eng.
Den.	...	...	Denison's Crown Cases Reserved, 2 vols., 1844—1852	Eng.
Dick.	...	...	Dickens' Reports, Chancery, 2 vols., 1559—1798	Eng.
Dig.	...	...	Justinian's Digest or Pandects	Eng.
Dirl.	...	...	Dirleton's Decisions, Court of Session (Scotland), fol., 1 vol	
			1665—1677...	Scot.
Dods.	...	...	Dodson's Reports, Admiralty, 2 vols., 1811—1822	Eng.
Donnelly	...	...	Donnelly's Reports, Chancery, 1 vol., 1836—1837	Eng.
Doug. El. Cas.	...	...	Douglas' Election Cases, 4 vols., 1774—1776	Eng.
Doug. K. B.	...	...	Douglas' Reports, King's Bench, 4 vols., 1778—1785	Eng.
Dow	...	...	Dow's Reports, House of Lords, 6 vols., 1812—1818	Eng.
Dow & Cl.	...	...	Dow and Clark's Reports, House of Lords, 2 vols., 1827—1832	Eng.
Dow. & L.	...	...	Dowling and Lowndes' Practice Reports, 7 vols., 1843—1849	Eng.
Dow. & Ry. K. B.	...	...	Dowling and Ryland's Reports, King's Bench, 9 vols., 1822—	
			1827...	Eng.
Dow. & Ry. M. C.	...	...	Dowling and Ryland's Magistrates' Cases, 4 vols., 1822—	
			1827...	
Dow. & Ry. N. P.	...	...	Dowling and Ryland's Reports, Nisi Prius, 1 part, 1822	
			1823...	
Dowl.	...	...	Dowling's Practice Reports, 9 vols., 1830—1841	Eng.
Dowl. N. S.	...	...	Dowling's Practice Reports, New Series, 2 vols., 1841—1843	Eng.
Dr. & Wal.	...	...	Drury and Walsh's Reports, Chancery (Ireland), 2 vols., 1837—	
			1841...	Ir.
Dr. & War.	...	...	Drury and Warren's Reports, Chancery (Ireland), 4 vols., 1841—	
			1843...	Ir.
Dra.	...	...	Draper's King's Bench Reports	Can.
Drew.	...	...	Drewry's Reports, Chancery, 4 vols., 1852—1859	Eng.
Drew. & Sm.	...	...	Drewry and Smale's Reports, Chancery, 2 vols., 1859—1865	Eng.
Drinkwater	...	...	Drinkwater's Reports, Common Pleas, 1 vol., 1840—1841	Eng.
Drury temp. Nap.	...	...	Drury's Reports temp. Napier, Chancery (Ireland), 1 vol., 1858—	
			1859...	Ir.
Drury temp. Sug.	...	...	Drury's Reports temp. Sugden, Chancery (Ireland), 1 vol., 1841—	
			1844...	Ir.
Dugd. Orig.	...	...	Dugdale's Origines Juridicales	Eng.
Dunl. (Ct. of Sess.)	...	...	Dunlop, Court of Session Cases (Scotland), 2nd Series, 24 vols.,	
			1838—1862...	Scot.
Dunning	...	...	Dunning's Reports, King's Bench, 1 vol., 1753—1754	Eng.
Durie	...	...	Durie's Decisions, Court of Session (Scotland), fol., 1 vol., 1621	
			1642...	Scot.
Dyer	...	...	Dyer's Reports, King's Bench, 3 vols., 1513—1581	Eng.
E. & A.	...	...	Upper Canada Error and Appeal	Can.
E. & B.	...	...	Ellis and Blackburn's Reports, Queen's Bench, 8 vols., 1852—	
			1858...	Eng.
E. & E.	...	...	Ellis and Ellis's Reports, Queen's Bench, 3 vols., 1858—1861	Eng.
E. B. & E.	...	...	Ellis, Blackburn, and Ellis's Reports, Queen's Bench, 1 vol.,	
			1858—1860...	Eng.
E. D. C.	...	...	Reports of the Eastern Districts Court (Cape) from 1880	S. Af.
E. D. L.	...	...	South African Law Reports, Eastern Districts Local Division	S. Af.
E. L. R.	...	...	Eastern Law Reporter	Can.
E. R. (or Eng. Rep.)	...	...	English Reports	Eng.
E. R.	...	...	Ontario Election Reports	Can.
Eag. & Y.	...	...	Eagle and Younge's Tithe Cases, 4 vols., 1204—1825	Eng.
East	...	...	East's Reports, King's Bench, 16 vols., 1800—1812	Eng.

xx REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

East, P. C.	...	...	East's Pleas of the Crown	...	...	...	...	Eng.
Ecc. & Ad.	...	...	Spinks' Ecclesiastical and Admiralty Reports, 2 vols., 1853—1855	...	...	...	...	Eng.
Eden	...	...	Eden's Reports, Chancery, 2 vols., 1757—1766	...	...	...	...	Eng.
Edgar	...	...	Edgar's Decisions, Court of Session (Scotland), fol., 1724—1725	...	...	...	...	Scot.
Edw.	...	...	Edwards' Reports, Admiralty, 1 vol., 1808—1812	...	...	...	...	Eng.
Elchies	...	...	Elchies' Decisions, Court of Session (Scotland), 2 vols., 1733—1754	...	...	...	...	Scot.
Emden's B. C.	...	...	Emden's Building Contracts, Building Leases and Building Statutes	...	...	...	...	Eng.
Eng. Pr. Cas.	...	...	Roscoe's English Prize Cases, 2 vols., 1745—1858	...	...	...	...	Eng.
Eq. Cas. Abr.	...	...	Abridgment of Cases in Equity, fol., 2 vols., 1667—1744	...	...	...	...	Eng.
Eq. Rep.	...	...	Equity Reports, 3 vols., 1853—1855	...	...	...	...	Eng.
Esp.	...	...	Espinasse's Reports, Nisi Prius, 6 vols., 1793—1810	...	...	...	...	Eng.
Ex. D.	...	...	Law Reports, Exchequer Division, 5 vols., 1875—1880	...	...	...	...	Eng.
Exch.	...	...	Exchequer Reports (Welsby, Hurlstone, and Gordon), 11 vols., 1847—1856	...	...	...	...	Eng.
Exch. C. R.	...	...	Exchequer Court Reports	...	...	...	...	Can.
F. (Ct. of Sess.)	...	...	Fraser, Court of Session Cases (Scotland), 5th series, 1898—1906	...	...	...	...	Scot.
F.	...	...	Foord's Reports of the Supreme Court of the Cape of Good Hope, 1879—1880	...	...	...	...	S. Af.
F. & F.	...	...	Foster and Finlason's Reports, Nisi Prius, 4 vols., 1856—1867	...	...	...	...	Eng.
F. N. D.	...	...	Finnemore's Notes and Digest of Natal Cases, 1863—1867	...	...	...	...	S. Af.
Fac. Coll.	...	...	Faculty of Advocates, Collection of Decisions, Court of Session (Scotland), 38 vols., 1752—1841	...	...	...	...	Scot.
Falc.	...	...	Falconer's Decisions, Court of Session (Scotland), 2 vols., fol., 1744—1751	...	...	...	...	Scot.
Falc. & Fitz.	...	...	Falconer and Fitzherbert's Election Cases, 1 vol., 1835—1838	...	...	...	...	Eng.
Fenton	...	...	Fenton, Important Judgments	...	...	...	...	N.Z.
Ferg.	...	...	Ferguson's Consistorial Decisions (Scotland), 1 vol., 1811—1817	...	...	...	...	Scot.
Fitz. Nat. Brev.	...	...	Fitzherbert's Natura Brevium	...	...	...	...	Eng.
Fitz-G.	...	...	Fitz-Gibbons' Reports, King's Bench, fol., 1 vol., 1727—1731	...	...	...	...	Eng.
Fl. & K.	...	...	Flanagan and Kelly's Reports, Rolls Court (Ireland), 1 vol., 1840—1842	...	...	...	...	Ir.
Fonbl.	...	...	Fonblanque's Reports, Bankruptcy, 2 parts, 1849—1852	...	...	...	...	Eng.
For.	...	...	Forrest's Reports, Exchequer, 1 vol., 1800—1801	...	...	...	...	Eng.
Forb.	...	...	Forbes' Decisions, Court of Session (Scotland), fol., 1 vol., 1705—1713	...	...	...	...	Scot.
Fort. De Laud.	...	...	Fortesque, De Laudibus Legum Angliæ	...	...	...	...	Eng.
Fortes. Rep.	...	...	Fortescue's Reports, fol., 1 vol., 1692—1736	...	...	...	...	Eng.
Fost.	...	...	Foster's Crown Cases, 1 vol., 1708—1760	...	...	...	...	Eng.
Fount.	...	...	Fountainhall's Decisions, Court of Session (Scotland), fol., 2 vols., 1678—1712	...	...	...	...	Scot.
Fox & S. Ir.	...	...	M. C. Fox and T. B. C. Smith's Reports, King's Bench (Ireland), 2 vols., 1822—1825	...	...	...	...	Ir.
Fox & S. Reg.	...	...	J. S. Fox and C. L. Smith's Registration Cases, 1 vol., 1886—1895	...	...	...	...	Eng.
Fras.	...	...	Fraser (Simon), Election Cases, 2 vols., 1793	...	...	...	...	Eng.
Freem. Ch.	...	...	Freeman's Reports, Chancery, 1 vol., 1660—1706	...	...	...	...	Eng.
Freem. K. B.	...	...	Freeman's Reports, King's Bench and Common Pleas, 1 vol., 1670—1704	...	...	...	...	Eng.
G.	...	...	Gregorowski's Reports of the High Court of the Orange Free State from 1883	...	...	...	...	S. Af.
G. I. Dig.	...	...	General Index Digest	...	...	...	...	Can.
Gal. & Dav.	...	...	Gale and Davison's Reports, Queen's Bench, 3 vols., 1841—1843	...	...	...	...	Eng.
Gale	...	...	Gale's Reports, Exchequer, 2 vols., 1835—1836	...	...	...	...	Eng.
Gaz. L. R.	...	...	New Zealand Gazette Law Reports	...	...	...	...	N.Z.
Geld. Dig.	...	...	Geldert's Digest	...	...	...	...	Can.
Gib. Cod.	...	...	Gibson's Codex Juris Ecclesiastici Anglicani	...	...	...	...	Eng.
Giff.	...	...	Giffard's Reports, Chancery, 5 vols., 1857—1865	...	...	...	...	Eng.
Gilb.	...	...	Gilbert's Cases in Law and Equity, 1 vol., 1713—1714	...	...	...	...	Eng.
Gilb. C. P.	...	...	Gilbert's History and Practice of the Court of Common Pleas	...	...	...	...	Eng.
Gilb. Ch.	...	...	Gilbert's Reports, Chancery and Exchequer, fol., 1 vol., 1706—1726	...	...	...	...	...
Gilm. & F	...	...	Gilmour and Falconer's Decisions, Court of Session (Scotland), 2 parts, Part I. (Gilmour) 1661—1666, Part II. (Falconer) 1681—1686	...	...	...	...	...
Gl. & J.	...	...	Glyn and Jameson's Reports, Bankruptcy, 2 vols., 1819—1828	...	...	...	...	Eng.
Glanv.	...	...	Glanville, De Legibus et Consuetudinibus Regni Angliæ	...	...	...	...	Eng.
Glanv. El. Cas.	...	...	Glanville's Election Cases, 1 vol., 1623—1624	...	...	...	...	Eng.
Glascoc	...	...	Glascoc's Reports (Ireland), 1 vol., 1831—1832	...	...	...	...	Ir.
Godb.	...	...	Godbolt's Reports, King's Bench, Common Pleas, and Exchequer, 1 vol., 1574—1637	...	...	...	...	Eng.

REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

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Gouldsb.	...	...	Gouldsborough's Reports, Queen's Bench and King's Bench, 1 vol., 1586—1601	...	...	...	Eng.
Gow	...	...	Gow's Reports, Nisi Prius, 1 vol., 1818—1820	...	...	...	Eng.
Gr.	...	...	Upper Canada Chancery (Grant)	...	...	...	Can.
Griffin's Patent Cases	...	...	Griffin's Patent Cases, 1884—1886	...	...	...	Eng.
Gwill.	...	...	Gwillim's Tithe Cases, 4 vols., 1224—1824	...	...	...	Eng.
H.	...	...	Hertzog's Reports of the High Court of the South African Republic, 1893	...	...	...	S. Af.
H. & O.	...	...	Hurlstone and Coltman's Reports, Exchequer, 4 vols., 1862—1866	...	...	...	Eng.
H. & N.	...	...	Hurlstone and Norman's Reports, Exchequer, 7 vols., 1856—1862	...	...	...	Eng.
H. & Tw.	...	...	Hall and Twells' Reports, Chancery, 2 vols., 1848—1850	...	...	...	Eng.
H. & W.	...	...	Hurlstone and Walmsley's Reports, Exchequer, 1 vol., 1840—1841	...	...	...	Eng.
H. B. R. (preceded by date)	...	...	Hansell's Reports of Bankruptcy and Companies' Winding up Cases, 3 vols., 1915—1917 (e.g., [1915] H. B. R.)	...	...	...	Eng.
H. O.	...	...	Reports of the High Court of Griqualand West	...	...	...	S. Af.
F. E. C.	...	...	Hodgin's Election Reports	...	...	...	Can.
H. L. Cas.	...	...	Clark's Reports, House of Lords, 11 vols., 1847—1866	...	...	...	Eng.
Hag. Adm.	...	...	Haggard's Reports, Admiralty, 3 vols., 1822—1838	...	...	...	Eng.
Hag. Con.	...	...	Haggard's Consistorial Reports, 2 vols., 1789—1821	...	...	...	Eng.
Hag. Ecc.	...	...	Haggard's Ecclesiastical Reports, 4 vols., 1827—1833	...	...	...	Eng.
Hailes	...	...	Hailes's Decisions, Court of Session (Scotland), 2 vols., 1766—1791	...	...	...	Scot.
Hale, C. L.	...	...	Hale's Common Law	...	...	...	Eng.
Hale, P. O.	...	...	Hale's Pleas of the Crown, 2 vols.	...	...	...	Eng.
Han.	...	...	New Brunswick Reports (Hannay)	...	...	...	Can.
Har. & Ruth.	...	...	Harrison and Rutherford's Reports, Common Pleas, 1 vol., 1865—1866	...	...	...	Eng.
Har. & W.	...	...	Harrison and Wollaston's Reports, King's Bench and Bail Court, 2 vols., 1835—1836	...	...	...	Eng.
Harc.	...	...	Harcarse's Decisions, Court of Session (Scotland), fol., 1 vol., 1681—1691	...	...	...	Scot.
Hard.	...	...	Hardres' Reports, Exchequer, fol., 1 vol., 1655—1669	...	...	...	Eng.
Hare	...	...	Hare's Reports, Chancery, 11 vols., 1841—1853	...	...	...	Eng.
Hawk. P. O.	...	...	Hawkins's Pleas of the Crown, 2 vols.	...	...	...	Eng.
Hay	...	...	Hay's Reports	...	...	...	Ind.
Hayes	...	...	Hayes's Reports, Exchequer (Ireland), 1 vol., 1830—1832	...	...	...	Ir.
Hayes & Jo.	...	...	Hayes and Jones's Reports, Exchequer (Ireland), 1 vol., 1832—1834	...	...	...	Ir.
Hem. & M.	...	...	Hemming and Miller's Reports, Chancery, 2 vols., 1862—1865	...	...	...	Eng.
Het.	...	...	Hetley's Reports, Common Pleas, fol., 1 vol., 1627—1631	...	...	...	Eng.
Hob.	...	...	Hobart's Reports, Common Pleas, fol., 1 vol., 1613—1625	...	...	...	Eng.
Hodg.	...	...	Hodges' Reports, Common Pleas, 3 vols., 1835—1837	...	...	...	Eng.
Hog.	...	...	Hogan's Reports, Rolls Court (Ireland), 2 vols., 1816—1834	...	...	...	Ir.
Holt, Adm.	...	...	W. Holt's Rule of the Road Cases, Admiralty, 1 vol., 1863—1867	...	...	...	Eng.
Holt, Eq.	...	...	W. Holt's Equity Reports, 2 vols., 1845	...	...	...	Eng.
Holt, K. B.	...	...	Sir John Holt's Reports, King's Bench, fol., 1 vol., 1688—1710	...	...	...	Eng.
Holt, N. P.	...	...	F. Holt's Reports, Nisi Prius, 1 vol., 1815—1817	...	...	...	Eng.
Home, Ct. of Sess.	...	...	Home's Decisions, Court of Session (Scotland), fol., 1 vol., 1735—1744	...	...	...	Scot.
Hong Kong L. R.	...	...	Hong Kong Reports	...	...	...	Hong Kong.
Hop. & Colt.	...	...	Hopwood and Coltman's Registration Cases, 2 vols., 1863—1878	...	...	...	Eng.
Hop. & Ph.	...	...	Hopwood and Philbrick's Registration Cases, 1 vol., 1863—1867	...	...	...	Eng.
Horn & H.	...	...	Horn and Hurlstone's Reports, Exchequer, 2 vols., 1838—1839	...	...	...	Eng.
Hov. Supp.	...	...	Hovenden's Supplement to Vesey Jun.'s Reports, Chancery, 2 vols., 1753—1817	...	...	...	Eng.
How. O.	...	...	Howard's Chancery Practice	...	...	...	Ir.
How. O. S.	...	...	Howard's Supplement to Rules, etc., of the High Court of Chancery in Ireland	...	...	...	Ir.
How. E. E.	...	...	Howard's Equity Exchequer	...	...	...	Ir.
How. P. L.	...	...	Howard on the Popery Laws	...	...	...	Ir.
Hud. & B.	...	...	Hudson and Brooke's Reports, King's Bench and Exchequer (Ireland), 2 vols., 1827—1831	...	...	...	Ir.
Hudson's B. O.	...	...	Hudson on Building Contracts, 2 vols.	...	...	...	Eng.
Hume	...	...	Hume's Decisions, Court of Session (Scotland), 1 vol., 1781—1822	...	...	...	Scot.
Hut.	...	...	Hutton's Reports, Common Pleas, fol., 1 vol., 1617—1638	...	...	...	Eng.
Hy. Bl.	...	...	Henry Blackstone's Reports, Common Pleas, 2 vols., 1788—1796	...	...	...	Eng.
Hyde	...	...	Hyde's Reports	...	...	...	Ind.

I. C. L. R.	...	Irish Common Law Reports, 17 vols., 1849—1866	...	Ir.
I. Ch. R.	...	Irish Chancery Reports, 17 vols., 1850—1867	...	Ir.
I. Eq. R.	...	Irish Equity Reports, 13 vols., 1838—1851	...	Ir.
I. L. R.	...	Irish Law Reports, 13 vols., 1838—1851	...	Ir.
I. L. R. (Vol.) All.	...	Indian Law Reports, Allahabad	...	Ind.
I. L. R. (Vol.) Bom.	...	Indian Law Reports, Bombay	...	Ind.
I. L. R. (Vol.) Calc.	...	Indian Law Reports, Calcutta	...	Ind.
I. L. R. (Vol.) Lah.	...	Indian Law Reports, Lahore	...	Ind.
I. L. R. (Vol.) Mad.	...	Indian Law Reports, Madras	...	Ind.
I. L. T.	...	Irish Law Times, 1867—(current)	...	Ir.
I. L. T. Jo.	...	Irish Law Times Journal, 1867—(current)	...	Ir.
I. R. (preceded by date)	...	Irish Reports, since 1893 (<i>e.g.</i> [1894] 1 I. R.)	...	Ir.
I. R. (Vol.) C. L.	...	Irish Reports, Common Law, 11 vols., 1866—1877	...	Ir.
I. R. Eq.	...	Irish Reports, Equity, 11 vols., 1866—1877	...	Ir.
Ind. Awards	...	Industrial Awards Recommendations	...	N.Z.
Ind. Jur. N. S.	...	Indian Jurist, New Series	...	Ind.
Ind. Jur. O. S.	...	Indian Jurist, Old Series	...	Ind.
Ir. Cir. Rep.	...	Reports of Irish Circuit Cases, 1 vol., 1841—1843	...	Ir.
Ir. Jur.	...	Irish Jurist, 18 vols., 1849—1866	...	Ir.
Ir. L. Rec. 1st ser.	...	Law Recorder (Ireland), 1st series, 4 vols., 1827—1831	...	Ir.
Ir. L. Rec. N. S.	...	Law Recorder (Ireland), New Series, 6 vols., 1833—1838	...	Ir.
Ir. Term Rep.	...	Irish Term Reports	...	Ir.
Irv.	...	Irvine's Justiciary Reports (Scotland), 5 vols., 1852—1867	...	Scot.
J. Bridg.	...	Sir John Bridgman's Reports, Common Pleas, fol., 1 vol., 1613—1621	...	Eng.
J. D. R.	...	Juta's Daily Reporter, reporting Cases in the Cape Provincial Division	...	S. Af.
J. P.	...	Justice of the Peace, 1837—(current)	...	Eng.
J. P. Jo.	...	Justice of the Peace (Weekly Notes of Cases)	...	Eng.
J. R.	...	Jurist Reports	...	N.Z.
J. R. N. S.	...	Jurist Reports, New Series	...	N.Z.
J. Shaw, Just.	...	J. Shaw's Justiciary Reports (Scotland), 1 vol., 1848—1852	...	Scot.
Jac.	...	Jacob's Reports, Chancery, 1 vol., 1821—1823	...	Eng.
Jac. & W.	...	Jacob and Walker's Reports, Chancery, 2 vols., 1819—1821	...	Eng.
James	...	Nova Scotia Law Reports (James)	...	Can.
Jebb & B.	...	Jebb and Bourke's Reports, Queen's Bench (Ireland), 1 vol., 1841—1842	...	Ir.
Jebb & S.	...	Jebb and Symes' Reports, Queen's Bench (Ireland), 2 vols., 1838—1841	...	Ir.
Jebb, C. C.	...	Jebb's Crown Cases Reserved (Ireland), 1 vol., 1822—1840	...	Ir.
Jebb, Cr. & Pr. Cas.	...	Jebb's Crown and Presentment Cases	...	Ir.
Jenk.	...	Jenkins' Reports, 1 vol., 1220—1623	...	Eng.
Jo. & Car.	...	Jones and Carey's Reports, Exchequer (Ireland), 1 vol., 1838—1839	...	Ir.
Jo. & Lat.	...	Jones and La Touche's Reports, Chancery (Ireland), 3 vols., 1844—1846	...	Ir.
Jo. Ex. Ir.	...	T. Jones' Reports, Exchequer (Ireland), 2 vols., 1834—1838	...	Ir.
John.	...	Johnson's Reports, Chancery, 1 vol., 1858—1860	...	Eng.
John. & H.	...	Johnson and Hemming's Reports, Chancery, 2 vols., 1859—1862	...	Eng.
Jur.	...	Jurist Reports, 18 vols., 1837—1854	...	Eng.
Jur. N. S.	...	Jurist Reports, New Series, 12 vols., 1855—1867	...	Eng.
Just. Inst.	...	Justinian's Institutes	...	Eng.
K.	...	Kotze's Reports of the High Court of the Transvaal Province, 1877—1881	...	S. Af.
K. & G	...	Keane and Grant's Registration Cases, 1 vol., 1854—1862	...	Eng.
K. & J	...	Kay and Johnson's Reports, Chancery, 4 vols., 1854—1858	...	Eng.
K. B. (preceded by date)	...	Law Reports, King's Bench Division, since 1900 (<i>e.g.</i> , [1901] 2 K. B.)	...	Eng.
Kames Dict. Dec.	...	Kames, Dictionary of Decisions, Court of Session (Scotland), fol., 2 vols., 1540—1741	...	Scot.
Kames, Rem. Dec.	...	Kames, Remarkable Decisions, Court of Session (Scotland), 2 vols., 1716—1752	...	Scot.
Kames, Sel. Dec.	...	Kames, Select Decisions, Court of Session (Scotland), 1 vol., 1752—1768	...	Scot.
Kay	...	Kay's Reports, Chancery, 1 vol., 1853—1854	...	Eng.
Keb.	...	Keble's Reports, fol., 3 vols., 1661—1677	...	Eng.
Keen	...	Keen's Reports, Rolls Court, 2 vols., 1836—1838	...	Eng.
Keil.	...	Keilwey's Reports, King's Bench, fol., 1 vol., 1327—1578	...	Eng.
Kel.	...	Sir John Kelyng's Reports, Crown Cases, fol., 1 vol., 1662—1707	...	Eng.
Kel. W.	...	W. Kelynge's Reports, fol., 1 vol., Chancery, 1730—1732; King's Bench, fol., 1731—1734	...	Eng.
Keny.	...	Kenyon's Notes of Cases, King's Bench, 2 vols., 1753—1759	...	Eng.
Keny. Ch.	...	Chancery Cases in Vol. II. of Kenyon's Notes of Cases, 1753—1754	...	Eng.

REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

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Kerr	New Brunswick Reports (Kerr)	Can.
Kilkerran	Kilkerran's Decisions, Court of Session (Scotland), fol., 1 vol., 1738—1752	Scot.
Kn. & Omb.	Knapp and Ombler's Election Cases, 1 vol., 1834—1835	Eng.
Knapp	Knapp's Reports, Privy Council, 3 vols., 1829—1836	Eng.
Knox	Knox's Reports	Aus.
Konst. & W. Rat. App.	Konstam and Ward's Reports of Rating Appeals, 1 vol., 1909—1912	Eng.
Konst. Rat. App.	Konstam's Reports of Rating Appeals, 2 vols., 1894—1904	Eng.
L. & G. temp. Plunk.	Lloyd and Goold's Reports temp. Plunkett, Chancery (Ireland), 1 vol., 1834—1839	Ir.
L. & G. temp. Sugd.	Lloyd and Goold's Reports temp. Sugden, Chancery (Ireland), 1 vol., 1835	Ir.
L. & Welsb.	Lloyd and Welsby's Commercial and Mercantile Cases, 1 vol., 1829—1830	Eng.
L. C. & M. Gaz.	Local Courts and Municipal Gazette	Can.
L. C. J.	Lower Canada Jurist	Can.
L. C. L. J.	Lower Canada Law Journal	Can.
L. C. R.	Lower Canada Reports	Can.
L. G. R.	Local Government Reports, 1902—(current)	Eng.
L. J. Adm.	Law Journal, Admiralty, 1865—1875	Eng.
L. J. Bcy.	Law Journal, Bankruptcy, 1832—1880	Eng.
L. J. C. C.	Law Journal (County Courts Reporter), 1912—(current)	Eng.
L. J. C. P.	Law Journal, Common Pleas, 1831—1875	Eng.
L. J. Ch.	Law Journal, Chancery, 1831—(current)	Eng.
L. J. Eccl.	Law Journal, Ecclesiastical Cases, 1866—1875	Eng.
L. J. Ex.	Law Journal, Exchequer, 1831—1875	Eng.
L. J. Ex. Eq.	Law Journal, Exchequer in Equity, 1835—1841	Eng.
L. J. K. B. or Q. B.	Law Journal, King's Bench or Queen's Bench, 1831—(current)	Eng.
L. J. M. C.	Law Journal, Magistrates' Cases, 1831—1896	Eng.
L. J. N. C.	Law Journal, Notes of Cases, 1866—1892 (from 1893, see Law Journal)	Eng.
L. J. O. S.	Law Journal, Old Series, 10 vols., 1822—1831	Eng.
L. J. P.	Law Journal, Probate Divorce and Admiralty, 1875—(current)	Eng.
L. J. P. & M.	Law Journal, Probate and Matrimonial Cases, 1858—1859, 1866—1875	Eng.
L. J. P. C.	Law Journal, Privy Council, 1865—(current)	Eng.
L. J. P. M. & A.	Law Journal, Probate, Matrimonial and Admiralty, 1860—1865	Eng.
L. Jo.	Law Journal Newspaper, 1866—(current)	Eng.
L. L. R.	Leader Law Reports	S. At.
L. M. & P.	Lowndes, Maxwell, and Pollock's Reports, Bail Court and Practice, 2 vols., 1850—1851	Eng.
L. N.	Legal News	Can.
L. R. A. & E.	Law Reports, Admiralty and Ecclesiastical Cases, 4 vols., 1865—1875	Eng.
L. R. C. C. R.	Law Reports, Crown Cases Reserved, 2 vols., 1865—1875	Eng.
L. R. C. P.	Law Reports, Common Pleas, 10 vols., 1865—1875	Eng.
L. R. Eq.	Law Reports, Equity Cases, 20 vols., 1865—1875	Eng.
L. R. Exch.	Law Reports, Exchequer, 10 vols., 1865—1875	Eng.
L. R. H. L.	Law Reports, English and Irish Appeals and Peerage Claims, House of Lords, 7 vols., 1866—1875	Eng.
L. R. Ind. App.	Law Reports, Indian Appeals, Privy Council, 1873—(current)	Eng.
L. R. Ind. App. Supp. Vol.	Law Reports, India Appeals, Privy Council, Supplementary Volume, 1872—1873	Eng.
L. R. Ir.	Law Reports (Ireland), Chancery and Common Law, 32 vols., 1877—1893	Ir.
L. R. P. & D.	Law Reports, Probate and Divorce, 3 vols., 1865—1875	Eng.
L. R. P. C.	Law Reports, Privy Council, 6 vols., 1865—1875	Eng.
L. R. Q. B.	Law Reports, Queen's Bench, 10 vols., 1865—1875	Eng.
L. R. Q. B.	Quebec Reports, Queen's Bench	Can.
L. R. Sc. & Div.	Law Reports, Scotch and Divorce Appeals, House of Lords, 2 vols., 1866—1875	Eng.
L. T.	Law Times Reports, 1859—(current)	Eng.
L. T. Jo.	Law Times Newspaper, 1843—(current)	Eng.
L. T. O. S.	Law Times Reports, Old Series, 34 vols., 1843—1860	Eng.
L. Th.	La Themis	Can.
Lane	Lane's Reports, Exchequer, fol., 1 vol., 1605—1611	Eng.
Lat.	Latch's Reports, King's Bench, fol., 1 vol., 1625—1628	Eng.
Laws. Reg. Cas.	Lawson's Registration Cases, 1895—(current)	Eng.
Ld. Raym.	Lord Raymond's Reports, King's Bench and Common Pleas, 3 vols., 1694—1732	Eng.
Le. & Ca.	Leigh and Cave's Crown Cases Reserved, 1 vol., 1861—1865	Eng.
Leach	Leach's Crown Cases, 2 vols., 1730—1814	Eng.
Lee	Sir G. Lee's Ecclesiastical Judgments, 2 vols., 1752—1758	Eng.
Lee temp. Hard.	T. Lee's Cases temp. Hardwicke, King's Bench, 1 vol., 1733—1738	Eng.

xxiv REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

Leg. Rep.	...	...	Legal Reporter	...	...	...	...	...	Ir.
Legge	...	...	Legge's Reports	...	...	...	...	...	Aus.
Leon.	...	...	Leonard's Reports, King's Bench, Common Pleas and Exchequer, fol., 4 parts, 1552—1615	...	...	...	...	...	Eng.
Lev.	...	...	Levinz's Reports, King's Bench and Common Pleas, fol., 3 vols., 1660—1696	...	...	...	...	...	Eng.
Lew. O. O.	...	...	Lewin's Crown Cases on the Northern Circuit, 2 vols., 1822—1838	...	...	...	...	...	Eng.
Ley	...	...	Ley's Reports, King's Bench, fol., 1 vol., 1608—1629	...	...	...	...	...	Eng.
Lib. Ass.	...	...	Liber Assisarum, Year Books, 1—51 Edw. III.	...	...	...	...	...	Eng.
Lilly	...	...	Lilly's Reports and Pleadings of Cases in Assize, fol., 1 vol.	...	...	...	...	...	Eng.
Litt.	...	...	Littleton's Reports, Common Pleas, fol., 1 vol., 1627—1631	...	...	...	...	...	Eng.
Lloyd, L. R.	...	...	Lloyd's List Law Reports, 1919—(current)	...	...	...	...	...	Eng.
Lloyd, Pr. Cas.	...	...	Lloyd's Reports of Prize Cases, 5 vols., 1914—1918	...	...	...	...	...	Eng.
Lofft	...	...	Lofft's Reports, King's Bench, foll., 1 vol., 1772—1774	...	...	...	...	...	Eng.
Long. & T.	...	...	Longfield and Townsend's Reports, Exchequer (Ireland), 1 vol., 1841—1842	...	...	...	...	...	Ir.
Lords Journals	...	...	Journals of the House of Lords	...	...	...	...	...	Eng.
Lud. E. O.	...	...	Luder's Election Cases, 3 vols., 1784—1787	...	...	...	...	...	Eng.
Lumley, P. L. C.	...	...	Lumley's Poor Law Cases, 2 vols., 1834—1842	...	...	...	...	...	Eng.
Lush.	...	...	Lushington's Reports, Admiralty, 1 vol., 1859—1862	...	...	...	...	...	Eng.
Lut.	...	...	Sir E. Lutwyche's Entries and Reports, Common Pleas, 2 vols., 1682—1704	...	...	...	...	...	Eng.
Lut. Reg. Cas.	...	...	A. J. Lutwyche's Registration Cases, 2 vols., 1843—1853	...	...	...	...	...	Eng.
Lynd.	...	...	Lyndwood, Provinciale, fol., 1 vol.	...	...	...	...	...	Eng.
M.	...	...	Menzie's Reports of the Supreme Court of the Cape of Good Hope,	...	...	...	...	...	S. Af.
M. & S.	...	...	Maule and Selwyn's Reports, King's Bench, 6 vols., 1813—1817	...	...	...	...	...	Eng.
M. & W.	...	...	Meeson and Welsby's Reports, Exchequer, 16 vols., 1836—1847	...	...	...	...	...	Eng.
M. C. R....	...	...	Montreal Condensed Reports	...	...	...	...	...	Can.
M. H. C. R.	...	...	Madras High Court Reports	...	...	...	...	...	Ind.
M. L. R. (Vol.) K. B. or Q. B.	...	...	Montreal Law Reports, King's Bench or Queen's Bench	...	...	...	...	...	Can.
M. L. R. (Vol.) S. C.	...	...	Montreal Law Reports, Superior Court	...	...	...	...	...	Can.
M. M. Cas.	...	...	Martin's Reports of Mining Cases	...	...	...	...	...	Can.
Mac.	...	...	Macassey's New Zealand Reports	...	...	...	...	...	N.Z.
Mac. & G.	...	...	Macnaghten and Gordon's Reports, Chancery, 3 vols., 1849—1852	...	...	...	...	...	Eng.
Mac. & H.	...	...	Macrae and Hertslet's Insolvency Cases, 1 vol., 1847—1852	...	...	...	...	...	Eng.
M'Cle	...	...	M'Clelland's Reports, Exchequer, 1 vol., 1824	...	...	...	...	...	Eng.
M'Cle. & Yo.	...	...	M'Clelland and Younge's Reports, Exchequer, 1 vol., 1824—	...	...	...	...	...	Eng.
Macfarlane	...	...	Macfarlane's Jury Trials, Court of Session (Scotland), 3 parts, 1838—1839	...	...	...	...	...	Scot.
Macl. & Rob.	...	...	Maclean and Robinson's Scotch Appeals (House of Lords), 1 vol., 1839	...	...	...	...	...	Scot.
Macph. (Ct. of Sess.)	...	...	Macpherson, Court of Session (Scotland), 3rd series, 11 vols., 1862—1873	...	...	...	...	...	Scot.
Macq.	...	...	Macqueen's Scotch Appeals, House of Lords, 4 vols., 1849—1865	...	...	...	...	...	Scot.
Macr.	...	...	Macrory's Patent Cases, 2 parts, 1847—1856	...	...	...	...	...	Eng.
Mad.	...	...	Madras High Court Reports	...	...	...	...	...	Ind.
Madd.	...	...	Maddock's Reports, Chancery, 6 vols., 1815—1821	...	...	...	...	...	Eng.
Madd. & G.	...	...	Maddock and Geldart's Reports, Chancery, 1 vol., 1819—1822 (Vol. VI. of Madd.)	...	...	...	...	...	Eng.
Madox	...	...	Madox's Formulæ Anglicanum	...	...	...	...	...	Eng.
Madox, Exch.	...	...	Madox's History and Antiquities of the Exchequer, 2 vols.	...	...	...	...	...	Eng.
Mag.	...	...	Magistrate and Municipal and Parochial Lawyer, London, 5 vols., 1848—1852	...	...	...	...	...	Eng.
Man. & G.	...	...	Manning and Granger's Reports, Common Pleas, 7 vols., 1840—1845	...	...	...	...	...	Eng.
Man. & Ry. K. B.	...	...	Manning and Ryland's Reports, King's Bench, 5 vols., 1827—1830	...	...	...	...	...	Eng.
Man. & Ry. M. C.	...	...	Manning and Ryland's Magistrates' Cases, 3 vols., 1827—1830	...	...	...	...	...	Eng.
Man. L. J.	...	...	Manitoba Law Journal	...	...	...	...	...	Can.
Man. L. R.	...	...	Manitoba Law Reports	...	...	...	...	...	Can.
Man. R. temp. Wood	...	...	Manitoba Reports temp. Wood	...	...	...	...	...	Can.
Mans.	...	...	Manson's Bankruptcy and Company Cases, 21 vols., 1893—1914	...	...	...	...	...	Eng.
Mar. L. C.	...	...	Maritime Law Reports (Crockford), 3 vols., 1860—1871	...	...	...	...	...	Eng.
March	...	...	March's Reports, King's Bench and Common Pleas, 1 vol.,	...	...	...	...	...	Eng.
Marr.	...	...	Marriott's Decisions, Admiralty, 1 vol., 1776—1779	...	...	...	...	...	Eng.
Marsh.	...	...	Marshall's Reports, Common Pleas, 2 vols., 1813—1816	...	...	...	...	...	Eng.
Marsh.	...	...	Marshall's Reports	...	...	...	...	...	Ind.
Mayn.	...	...	Maynard's Reports, Exchequer Memoranda of Edw. I. and Year Books of Edw. II., Year Books, Part I., 1273—1326	...	...	...	...	...	Eng.
	...	...	Megone's Companies Acts Cases, 2 vols., 1889—1891	...	...	...	...	...	Eng.

REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

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Men.	Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828—1850	S. Af.
Mer.	Merivale's Reports, Chancery, 3 vols., 1815—1817	Eng.
Milw.	Milward's Ecclesiastical Reports (Ireland), 1 vol., 1819—1843	Ir.
Mod. Rep.	Modern Reports, 12 vols., 1669—1755	Eng.
Mol.	Molloy's Reports, Chancery (Ireland), 3 vols., 1808—1831	Ir.
Mont.	Montagu's Reports, Bankruptcy, 1 vol., 1829—1832	Eng.
Mont. & A.	Montagu and Ayrton's Reports, Bankruptcy, 3 vols., 1832—1838	Eng.
Mont. & B.	Montagu and Bligh's Reports, Bankruptcy, 1 vol., 1832—1833	Eng.
Mont. & Ch.	Montagu and Chitty's Reports, Bankruptcy, 1 vol., 1838—1840	Eng.
Mont. & M.	Montagu and Macarthur's Reports, Bankruptcy, 1 vol., 1826—1830	Eng.
Mont. D. & De G.	Montagu, Deacon, and De Gex's Reports, Bankruptcy, 3 vols., 1840—1844	Eng.
Moo. & P.	Moore and Payne's Reports, Common Pleas, 5 vols., 1827—1831	Eng.
Moo. & S.	Moore and Scott's Reports, Common Pleas, 4 vols., 1831—1834	Eng.
Moo. Ind. App.	Moore's Indian Appeal Cases, Privy Council, 14 vols., 1836—1872	Eng.
Moo. P. C. C.	Moore's Privy Council Cases, 15 vols., 1836—1863	Eng.
Moo. P. C. C. N. S.	Moore's Privy Council Cases, New Series, 9 vols., 1862—1873	Eng.
Mood. & M.	Moody and Malkin's Reports, Nisi Prius, 1 vol., 1826—1830	Eng.
Mood. & R.	Moody and Robinson's Reports, Nisi Prius, 2 vols., 1830—1844	Eng.
Mood. C. C.	Moody's Crown Cases Reserved, 2 vols., 1824—1844	Eng.
Moore, C. P.	J. B. Moore's Reports, Common Pleas, 12 vols., 1817—1827	Eng.
Moore, K. B.	Sir F. Moore's Reports, King's Bench, fol., 1 vol., 1485—1620	Eng.
Mor. Dict.	Morison's Dictionary of Decisions, Court of Session (Scotland), 43 vols., 1532—1808	Scot.
Morr.	Morrell's Reports, Bankruptcy, 10 vols., 1884—1893	Eng.
Mos.	Moseley's Reports, Chancery, fol., 1 vol., 1726—1730	Eng.
Mun. Rep.	Municipal Reports	Can.
Murd. Epit.	Murdoch's Epitome	Can.
Murp. & H.	Murphy and Hurlstone's Reports, Exchequer, 1 vol., 1837	Eng.
Murr.	Murray's Reports, Jury Court (Scotland), 5 vols., 1816—1830	Scot.
My. & Cr.	Mylne and Craig's Reports, Chancery, 5 vols., 1835—1841	Eng.
My. & K.	Mylne and Keen's Reports, Chancery, 3 vols., 1832—1835	Eng.
N. A. C.	Native Appeal Cases	S. Af.
N. & S.	Nichols and Stop's Reports (Tasmania)	Tasmania.
N. B. Dig.	New Brunswick Digest (Stevens)	Can.
N. B. Eq. Rep.	New Brunswick Equity Reports	Can.
N. B. R.	New Brunswick Reports	Can.
N. B. R. (All.)	New Brunswick Law Reports (Allen)	Can.
N. B. R. (Ber.)	New Brunswick Law Reports (Berton)	Can.
N. B. R. (Chip.)	New Brunswick Reports (Chipman)	Can.
N. B. R. (Han.)	New Brunswick Reports (Hannay)	Can.
N. B. R. (Kerr)	New Brunswick Law Reports (Kerr)	Can.
N. B. R. (P. & B.)	New Brunswick Reports (Pugsley and Burbidge)	Can.
N. B. R. (P. & T.)	New Brunswick Law Reports (Pugsley and Trueman)	Can.
N. B. R. (Pug.)	New Brunswick Reports (Pugsley)	Can.
N. L. R.	Natal Law Reports	S. Af.
N. S. R.	Nova Scotia Reports	Can.
N. S. R. (James)	Nova Scotia Reports (James)	Can.
N. S. R. (Old.)	Nova Scotia Reports (Oldrights)	Can.
N. S. R. (R. & C.)	Nova Scotia Reports (Russell and Chesley)	Can.
N. S. R. (R. & G.)	Nova Scotia Reports (Russell and Geldert)	Can.
N. S. R. (Thom.)	Nova Scotia Reports (Thomson)	Can.
N. S. W. Adm. or Ad.	New South Wales Reports, Admiralty	Aus.
N. S. W. B.	New South Wales Reports, Bankruptcy	Aus.
N. S. W. Bkpty. Cas.	New South Wales Bankruptcy Cases	Aus.
N. S. W. Eq.	New South Wales Reports, Equity	Aus.
N. S. W. Ind. Arbtrn. Cas.	New South Wales Industrial Arbitration Cases	Aus.
N. S. W. L. R.	New South Wales Law Reports	Aus.
N. S. W. Land App. Cts.	New South Wales Land Appeal Courts	Aus.
N. S. W. S. C. R.	New South Wales Supreme Court Reports	Aus.
N. S. W. S. C. R. N. S.	New South Wales Supreme Court Reports, New Series	Aus.
N. S. W. W. N.	New South Wales Weekly Notes	Aus.
N. W.	North-Western Provinces High Court Reports	Ind.
N. W. T. R.	North-West Territories Reports	Can.
N. Z. Jur.	New Zealand Jurist	N.Z.
N. Z. Jur. Mining Law	New Zealand Jurist Mining Law	N.Z.
N. Z. Jur. N. S.	New Zealand Jurist, New Series	N.Z.
N. Z. L. R.	New Zealand Law Reports, 1883—(current)	N.Z.
N. Z. L. R. C. A.	New Zealand Law Reports, Court of Appeal, 5 vols., 1883—1887	N.Z.
Nels.	Nelson's Reports, Chancery, 1 vol., 1625—1693	Eng.

Nev. & M. K. B.	...	Neville and Manning's Reports, King's Bench, 6 vols., 1832—1836 ...	Eng.
Nev. & M. M. O.	...	Neville and Manning's Magistrates' Cases, 8 vols., 1832—1836 ...	Eng.
Nev. & P. K. B.	...	Neville and Perry's Reports, King's Bench, 3 vols., 1836—1838 ...	Eng.
Nev. & P. M. O.	...	Neville and Perry's Magistrates' Cases, 1 vol., 1836—1837 ...	Eng.
New Mag. Cas.	...	New Magistrates' Cases (Bittleston, Wise and Parnell), 5 vols., 1844—1850 ...	Eng.
New Pract. Cas.	...	New Practice Cases (Bittleston and others), 3 vols., 1844—1848 ...	Eng.
New Rep.	...	New Reports, 6 vols., 1862—1865 ...	Eng.
New Sess. Cas.	...	New Sessions Magistrates' Cases (Carrow, Hamerton, Allen, etc.), 4 vols., 1844—1851 ...	Eng.
Nfld. L. R.	...	Newfoundland Reports ...	Nfld.
Nolan	...	Nolan's Magistrates' Cases, 1 vol., 1791—1793 ...	Eng.
Notes of Cases	...	Notes of Cases in the Ecclesiastical and Maritime Courts, 7 vols., 1841—1850 ...	Eng.
Noy	...	Noy's Reports, King's Bench, fol., 1 vol., 1558—1649 ...	Eng.
O. B. & F.	...	Ollivier Bell and Fitzgerald's Reports ...	N.Z.
O. B. S. P.	...	Old Bailey Session Papers ...	Eng.
O. Bridg.	...	Sir Orlando Bridgman's Reports, Common Pleas, 1 vol., 1660—1666 ...	Eng.
O. F. S.	...	Reports of the High Court of the Orange Free State, 1879—1883 ...	S. Af.
O. L. R.	...	Ontario Law Reports ...	Can.
O'M. & H.	...	O'Malley and Hardcastle's Election Cases, 1869—(current) ...	Eng.
O. P. D.	...	South African Law Reports, Orange Free State Provincial Division ...	S. Af.
O. R.	...	Ontario Reports ...	Can.
O. R.	...	Official Reports of the South African Republic, 1894—1899 ...	S. Af.
O. R. C.	...	Reports of the High Court of the Orange River Colony ...	S. Af.
O. S.	...	Upper Canada Queen's Bench, Old Series ...	Can.
O. W. N.	...	Ontario Weekly Notes ...	Can.
O. W. R.	...	Ontario Weekly Reporter ...	Can.
Old.	...	Nova Scotia Reports (Oldrights) ...	Can.
Ont. Dig.	...	Digest of Ontario Case Law, 4 vols., 1823—1900 ...	Can.
Owen	...	Owen's Reports, King's Bench and Common Pleas, fol., 1 vol., 1557—1614 ...	Eng.
P. (preceded by date)	...	Law Reports, Probate, Divorce, and Admiralty Division, since 1890 (<i>e.g.</i> , [1891] P.) ...	Eng.
P. & B.	...	New Brunswick Reports (Pugsley and Burbidge) ...	Can.
P. & T.	...	New Brunswick Law Reports (Pugsley and Trueman) ...	Can.
P. D.	...	Law Reports, Probate, Divorce, and Admiralty Division, 15 vols., 1875—1890 ...	Eng.
P. E. I.	...	Prince Edward Island Reports ...	Can.
P. R.	...	Ontario Practice ...	Can.
P. Wms.	...	Peere Williams' Reports, Chancery and King's Bench, 3 vols., 1695—1735 ...	Eng.
Palm.	...	Palmer's Reports, King's Bench, fol., 1 vol., 1619—1629 ...	Eng.
Park.	...	Parker's Reports, Exchequer, fol., 1 vol., 1743—1767 ...	Eng.
Pat. App.	...	Paton's Scotch Appeals, House of Lords, 6 vols., 1726—1822 ...	Scot.
Pater. App.	...	Paterson's Scotch Appeals, House of Lords, 2 vols., 1851—1873 ...	Scot.
Peake	...	Peake's Reports, Nisi Prius, 1 vol., 1790—1794 ...	Eng.
Peake, Add. Cas.	...	Peake's Additional Cases, Nisi Prius, 1 vol., 1795—1812 ...	Eng.
Peck.	...	Peckwell's Election Cases, 2 vols., 1803—1806 ...	Eng.
Pelham	...	Pelham (S. A.) Reports ...	Aus.
Per. & Dav.	...	Perry and Davison's Reports, Queen's Bench, 4 vols., 1838—1841 ...	Eng.
Per. & Kn.	...	Perry and Knapp's Election Cases, 1 vol., 1833 ...	Eng.
Per. C. S.	...	Perrault's Conseil Supérieur ...	Can.
Per. P.	...	Perrault's Prévosté de Quebec, 1726—1756 ...	Can.
Ph.	...	Phillips' Reports, Chancery, 2 vols., 1841—1849 ...	Eng.
Phil. El. Cas.	...	Philipps' Election Cases, 1 vol., 1780 ...	Eng.
Phillim.	...	J. Phillimore's Ecclesiastical Reports, 3 vols., 1809—1821 ...	Eng.
Phillim. Eccl. Jud.	...	Sir R. Phillimore's Ecclesiastical Judgments, 1 vol., 1867—1875 ...	Eng.
Phip.	...	Phipson's Digest of Natal Reports, 1858—1859 ...	S. Af.
Pig. & R.	...	Pigott and Rodwell's Registration Cases, 1 vol., 1843—1845 ...	Eng.
Pitc.	...	Pitcairn's Criminal Trials (Scotland), 3 vols., 1488—1624 ...	Scot.
Plowd.	...	Plowden's Reports, fol., 2 vols., 1550—1580, and Plowden's Queries, Vol. I. ...	Eng.
Poll.	...	Pollexfen's Reports, King's Bench, fol., 1 vol., 1670—1682 ...	Eng.
Poph.	...	Popham's Reports, King's Bench, fol., 1 vol., 1591—1627 ...	Eng.
Pow. R. & D.	...	Power, Rodwell, and Dew's Election Cases, 2 vols., 1848—1856 ...	Eng.
Prec. Ch.	...	Precedents in Chancery, fol., 1 vol., 1689—1722 ...	Eng.
Price	...	Price's Reports, Exchequer, 13 vols., 1814—1824 ...	Eng.
Price	...	Price's Mining Commissioners' Cases ...	Can.

REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

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Pug.	...	...	New Brunswick Reports (Pugsley)	...	...	...	...	Can.
Py. R.	...	...	Pykes' Lower Canada Reports	...	...	...	...	Can.
Q. B.	...	...	Queen's Bench Reports (Adolphus and Ellis, New Series), 18 vols., 1841—1852	...	...	...	...	Eng.
Q. B. (preceded by date)	...	...	Law Reports, Queen's Bench Division, 1891—1901 (<i>e.g.</i> , [1891] 1 Q. B.)	...	...	...	...	Eng.
Q. B. D.	...	...	Law Reports, Queen's Bench Division, 25 vols., 1875—1890	...	...	...	...	Eng.
Q. J. P.	...	...	Queensland Justice of Peace Reports	...	...	...	...	Aus.
Q. L. J.	...	...	Queensland Law Journal	...	...	...	...	Aus.
Q. L. R.	...	...	Quebec Law Reports	...	...	...	...	Can.
Q. L. R. (Beor)	...	...	Queensland Law Reports by Beor	...	...	...	...	Aus.
Q. P. R.	...	...	Quebec Practice Reports	...	...	...	...	Can.
Q. R. (Vol.) K. B. or Q. B.	...	...	Rapports Judiciaires de Québec, Cour du Banc du Roi, 1892—(current)	...	...	...	...	Can.
Q. R. (Vol.) S. O.	...	...	Rapports Judiciaires de Québec, Cour Supérieure, 1892—(current)	...	...	...	...	Can.
Q. S. O. R.	...	...	Queensland Supreme Court Reports	...	...	...	...	Aus.
Q. S. R.	...	...	Queensland State Reports	...	...	...	...	Aus.
Q. W. N.	...	...	Weekly Notes, Queensland	...	...	...	...	Aus.
R.	...	...	The Reports, 15 vols., 1893—1895	...	...	...	...	Eng.
R.	...	...	Roscoe's Reports of the Supreme Court of the Cape of Good Hope 1861—1867, 1871—1872, 1877—1878	...	...	...	...	S. Af.
R. (Ct. of Sess.)	...	...	Rettie, Court of Session Cases (Scotland), 4th series, 25 vols., 1873—1898	...	...	...	...	Scot.
R. A. O.	...	...	Ramsay, Appeal Cases	...	...	...	...	Can.
R. & C.	...	...	Nova Scotia Reports (Russell & Chesney)	...	...	...	...	Can.
R. & G.	...	...	Nova Scotia Reports (Russell and Geldert)	...	...	...	...	Can.
R. C.	...	...	La Revue Critique de Législation et de Jurisprudence de Canada	...	...	...	...	Can.
R. de J.	...	...	Revue de Jurisprudence	...	...	...	...	Can.
R. de L.	...	...	Revue de Législation et de Jurisprudence, 3 vols., 1845—1848	...	...	...	...	Can.
R. E. D.	...	...	New South Wales, Reserved and Equity Decisions	...	...	...	...	Aus.
R. E. D.	...	...	Ritchie's Equity Decisions (Russell)	...	...	...	...	Can.
R. J. R. Q.	...	...	Quebec Revised Reports	...	...	...	...	Can.
R. L. N. S.	...	...	Revue Légale, New Series, 1895—(current)	...	...	...	...	Can.
R. L. O. S.	...	...	Revue Légale, Old Series, 21 vols., 1869—1892	...	...	...	...	Can.
R. P. O.	...	...	Reports of Patent Cases, 1884—(current)	...	...	...	...	Eng.
R. R.	...	...	Revised Reports	...	...	...	...	Eng.
Rast.	...	...	Rastell's Entries	...	...	...	...	Eng.
Rayn.	...	...	Rayner's Tithe Cases, 3 vols., 1575—1782	...	...	...	...	Eng.
Real Prop. Cas.	...	...	Real Property Cases, 2 vols., 1843—1847	...	...	...	...	Eng.
Rep. Ch.	...	...	Reports in Chancery, fol., 3 vols., 1615—1710	...	...	...	...	Eng.
Rep. in C. of A.	...	...	Reports in Courts of Appeal	...	...	...	...	N.Z.
Res. & Eq. Jud.	...	...	New South Wales Reserved and Equity Judgments	...	...	...	...	Aus.
Reserv. Cas.	...	...	Reserved Cases	...	...	...	...	Ir.
Rick. & M.	...	...	Rickards and Michael's Locus Standi Reports, 1 vol., 1885—1889	...	...	...	...	Eng.
Rick. & S.	...	...	Rickards and Saunders' Locus Standi Reports, 1 vol., 1890—1894	...	...	...	...	Eng.
Ridg. L. & S.	...	...	Ridgeway, Lapp, and Schoales' Reports (Ireland), 1 vol., 1793—1795	...	...	...	...	Ir.
Ridg. Parl. Rep.	...	...	Ridgeway's Parliamentary Reports (Ireland), 3 vols., 1784—1796	...	...	...	...	Ir.
Ridg. temp. H.	...	...	Ridgeway's Reports temp. Hardwicke, 1 vol., King's Bench, 1733—1736; Chancery, 1744—1746	...	...	...	...	Eng.
Ritch. Eq. Rep.	...	...	Ritchie's Equity Reports	...	...	...	...	Can.
Rob. Eccl.	...	...	Robertson's Ecclesiastical Reports, 2 vols., 1844—1853	...	...	...	...	Eng.
Rob. L. & W.	...	...	Roberts, Leeming, and Wallis' New County Court Cases, 1 vol., 1849—1851	...	...	...	...	Eng.
Robert. App.	...	...	Robertson's Scotch Appeals, House of Lords, 1 vol., 1709—1727	...	...	...	...	Scot.
Robin. App.	...	...	Robinson's Scotch Appeals, House of Lords, 2 vols., 1840—1841	...	...	...	...	Scot.
Roll. Abr.	...	...	Rolle's Abridgment of the Common Law, fol., 2 vols.	...	...	...	...	Eng.
Roll. Rep.	...	...	Rolle's Reports, King's Bench, fol., 2 vols., 1614—1625	...	...	...	...	Eng.
Rom.	...	...	Romilly's Notes of Cases in Equity, 1 part, 1772—1787	...	...	...	...	Eng.
Roscoe's B.C.	...	...	Roscoe, Digest of Building Cases	...	...	...	...	Eng.
Rose	...	...	Rose's Reports, Bankruptcy, 2 vols., 1810—1816	...	...	...	...	Eng.
Ross, L. O.	...	...	Ross's Leading Cases in Commercial Law (England and Scotland), 3 vols.	...	...	...	...	Eng.
Rowe	...	...	Rowe's Reports (England and Ireland), 1 vol., 1798—1823	...	...	...	...	Eng.
Rul. Cas.	...	...	Campbell's Ruling Cases, 25 vols.	...	...	...	...	Eng.
Russ.	...	...	Russell's Reports, Chancery, 5 vols., 1824—1829	...	...	...	...	Eng.
Russ. & M.	...	...	Russell and Mylne's Reports, Chancery, 2 vols., 1829—1833	...	...	...	...	Eng.
Russ. & Ry.	...	...	Russell and Ryan's Crown Cases Reserved, 1 vol., 1800—1823	...	...	...	...	Eng.
Russ. E. R.	...	...	Russell's Election Reports	...	...	...	...	Can.
Ry. & Can. Cas.	...	...	Railway and Canal Cases, 7 vols., 1835—1854	...	...	...	...	Eng.
Ry. & Can. Tr. Cas.	...	...	Railway and Canal Traffic Cases, 1855—(current)	...	...	...	...	Eng.
Ry. & M.	...	...	Ryan and Moody's Reports, Nisi Prius, 1 vol., 1823—1826	...	...	...	...	Eng.

XXVIII REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

Ryde & K. Rat. App. ...	Ryde and Konstam's Reports of Rating Appeals, 1 vol., 1894—1904 ...	Eng.
Ryde, Rat. App. ...	Ryde's Rating Appeals, 3 vols., 1871—1893 ...	Eng.
S. ...	Searle's Reports of the Supreme Court of the Cape of Good Hope ...	S. Af.
S. A. L. J. ...	South African Law Journal ...	S. Af.
S. A. L. R. ...	South Australian Law Reports ...	Aus.
S. A. L. R. ...	South African Law Reports ...	S. Af.
S. A. R. ...	Reports of the High Court of the South African Republic, 1881—1892 ...	S. Af.
S. C. ...	Reports of the Supreme Court of the Cape of Good Hope from 1880 ...	S. Af.
S. C. (preceded by date)	Court of Session Cases (Scotland), since 1906 (<i>e.g.</i> , [1906] S. C.)	Scot.
S. C. (H. L.) (preceded by date).	Court of Session Cases (Scotland) (House of Lords), since 1906 (<i>e.g.</i> , [1906] S. C. (H. L.))	Scot.
S. C. (J.) (preceded by date).	Court of Justiciary Cases (Scotland), since 1906 (<i>e.g.</i> , [1906] S. C. (J.))	Scot.
S. C. R. ...	Canada, Supreme Court Reports ...	Can.
S. L. T. ...	Scots Law Times, 1893 (current) ...	Scot.
S. Q. R. ...	Queensland State Reports ...	Aus.
S. R. ...	Reports of the High Court of Southern Rhodesia ...	S. Af.
S. R. C. ...	Stuart's Lower Canada Reports ...	Can.
S. R. N. S. W. ...	New South Wales, State Reports ...	Aus.
S. R. Q. ...	Queensland Reports, Supreme Court ...	Aus.
S. V. A. R. ...	Stuart's Vice-Admiralty Reports ...	Can.
Saint ...	Saint's Digest of Registration Cases, 1843—1906, 1 vol. ...	Eng.
Salk. ...	Salkeld's Reports, King's Bench, 3 vols., 1689—1712 ...	Eng.
Sask. L. R. ...	Saskatchewan Law Reports ...	Can.
Sau. & Sc. ...	Sausee and Scully's Reports, Rolls Court (Ireland), 1 vol., 1837—1840 ...	Ir.
Saund. ...	Saunders's Reports, King's Bench, 2 vols., 1666—1672 ...	Eng.
Saund. & A. ...	Saunders and Austin's Locus Standi Reports, 2 vols., 1895—1904 ...	Eng.
Saund. & B. ...	Saunders and Bidder's Locus Standi Reports, 1905—(current) ...	Eng.
Saund. & C. ...	Saunders and Cole's Reports, Bail Court, 2 vols., 1846—1848 ...	Eng.
Saund. & M. ...	Saunders and Macrae's County Courts and Insolvency Cases (County Courts Cases and Appeals, Vols. II. and III.), 2 vols., 1852—1858 ...	Eng.
Sav. ...	Savile's Reports, Common Pleas, fol., 1 vol., 1580—1591 ...	Eng.
Say. ...	Sayer's Reports, King's Bench, fol., 1 vol., 1751—1756 ...	Eng.
Sc. Jur. ...	Scottish Jurist, 46 vols., 1829—1873 ...	Scot.
Sc. L. R. ...	Scottish Law Reporter, 1865—(current) ...	Scot.
Sc. R. R. ...	Scots Revised Reports ...	Scot.
Sch. & Lef. ...	Schoales and Lefroy's Reports, Chancery (Ireland), 2 vols., 1802—1806 ...	Ir.
Scott ...	Scott's Reports, Common Pleas, 8 vols., 1834—1840 ...	Eng.
Scott, N. R. ...	Scott's New Reports, Common Pleas, 8 vols., 1840—1845 ...	Eng.
Sea. & Sm. ...	Searle and Smith's Reports, Probate and Divorce, 1 vol., 1859—1860 ...	Eng.
Sel. Cas. Ch. ...	Select Cases in Chancery, fol., 1 vol., 1685—1698 (Pt. III. of Cas. in Ch.) ...	Eng.
Selwyn's N.P. ...	Selwyn's Abridgement of the Law of Nisi Prius ...	Eng.
Sess. Cas. K. B. ...	Sessions Settlement Cases, King's Bench, 2 vols., 1710—1747 ...	Eng.
Sh. (Ct. of Sess.) ...	Shaw, Court of Session Cases (Scotland), 1st series, 16 vols., 1821—1838 ...	Scot.
Sh. & MacL. ...	Shaw and Maclean's Scotch Appeals, House of Lords, 3 vols., 1835—1838 ...	Scot.
Sh. Dig. ...	P. Shaw's Digest of Decisions (Scotland), ed. by Bell and Lamond, 3 vols., 1726—1868 ...	Scot.
Sh. Just. ...	P. Shaw's Justiciary Decisions (Scotland), 1 vol., 1819—1831 ...	Scot.
Sh. Sc. App. ...	P. Shaw's Scotch Appeals, House of Lords, 2 vols., 1821—1824 ...	Scot.
Sh. Teind Ct. ...	P. Shaw's Teind Court Decisions (Scotland), 1 vol., 1821—1831 ...	Scot.
Shep. Touch. ...	Sheppard's Touchstone of Common Assurances ...	Eng.
Show. ...	Shower's Reports, King's Bench, 2 vols., 1678—1695 ...	Eng.
Show. Parl. Cas. ...	Shower's Cases in Parliament, fol., 1 vol., 1694—1699 ...	Eng.
Sid. ...	Siderfin's Reports, King's Bench, Common Pleas and Exchequer, fol., 2 vols., 1657—1670 ...	Eng.
Sim. ...	Simons' Reports, Chancery, 17 vols., 1826—1852 ...	Eng.
Sim. & St. ...	Simons and Stuart's Reports, Chancery, 2 vols., 1822—1826 ...	Eng.
Sim. N. S. ...	Simons' Reports, Chancery, New Series, 2 vols., 1850—1852 ...	Eng.
Skin. ...	Skinner's Reports, King's Bench, fol., 1 vol., 1681—1697 ...	Eng.
Sm. & Bat. ...	Smith and Batty's Reports, King's Bench (Ireland), 1 vol., 1824—1825 ...	Ir.
Sm. & G. ...	Smale and Giffard's Reports, Chancery, 3 vols., 1852—1857 ...	Eng.
Smith, K. B. ...	J. P. Smith's Reports, King's Bench, 3 vols., 1803—1806 ...	Eng.
...	Smith's Leading Cases, 2 vols. ...	Eng.

REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

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Smith, Reg. Cas.	...	C. L. Smith's Registration Cases, 1895—(current)	...	Eng.
Smythe	...	Smythe's Reports, Common Pleas (Ireland), 1 vol., 1839—1840	...	Ir.
Sol. Jo.	...	Solicitors' Journal, 1856—(current)	...	Eng.
Spence	...	Spence's Equitable Jurisdiction of the Court of Chancery	...	Eng.
Spinks	...	Spinks' Prize Court Cases, 2 parts, 1854—1856	...	Eng.
St. R. Qd. (preceded by date)	...	Queensland State Reports, since 1902 (<i>e.g.</i> , [1902] St. R. Qd.)	...	Aus.
Stair Rep.	...	Stair's Decisions, Court of Session (Scotland), fol., 2 vols., 1661—1681	...	Scot.
Stark.	...	Starkie's Reports, Nisi Prius, 3 vols., 1814—1823	...	Eng.
State Tr.	...	State Trials, 34 vols., 1163—1820	...	Eng.
State Tr. N. S.	...	State Trials, New Series, 8 vols., 1820—1858	...	Eng.
Stewart	...	Stewart's Nova Scotia Admiralty Reports, 1803—1813	...	Can.
Stockton	...	Stockton's Vice-Admiralty Report and Digest	...	Can.
Story	...	Story's Commentaries on Equity Jurisprudence	...	Eng.
Stra.	...	Strange's Reports, 2 vols., 1716—1747	...	Eng.
Stu. M. & P.	...	Stuart, Milne, and Peddie's Reports (Scotland), 2 vols., 1851—1853	...	Scot.
Stuart	...	Sessions Cases (Stuart)	...	Scot.
Stuart, Adm.	...	Stuart's Vice-Admiralty (Lower Canada) Cases, 1836—1856	...	Can.
Stuart, Adm. N. S.	...	Stuart's Vice-Admiralty (Lower Canada) Cases, 2nd series, 1859—1874	...	Can.
Stuart, K. B.	...	Stuart's Reports of Cases in King's Bench, etc. (Lower Canada), 1810—1835	...	Can.
Sty.	...	Style's Reports, King's Bench, fol., 1 vol., 1646—1655	...	Eng.
Sw.	...	Swabey's Reports, Admiralty, 1 vol., 1855—1859	...	Eng.
Sw. & Tr.	...	Swabey and Tristram's Reports, Probate and Divorce, 4 vols., 1858—1865	...	Eng.
Swan.	...	Swanston's Reports, Chancery, 3 vols., 1818—1821	...	Eng.
Swin.	...	Swinton's Justiciary Reports (Scotland), 2 vols., 1835—1841	...	Scot.
Syme	...	Syme's Justiciary Reports (Scotland), 1 vol., 1826—1829	...	Scot.
T. & M.	...	Temple and Mew's Criminal Appeal Cases, 1 vol., 1848—1851	...	Eng.
T. H.	...	Reports of the Witwatersrand High Court (Transvaal Colony), 1902—1909	...	S. Af
T. Jo.	...	Sir T. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1667—1685	...	Eng.
T. L.	...	Reports of the Witwatersrand High Court (Transvaal Colony), 1910—(current)	...	S. Af
T. L. R.	...	The Times Law Reports, 1884—(current)	...	Eng.
T. P.	...	Reports of the Supreme Court of the Transvaal, 1910—(current)	...	S. Af.
T. P. D.	...	South African Law reports, Transvaal Provincial Division	...	S. Af.
T. Raym.	...	Sir T. Raymond's Reports, King's Bench, fol., 1 vol., 1660—1683	...	Eng.
T. S.	...	Reports of the Supreme Court of the Transvaal, 1902—1909	...	S. Af.
Taml.	...	Tamlyn's Reports, Rolls Court, 1 vol., 1829—1830	...	Eng.
Tas. L. R.	...	Tasmanian Law Reports	...	Aus.
Taunt.	...	Taunton's Reports, Common Pleas, 8 vols., 1807—1819	...	Eng.
Tax Cas.	...	Tax Cases, 1875—(current)	...	Eng.
Tay.	...	Taylor's King's Bench Reports	...	Can.
Temp. Wood	...	Manitoba Reports <i>temp.</i> Wood	...	Can.
Term Rep.	...	Term Reports (Durnford and East), fol., 8 vols., 1785—1800	...	Eng.
Terr. L. R.	...	Territories Law Reports	...	Can.
Thom.	...	Nova Scotia Reports (Thomson)	...	Can.
Toth.	...	Tothill's Transactions in Chancery, 1 vol., 1559—1646	...	Eng.
Town. St. Tr.	...	Townsend, Modern State Trials	...	Eng.
Trist.	...	Tristram's Consistory Judgments, 1 vol., 1872—1890	...	Eng.
Tudor, L. C. Merc. Law.	...	Tudor's Leading Cases on Mercantile and Maritime Law	...	Eng.
Tudor, L. C. Real. Prop.	...	Tudor's Leading Cases on Real Property	...	Eng.
Turn. & R.	...	Turner and Russell's Reports, Chancery, 1 vol., 1822—1825	...	Eng.
Tyr.	...	Tyrwhitt's Reports, Exchequer, 5 vols., 1830—1835	...	Eng.
Tyr. & Gr.	...	Tyrwhitt and Granger's Reports, Exchequer, 1 vol., 1835—1836	...	Eng.
U. C. Jur.	...	Upper Canada Jurist	...	Can.
U. C. L. J. N. S.	...	Canada Law Journal, New Series, 1865—(current)	...	Can.
U. C. L. J. O. S.	...	Canada Law Journal, Old Series, 10 vols., 1855—1864	...	Can.
U. C. R.	...	Upper Canada Reports, Queen's Bench	...	Can.
Udal	...	Fiji Law Reports (Udal)	...	Can.
V. L. R.	...	Victorian Law Reports	...	Can.
V. R.	...	Victorian Reports	...	Can.
V. R. (Adm.)	...	Victorian Reports (Admiralty)	...	Can.
V. R. (Eq.)	...	Victorian Reports (Equity)	...	Can.
V. R. (Law)	...	Victorian Reports (Law)	...	Can.

xxx REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

Vaugh.	...	...	Vaughan's Reports, Common Pleas, fol., 1 vol., 1666—1673	...	Eng.
Vent.	...	...	Ventris' Reports (Vol. I., King's Bench; Vol. II., Common Pleas), fol., 2 vols., 1668—1691	...	Eng.
Vern.	...	...	Vernon's Reports, Chancery, 2 vols., 1680—1719	...	Eng.
Vern. & Scr.	...	...	Vernon and Scriven's Reports, King's Bench (Ireland), 1 vol., 1786—1788	...	Ir.
Ves.	...	...	Vesey Jun.'s Reports, Chancery, 19 vols., 1789—1817	...	Eng.
Ves. & B.	...	...	Vesey and Beames's Reports, Chancery, 3 vols., 1812—1814	...	Eng.
Ves. Sen.	...	...	Vesey Sen.'s Reports, 2 vols., 1747—1756	...	Eng.
Vin. Abr.	...	...	Viner's Abridgment of Law and Equity, fol., 22 vols.	...	Eng.
Vin. Supp.	...	...	Supplement to Viner's Abridgment of Law and Equity, 6 vols.	...	Eng.
W.	...	...	Watermeyer's Reports of the Supreme Court of the Cape of Good Hope, 1857	...	S. Af.
W. A. L. R.	...	...	West Australian Law Reports	...	Aus.
W. A'B. & W.	...	...	Webb, A'Beckett and Williams' Victorian Reports	...	Aus.
W. & W.	...	...	Wyatt and Webb	...	Aus.
W. C. C.	...	...	Workmen's Compensation Cases (Minton-Senhouse), 9 vols., 1898—1907	...	Eng.
W. H. C.	...	...	South African Law Reports, Witwatersrand High Court	...	S. Af.
W. Jo.	...	...	Sir W. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1620—1640	...	Eng.
W. L. D.	...	...	South African Law Reports, Witwatersrand Local Division	...	S. Af.
W. L. R.	...	...	Western Law Reporter	...	Can.
W. L. T.	...	...	Western Law Times	...	Can.
W. N. (preceded by date)	...	...	Law Reports, Weekly notes, 1866—(current) (e.g., [1866] W. N.)	...	Eng.
W. N.	...	...	Calcutta Weekly Notes	...	Ind.
W. R.	...	...	Weekly Reporter, 54 vols., 1852—1906	...	Eng.
W. R.	...	...	Sutherland's Weekly Reporter	...	Ind.
W. R.	...	...	Weekly Reporter, reporting cases in the Cape Provincial Division	...	S. Af.
W. W. & A'B.	...	...	Wyatt, Webb and A'Beckett	...	Aus.
W. W. R.	...	...	Western Weekly Reports	...	Can.
Wallis	...	...	Wallis' Reports, Chancery (Ireland), 1 vol., 1766—1791	...	Ir.
Web. Pat. Cas.	...	...	Webster's Patent Cases, 2 vols., 1602—1855	...	Eng.
Welsh, Reg. Cas.	...	...	Welsh's Registry Cases (Ireland), 1 vol., 1832—1840	...	Ir.
Went. Off. Ex.	...	...	Wentworth's Office and Duty of Executors	...	Eng.
West	...	...	West's Reports, House of Lords, 1 vol., 1839—1841	...	Eng.
West temp. Hard.	...	...	West's Reports temp. Hardwicke, Chancery, 1 vol., 1736—1740	...	Eng.
West. Tithe Cas.	...	...	Western's London Tithe Cases, 1 vol., 1592—1822	...	Eng.
White	...	...	White's Justiciary Reports (Scotland), 3 vols., 1886—1893	...	Scot.
White & Tud. L. C.	...	...	White and Tudor's Leading Cases in Equity, 2 vols.	...	Eng.
Wight.	...	...	Wightwick's Reports, Exchequer, 1 vol., 1810—1811	...	Eng.
Will. Woll. & Dav.	...	...	Willmore, Wollaston, and Davison's Reports, Queen's Bench and Bail Court, 1 vol., 1837	...	Eng.
Will. Woll. & H.	...	...	Willmore, Wollaston, and Hodges' Reports, Queen's Bench and Bail Court, 2 vols., 1838—1839	...	Eng.
Willes	...	...	Willes' Reports, Common Pleas, 1 vol., 173—1758	...	Eng.
Wilm.	...	...	Wilmot's Notes of Opinions and Judgments, 1 vol., 1757—1770	...	Eng.
Wils.	...	...	G. Wilson's Reports, King's Bench and Common Pleas, fol., 3 vols., 1742—1774	...	Eng.
Wils & S.	...	...	Wilson and Shaw's Scotch Appeals, House of Lords, 7 vols., 1825—1835	...	Scot.
Wils. Ch.	...	...	J. Wilson's Reports, Chancery, 2 vols., 1818—1819	...	Eng.
Wils. Ex.	...	...	J. Wilson's Reports, Exchequer in Equity, 1 part, 1817	...	Eng.
Win.	...	...	Winch's Reports, Common Pleas, fol., 1 vol., 1621—1625	...	Eng.
Wm. Bl.	...	...	William Blackstone's Reports, King's Bench and Common Pleas, fol., 2 vols., 1746—1779	...	Eng.
Wm. Rob.	...	...	William Robinson's Reports, Admiralty, 3 vols., 1838—1850	...	Eng.
Wms. Saund.	...	...	Williams' Notes to Saunders' Reports, 2 vols.	...	Eng.
Wolf. & B.	...	...	Wolferstan and Bristowe's Election Cases, 1 vol., 1859—1864	...	Eng.
Wolf. & D.	...	...	Wolferstan and Dew's Election Cases, 1 vol., 1857—1858	...	Eng.
Woll.	...	...	Wollaston's Reports, Bail Court and Practice, 1 vol., 1840—1841	...	Eng.
Wood	...	...	Wood's Tithe Cases, Exchequer, 4 vols., 1650—1798	...	Eng.
Y. A. D.	...	...	Young's Vice-Admiralty Reports	...	Can.
Y. & C. Ch. Cas.	...	...	Younge and Collyer's Reports, Chancery Cases, 2 vols., 1841—1843	...	Eng.
Y. & C. Ex.	...	...	Younge and Collyer's Reports, Exchequer in Equity, 4 vols., 1833—1841	...	Eng.
Y. & J.	...	...	Younge and Jervis' Reports, Exchequer, 3 vols., 1826—1830	...	Eng.
Y. B.	...	...	Year Books	...	Eng.
Yelv.	...	...	Yelverton's Reports, King's Bench, fol., 1 vol., 1602—1613	...	Eng.
You.	...	...	Younge's Reports, Exchequer in Equity, 1 vol., 1830—1832	...	Eng.

ABBREVIATIONS

USED IN THIS WORK.

(For Abbreviations used in citing Reports, *see* pp. xv.—xxx., *ante*.)

A.-G.					for Attorney-General.
Act.					„ Actiengesellschaft.
Admlty					„ Admiralty.
Affd.					„ Affirmed.
Affg.					„ Affirming.
Akt.					„ Aktiengesellschaft ; Aktiebolaget ; Aktieselskabet.
Anon.					„ Anonymous.
Apld.					„ Applied.
Appct.					„ Applicant.
Appln.					„ Application.
Appln.					„ Application to Register a Trade Mark.
Applt.					„ Appellant.
Apprvd					„ Approved.
Arbn.					„ Arbitration.
Archbp					„ Archbishop.
Art.					„ Article.
Assce.					„ Assurance.
Assocn.	.	.	.	.	„ Association.
B. C.	.	.	.	.	„ Borough Council.
Bkpcy.	.	.	.	.	„ Bankruptcy.
Bkpt.	.	.	.	.	„ Bankrupt.
Bldg. Soc.	.	.	.	.	„ Building Society.
Bp.	.	.	.	.	„ Bishop.
O. A.	.	.	.	.	„ Court of Appeal.
O & S. L. Ry. Co.	.	.	.	.	„ City & South London Railway Co.
O. O. A.	.	.	.	.	„ Court of Criminal Appeal.
O. O. R.	.	.	.	.	„ County Court Rules.
O. O. R.	.	.	.	.	„ Court of Crown Cases Reserved.
O. L. P. Act	.	.	.	.	„ Common Law Procedure Act.
C. L. Ry. Co.	.	.	.	.	„ Central London Railway Co.
O. S. U. C.	.	.	.	.	„ Consolidated Statutes of Upper Canada.
Cale. Ry. Co.	.	.	.	.	„ Caledonian Railway Co.
Ot.	.	.	.	.	„ Court.
Ot. of Eq.	.	.	.	.	„ Court of Equity.
Ot. of R.	.	.	.	.	„ Court of Review.
Co.	.	.	.	.	„ Company.
Co-op. Assocn.	.	.	.	.	„ Co-operative Supply Association.
Comrs.	.	.	.	.	„ Commissioners.
Consd.					„ Considered.
Corpn.					„ Corporation.
D. C.					Divisional Court.
Dbtd.					Doubted.
Deft.					„ Defendant
Distd.					„ Distinguished.
Eccl. Comrs.	.	.	.	.	„ Ecclesiastical Commissioners.
Eccl. Ot.	.	.	.	.	„ Ecclesiastical Court.

Ex. Ch.		for Exchequer Chamber.
<i>Ex p.</i>		„ <i>Ex parte.</i>
Exch.		„ Exchequer.
Exor.		„ Executor.
Exorship.		„ Executorship.
Expld.		„ Explained.
Ext'd.		„ Extended.
Extrix.		„ Executrix.
Folld.		„ Followed
G. & S. W. Ry. Co.		„ Glasgow & South Western Railway Co.
G. C. Ry. Co.		„ Great Central Railway Co.
G. E. Ry. Co.		„ Great Eastern Railway Co.
G. N. of Scotland Ry. Co.		„ Great North of Scotland Railway Co.
G. N. Picc. & Brompton Ry. Co.		„ Great Northern, Piccadilly & Brompton Railway Co.
G. N. Ry. Co.		„ Great Northern Railway Co.
G. S. & W. Ry. Co. of Ireland		„ Great Southern & Western Railway Co. of Ireland.
G. W. Ry. Co.		„ Great Western Railway Co.
Govt.		„ Government.
Grdns.		„ Guardians or Guardians of the Poor.
H. C. of A.		„ High Court of Australia.
H. L.		„ House of Lords.
I. R. Comrs.		„ Inland Revenue Commissioners.
Insce.		„ Insurance.
JJ.		„ Justices.
Jud. Act		„ Judicature Act.
L. & B. Ry. Co.		„ London & Brighton Railway Co.
L. & N. W. Ry. Co.		„ London & North Western Railway Co.
L. & S. W. Ry. Co.		„ London & South Western Railway Co.
L. & Y. Ry. Co.		„ Lancashire & Yorkshire Railway Co.
L. B.		„ Local Board.
L. B. & S. C. Ry. Co.		„ London, Brighton & South Coast Railway Co.
L.C.		„ Lord Chancellor.
L. C. & D. Ry. Co.		„ London, Chatham & Dover Railway Co.
L. C. C.		„ London County Council.
L. Elec. Ry. Co.		„ London Electric Railway Co.
L. G. Board		„ Local Government Board.
L.J.		„ Lord Justice.
L.JJ.		„ Lords Justices.
L. T. & S. Ry. Co.		„ London, Tilbury & Southend Railway Co.
M. S. Act		„ Merchant Shipping Act.
M. S. & L. Ry. Co.		„ Manchester, Sheffield & Lincolnshire Railway Co.
Mags.		„ Magistrates.
Mentd.		„ Mentioned.
Met. Dist. Ry. Co.		„ Metropolitan District Railway Co.
Met. Ry. Co.		„ Metropolitan Railway Co.
Mid. G. W. Ry. Co.		„ Midland Great Western Railway Co.
Mid. Ry. Co.		„ Midland Railway Co.
Mtge.		„ Mortgage.
Mtgee.		„ Mortgagee.
Mtgor.		„ Mortgagor.
N. B. Ry. Co.		„ North British Railway Co.
N. E. Ry. Co.		„ North Eastern Railway Co.
N. F.		„ Not Followed.
N. P.		„ Nisi Prius.
O.		„ Order.
O. H.		„ Outer House.
Overd.		„ Overruled.
P. C.		„ Privy Council.
Petn.		„ Petition or Election Petition.
Pltf.		„ Plaintiff.
R. C.		„ Rural Council.
R. D. C.		„ Rural District Council.
R. S. A.		„ Rural Sanitary Authority.
R. S. C.		„ Revised Statutes of Canada.

ABBREVIATIONS.

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R. S. O.	.	.	.	.	for Rules of the Supreme Court, 1883.
Refd.	.	.	.	.	„ Referred.
Regn. of Trade Mk.	.	.	.	.	„ Registration of Trade Mark.
Regr. of Trade Mks.	.	.	.	.	„ Registrar of Trade Marks.
Resp.	.	.	.	.	„ Respondent.
Restg.	.	.	.	.	„ Restoring.
Revsd	.	.	.	.	„ Reversed.
Revsg.	.	.	.	.	„ Reversing.
Ry. Co.	.	.	.	.	„ Rail. Co. or Railway Co.
S. C.	.	.	.	.	„ Same Case.
S. C. (name of colony following)	.	.	.	.	„ Supreme Court of a Colony.
S. E.	.	.	.	.	„ Settled Estates.
S. E. & C. Ry. Co	.	.	.	.	„ South Eastern & Chatham Railway Co.
S. E. Ry. Co.	.	.	.	.	„ South Eastern Railway Co.
S. P.	.	.	.	.	„ Same Point.
S.S. Co.	.	.	.	.	„ Steamship Co.
Sect.	.	.	.	.	„ Section.
Set. Land Act	.	.	.	.	„ Settled Land Act
Settlmt.	.	.	.	.	„ Settlement.
Soc.	.	.	.	.	„ Society.
Soc. Anon.	.	.	.	.	„ Société Anonyme, etc
Solr.	.	.	.	.	„ Solicitor.
Trade Mk.	.	.	.	.	„ Trade Mark.
Tram. Co.	.	.	.	.	„ Tramways Company
U. C.	.	.	.	.	„ Urban Council.
U. D. C.	.	.	.	.	„ Urban District Council.
U. S. A.	.	.	.	.	„ United States of America.
Union Assmt. Com.	.	.	.	.	„ Union Assessment Committee.
Urban S. A.	.	.	.	.	„ Urban Sanitary Authority.
V. A. C.	.	.	.	.	„ Vice-Admiralty Court.
V.-C.	.	.	.	.	„ Vice-Chancellor.

MEANING OF TERMS

USED IN CLASSIFYING ANNOTATING CASES.

THE different expressions used to describe the effect of the annotating cases have the following meanings, and the classification of the annotating cases has been done strictly in accordance with these meanings. The annotating cases are listed chronologically except such as are classified as "Referred to" or "Mentioned." These come at the end and are arranged *inter se* in chronological order. The terms used in classifying the annotating cases are as follows :—

- "APPLIED" (Apld.).—This expression is used to denote the fact that the principle of law enunciated in the annotated case has been applied to a new set of facts and circumstances in the annotating case.
- "APPROVED" (Apprvd.).—This expression is used to denote the fact that the annotated case has been considered to be good law in the annotating case where the latter is in a higher court than the former.
- "CONSIDERED" (Consd.).—This expression is used where the remarks in the annotating case are devoid of adverse criticism and merely denote the giving of more or less careful consideration to the annotated case.
- "DISTINGUISHED" (Distd.).—This expression is used where the earlier case is not necessarily doubted, but where some essential difference (either on the facts or in law) between it and the annotated case is pointed out.
- "DOUBTED" (Dbtd.).—This expression is used where the court in the annotating case without definitely going to the length of saying that the annotated case is wrong, adduces reasons which seem to show that it is not accurate.
- "EXPLAINED" (Expld.).—This expression is used where the earlier case is not necessarily doubted, but the decision arrived at is justified or accounted for by calling attention to some point of fact or of law which is usually, but not necessarily, one not obvious on the face of the report.
- "EXTENDED" (Extd.).—Compare "APPLIED," *supra*.
- "FOLLOWED" (Folld.).—This expression is used to denote that the same principles of law are applied in the two cases. It does not necessarily imply that the facts are substantially identical in the two cases.
- "NOT FOLLOWED" (N.F.).—Compare "FOLLOWED," *supra*, to which it is the adverse.
- "OVERRULED" (Overd.).—This expression is used where the annotating case is on substantially identical facts with the annotated case and in a higher court and the rule in the latter case is held to be wrong.
- "REFERRED" (Refd.).—This expression is used only where the annotating case deals with the point of the Digest paragraph and is without comment of any definite character on the case annotated, and where there is no delicate shade of approval or disapproval which would justify the use of any of the foregoing words.
- "MENTIONED" (Mentd.).—This expression is used only where none of the foregoing terms apply. In other words, it is used only where the case annotated is cited on a point having nothing to do with the point in the Digest paragraph.

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Local Customs See CUSTOM AND USAGES.

Rights of Common „ COMMONS AND RIGHTS OF COMMON.

Part I.—The Manor.

SECT. 1.—NATURE.

1. In general.]—The demesne lands of a manor previously granted in fee do not become reunited to a manor, if purchased by the lord, as they would do if they had reverted to him by escheat. If the demesne lands of a manor are treated, in a conveyance of them in fee, as a distinct property, as, for instance, being conveyed by the lord in fee without being accompanied by a declaration of the feoffor's title as lord, or being described as lands held of the manor, but only

as lands situate, lying & being within the manor, they are severed from the manor & cease to form part of it, although the rents & dues may remain. On repurchase, by the lord, of the fee simple, he will hold them of the chief lord, & they will not on such repurchase, again form part of the manor, so as to pass under that description made in a will dated anterior to the purchase.

(1) In the reign of Charles I., a grant was made by patent to M. of a manor to be held in fee & common socage, with power to create as many

Sect. 1.—Nature. Sects. 2 & 3: Sub-sects. 1 & 2. Sect. 4: Sub-sect. 1, A. (a) & (b).]

separate manors, & to appoint as many tenemental lands to each manor as the grantee should think fit, & also with licence to grant in fee simple or for lesser estates any of the lands belonging to such manors, to be held thereof respectively by suit of ct. & such other services or rents as he, his heirs, etc., should think fit, *non obstante Stat. Quia Emptores*. This patent was validated & confirmed by Acts of the Irish Parliament. The heir of the grantee, in the year 1721, granted by indenture or lease & release to A., in fee farm, certain of the tenemental lands of the manor. They were described as situate, lying, & being in the manor, & were to be held at a rent of £6 suit & service to the manor, payment of small sums for leet money, & an obligation to grind corn at the manor mills; performance of each of which things was secured by covenant; & the grantor also reserved a power of distress:—*Held*: the lands thus granted out were severed from the manor.

(2) In Mar. 1836 the owner of the manor executed a will devising the manor to the younger of his two nephews. In 1842 he purchased the tenemental lands which had been granted out in 1721. He died in October 1850, without having altered or republished his will:—*Held*: these lands were not by the purchase reannexed to the manor so as to pass by the will, but devolved upon testator's heir-at-law.

(3) Without attempting to define a manor in the abstract, it is enough to say that the seisin of a defined district, with the power of subinfeudation therein, & the existence of freeholders holding of the manor, & the right to a ct. baron in which the feudatories are the judges does of itself constitute a seignior or manor within the considerations of the present case (WILLES, J.).—*DELACHEROIS v. DELACHEROIS* (1864), 11 H. L. Cas. 62; 4 New Rep. 501; 10 L. T. 884; 10 Jur. N. S. 886; 13 W. R. 24; 11 E. R. 1254, H. L.

Annotations:—As to (1) *Refd. Re Holliday* (1922), 127 L. T. 585. *Generally, Mentd. Johnson v. Barnes* (1872), L. R. 7 C. P. 592.

2. — Limited to demesnes & services.]—

Upon a bill to have contribution towards the repairs of public bridges within the manor of S. against the freehold & copyhold tenants, & such as had part of the demesnes of the manor by the purchase from the crown at several times. The charge being upon pltf. as lord of the manor *ratione tenuræ*:—*Held*: the ancient freehold tenants & copyholders are not liable to contribute; for nothing is part of the manor but demesnes & services, & not the lands of the tenants.—*RICH v. BARKER* (1658), Hard. 131; 145 E. R. 416.

Annotation:—*Refd. Derry v. Sanders* (1918), 88 L. J. K. B. 410.

3. Cannot exist without two free suitors.]—ANON., No. 7, *post*.

4. —.]—(1) A ct. baron must be held from three weeks to three weeks. A ct. which is stated to be held otherwise shall be intended to be a customary ct., though it is called in the statement the ct. of the manor. Such ct. may by custom be held before the steward. The lord may avow distraining for suit to it without showing a prescription for the ct. or a custom to distrain for the suit.

(2) A manor cannot exist without two free suitors. Suit to be done twice a year at ct. leet is suit service.

(3) For suppose, that there were two suitors, one of them makes a lease for life; the lessee for

life does not hold of the lord, but of the reversioner, & he holds of the lord; & then for that time there is but one free suitor. The manor seems to be suspended *pro tempore*, but the suit service remains notwithstanding the suspension (HOLT, C.J.).—*TONKIN v. CROKER* (1703), 2 Ld. Raym. 860; 2 Lut. 1211; Holt, K. B. 452; 92 E. R. 74; *sub nom. TOMKINS v. CROCKER*, 2 Salk. 604.

Annotation:—*Generally, Mentd. Mitchell v. Torup* (1766), Park. 227.

5. Reputed manor—Manor ceasing to exist as such—From some supervening cause.]—(1) Upon a question of manorial rights or boundaries, evidence of reputation is admissible where the manor is shown to be a reputed manor, just as much as where it is shown to be an existing manor.

(2) By a reputed manor is commonly understood to be that which has been a manor, though from some supervening cause it has ceased to be so.—*DOE d. MOLESWORTH v. SLEEMAN* (1846), 9 Q. B. 298; 1 New Pract. Cas. 434; 15 L. J. Q. B. 338; 7 L. T. O. S. 252; 10 Jur. 568; 115 E. R. 1287.

Annotation:—*Generally, Mentd. Doe d. Jenkins v. Davies* (1847), 10 Q. B. 314.

See, also, No. 14, post.

— **Evidence as to.]—***See Sect. 4, sub-sect. 1, A. (a), post.*

— **What passes on grant of.]—***See Sect. 6, sub-sect. 1, post.*

— **Whether passing by fine levied.]—***See No. 55, post.*

6. Customary manor—May be held by copy.]—

A customary manor may be held by copy, & such customary lord may hold customary cts., but not a ct. baron, & may grant copies, & such customary manor shall pass by surrender & admittance, & fines shall be paid upon admittance as well by alienation as descent, & there may be lord customary mesne & customary tenant, as well in case where the mesnalty is a tenancy at will, according to the custom of the manor, as where there is a tenancy at will at the common law, of a manor. If such customary manor is forfeited, the lord shall have the customs & services appertaining to it (*per CUR.*).—*NEVIL'S CASE* (1612), 11 Co. Rep. 17 a; 77 E. R. 1166; *sub nom. MOORE v. GOODGAME*, Cro. Jac. 327; *sub nom. GOOD-GROOME v. MOORE*, 2 Bulst. 135.

Annotations:—*Consd. R. v. Stafferton & Brown* (1612), 1 Bulst. 54. *Refd. Rowden v. Maltster* (1626), Cro. Car. 42.

— *See No. 95, post.*

SECT. 2.—CREATION.

7. Cannot now be created.]—A man cannot make a manor at this day, notwithstanding that he gives land to many severally in tail, to hold of him by services, & suit of his ct.: for he may make a tenure, but not a ct.: for a ct. cannot be but by continuance *cujus contrarium memoria hominum non existit*, & it is said for law, that if a manor be, & all the free-tenures escheat to the lord, but one, or if he purchases all but one, there after this the manor is extinct: for there cannot be a manor, except there be a ct. baron to it, & a ct. baron cannot be holden but before suitors, & not before one suitor, therefore one free-holder only cannot make a manor.—ANON. (1541), Bro. N. C. 132; 73 E. R. 904.

See, also, No. 76, post.

8. By parson, patron & ordinary—Out of glebe—Before Statute Quia Emptores.]—(1) A parsonage may be a manor, if before the Stat. *Quia Emptores* the parson with the patron & the ordinary have granted parcel of the glebe to divers persons, to hold of the parson by divers services,

(2) A rentcharge by prescription may be parcel of a manor & pass without the words *cum pertinentiis*. This will happen if there are two coparceners of a manor & other lands, & they make partition, by which the eldest sister hath the manor, & the other hath the other lands; & she who hath the lands grants a rentcharge to her sister who hath the manor, for equality of partition.—ANON. (1580), Godb. 3; 78 E. R. 2.

9. Customary manor—By grant by lord of manor—Of inheritance of all copyholds.]—MELWICH v. LUTER, No. 95, *post*.

10. ———. ———.]—JACKSON v. NEAL, No. 1883, *post*.

11. ——— By grant by copy of court roll.]—NEVIL'S CASE, No. 6, *ante*.

Regrant by Crown.]—See Sect. 6, sub-sect. 1, *post*.

Presumption of royal grant.]—See No. 589, *post*.

SECT. 3.—PROOF OF EXISTENCE.

SUB-SECT. 1.—ADMISSIBILITY.

See, generally, EVIDENCE.

12. Reputation—Without proof of exercise of manorial right—Admissible.]—*Semble*: reputation alone is admissible evidence to prove the existence of a manor without any proof of the actual exercise of any manorial right.—STEEL v. PRICKETT (1819), 2 Stark. 463, N. P.

Annotations:—*Consd.* Harrison v. Powell (1894), 10 T. L. R. 271. *Refd.* Rushworth v. Craven (1825), M'Cle. & Yo. 417; Simpson v. Dendy (1860), 6 Jur. N. S. 1197. *Mentd.* R. v. Brightside Bierlow (1849), 13 Q. B. 933; R. v. United Kingdom Electric Telegraph Co. (1862), 6 L. T. 378; Harvey v. Truro R. C., [1903] 2 Ch. 638.

13. Copies of court rolls—Purporting to be surrenders & admittances—Admissible.]—Copies of ct. rolls purporting to be surrenders of property by a person proved to be then in possession & admittances accordingly are evidence of the existence of a manor & of such property being within it, in an action by the surrenderee in which his ownership is disputed.—STANDEN v. CHRISTMAS (1847), 10 Q. B. 135; 16 L. J. Q. B. 265; 9 L. T. O. S. 169; 11 Jur. 694; 116 E. R. 53.

Annotations:—*Mentd.* Turner v. Cameron's Coalbrook Steam Coal Co. (1850), 5 Exch. 932; Churchward v. Ford (1857), 2 H. & N. 446; Hickman v. Machin (1859), 4 H. & N. 716; Elliott v. Johnson (1866), L. R. 2 Q. B. 120; Smith v. Eglington (1874), L. R. 9 C. P. 145; Phillips v. Miller (1875), L. R. 10 C. P. 420; Manchester Brewery Co. v. Coombs, [1901] 2 Ch. 608; Wedd v. Porter, [1916] 2 K. B. 91.

SUB-SECT. 2.—SUFFICIENCY.

14. Proof of reputed manor—Sufficient to support proof of immemorial right—Annexed to manor.]—An allegation in a declaration that one was seised of a manor of F., & that he & all those whose estate he has in the manor have immemorially appointed a sexton of the parish of F., is sustained by proof of his seisin of a *quondam* manor, which has ceased to be a legal manor for defect of freehold tenants, & existed now only by reputation.—SOANE v. IRELAND (1808), 10 East, 259; 103 E. R. 773.

Annotations:—*Consd.* Bush v. Green (1837), 4 Bing. N. C. 41. *Refd.* Doe d. Molesworth v. Sleeman (1846), 9 Q. B. 298; Harrison v. Powell (1894), 10 T. L. R. 271.

15. Holding courts—& appointment of gamekeepers.]—DOE d. BECK v. HEAKIN (1837), 6 Ad. & El. 495; 2 Nev. & P. K. B. 660; 112 E. R. 180.

16. ——— & keeping court rolls—Presumption of manor granted by Crown—Although not passed

by original grant.]—MERTTENS v. HILL, No. 589, *post*.

17. Casting essoigns—& paying fines—Insufficient.]—DOE d. R. & FINCH v. YORK (ARCHBP.) (1845), 5 L. T. O. S. 50.

18. Verdict of jury—Negating existence of manor—Negatives existence of reputed manor.]—BUSH v. GREEN (1837), 4 Bing. N. C. 41; 3 Hodg. 265; 5 Scott, 289; 7 L. J. C. P. 38; 1 Jur. 844; 132 E. R. 704.

Annotations:—*Mentd.* Lidster v. Borrow (1839), 1 Per. & Dav. 447; Hughes v. Buckland (1846), 3 Dow. & L. 702.

Appointment of gamekeepers.]—See No. 15, *ante*.

Court rolls.]—See No. 589, *post*.

Payment of fines.]—See No. 17, *ante*.

SECT. 4.—EXTENT.

SUB-SECT. 1.—EVIDENCE OF EXTENT.

A. Admissibility.

(a) Reputation.

19. That lands are part of manor—& copyhold—Admissible.]—DOE d. JONES v. RICHARDS (1798), Peake, Add. Cas. 180, N. P.

20. ——— Reputed manor — Admissible.] —DOE d. MOLESWORTH v. SLEEMAN, No. 5, *ante*.

See, generally, BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 313, Nos. 333 *et seq*.

Boundary between parish & manors.]—See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 314, No. 335.

Whether old or new land of manor.]—See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 314, No. 336.

Parish rights of common.]—See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 314, No. 339.

Waste of manor or freehold.]—See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 314, No. 343.

Declarations of deceased persons.]—See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., pp. 311, 315, Nos. 318, 347, 348, 350.

(b) Documents.

21. Ancient deed—Admissible.]—MOYLE v. EWER, No. 54, *post*.

22. Leases of minerals under waste — As evidence of lord's title to other common land—Not admissible—Unless locus in quo formed part of one entire waste to which leases applied.]—Where, on trespass for pulling down a wall, the issue was, whether certain common land was the soil & freehold of the lord of the manor, on which pltf. was entitled to a right of common, or the soil & freehold of the pltf.:—*Held*: (1) leases of minerals, etc. granted by the lord to other persons in other parts of the uninclosed waste land were not receivable in evidence, unless it was first shown that the locus in quo formed part of one entire waste, to which those leases were applicable; (2) the effect of such leases, if received, would only be to prove that the lord was entitled to the minerals under the locus in quo, & not to the surface.—TYRWHITT v. WYNNE (1819), 2 B. & Ald. 554; 106 E. R. 468.

Annotations:—*As to* (1) *Refd.* Hollis v. Goldfinch (1823), 1 B. & C. 205; Crease v. Barrett (1835), 1 Cr. M. & R. 919. *Generally, Refd.* Doe d. Welsh v. Langfield (1847), 16 M. & W. 497.

23. Copies of court rolls—Purporting to be surrenders & admittances—Admissible—As evidence that land formed part of manor.]—STANDEN v. CHRISTMAS, No. 13, *ante*.

24. Entries on court rolls—Of fines to lord—

Sect. 4.—Extent: Sub-sect. 1, A. (b), (c) & (d), B. (b) & (c); sub-sects. 2, 3 & 4. Sects. 5 & 6

For salvage—Admissible—As evidence of ownership of foreshore.]—Dispute between the lord of the manor of W. & the Corpn. of I. as to the ownership of a piece of foreshore. The ct. rolls contained entries of: (a) fines paid to the lord for salvage, for moorage, & for trespasses, in taking wreck & the like, & of sums paid to the lord by the bailiff for wreck sold by him; (b) presentments as to wreck, porpoises, etc. coming on the soil, with no express mention of receipt of money except, in some cases, by the bailiff; (c) presentments of wreck the payments in respect of which were partly made to the salvors & partly to the lord; (d) presentments directing the bailiff to levy certain fines, etc.; (e) similar presentments with no express direction to the bailiff to levy; (f) presentments of wreck with no particular entries as to value or entered as matter for future enquiry:—*Held*: all the entries except the last could be safely admitted as evidence of the lord's title.—*Re WALTON-CUM-TRIMLEY MANOR, Ex p. TOMLINE* (1873), 28 L. T. 12; 21 W. R. 475.

25. ——— **For moorage—Admissible—As evidence of ownership of foreshore.]—***Re WALTON-CUM-TRIMLEY MANOR, Ex p. TOMLINE, No. 24, ante.*

26. ——— **For trespasses—Admissible—As evidence of ownership of foreshore.]—***Re WALTON-CUM-TRIMLEY MANOR, Ex p. TOMLINE, No. 24, ante.*

27. ——— **Of payments to lord by bailiff—For wrecks sold—Admissible—As evidence of ownership of foreshore.]—***Re WALTON-CUM-TRIMLEY MANOR, Ex p. TOMLINE, No. 24, ante.*

28. ——— **Presentments of wreck—No receipt of money mentioned—Admissible—As evidence of ownership of foreshore.]—***Re WALTON-CUM-TRIMLEY MANOR, Ex p. TOMLINE, No. 24, ante.*

29. ——— **Payments to salvors & to lord—Admissible—As evidence of ownership of foreshore.]—***Re WALTON-CUM-TRIMLEY MANOR, Ex p. TOMLINE, No. 24, ante.*

30. ——— **No entries as to value—Inadmissible.]—***Re WALTON-CUM-TRIMLEY MANOR, Ex p. TOMLINE, No. 24, ante.*

31. ——— **Value entered as matter for future enquiry—Inadmissible.]—***Re WALTON-CUM-TRIMLEY MANOR, Ex p. TOMLINE, No. 24, ante.*

32. ——— **Presentments as to fines—Bailiff directed to levy—Admissible—As evidence of ownership of foreshore.]—***Re WALTON-CUM-TRIMLEY MANOR, Ex p. TOMLINE, No. 24, ante.*

33. ——— **No express direction to bailiff—Admissible—As evidence of ownership of foreshore.]—***Re WALTON-CUM-TRIMLEY MANOR, Ex p. TOMLINE, No. 24, ante.*

Survey.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 319, Nos. 393–396.*

Crown survey.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 315, Nos. 353–355.*

Duchy survey.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., pp. 315, 316, Nos. 356, 357.*

Tithe map.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 316, No. 362.*

Manor map.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 317, No. 372.*

Award of inclosure commissioners.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 318, No. 387.*

Presentation by homage of manor.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., pp. 318, 319, No. 390.*

County history.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 320, No. 403.*

Agreement to stay proceedings for trespass on land in dispute.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 321, No. 412.*

Statement in lease.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 312, No. 325.*

Verdict of commission.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 312, No. 327.*

Entry in manor book.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 313, No. 329.*

Deposition for perpetuation of testimony.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 313, No. 332.*

(c) Acts of Ownership.

Over foreshore.]—*See WATERS & WATERCOURSES.*

Perambulations.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 321, Nos. 416, 417.*

Over other land within manor.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 322, Nos. 419, 421, 422.*

(d) Other Cases.

As to continued boundary—Of adjoining manors.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 311, No. 316.*

B. Sufficiency.

(a) Reputation.

34. **As to parcel of manor—In case of manor granted by King—To Queen—Sufficient.]—**The word "Reputata" in Letters Patent of the King must have a reasonable construction & specially towards the Queen more than towards subjects, & if by rentals or other evidence & records land is shown to be reputed as parcel of a manor then as nothing passes which is not parcel in the case of a commoner by mere reputation of the common people.—*DODINGTON v. FORD* (1582), Sav. 26; 123 E. R. 992.

(b) Acts of Ownership.

Grants by lord of waste of foreshore.]—*See WATERS & WATERCOURSES.*

Toll for capstans—On foreshore.]—*See WATERS & WATERCOURSES.*

Permission to dig sand—On foreshore.]—*See WATERS & WATERCOURSES.*

Effect of acts of ownership.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 322, Nos. 424, 425.*

Over land within same manor.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 322, No. 420.*

(c) Other Cases.

35. **Evidence that premises are in manor—Not conclusive—To prove them parcel of manor.]—***DOE d. TYNTE v. TURNER* (1845), 6 L. T. O. S. 123.

SUB-SECT. 2.—ASCERTAINMENT OF BOUNDARIES.

Jurisdiction of courts.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., pp. 270, 272, Nos. 31 et seq., 53 et seq.*

Procedure—By commission.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 275, Nos. 82 et seq.*

By jury.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 277, Nos. 95 et seq.*

Where forfeiture involved.]—*See BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., p. 324, No. 439.*

SUB-SECT. 3.—RIGHT TO FORESHORE.

See, generally, WATERS & WATERCOURSES.

Right to cut seaweed—On foreshore.]—See No. 212, *post*.

SUB-SECT. 4.—OTHER CASES.

36. Private river running through manor—Presumption of right of fishing—In favour of riparian owners.]—LAMB v. NEWBIGGIN (1844), 1 Car. & Kir. 549.

Annotations:—Consd. Devonshire v. Pattinson & Carlisle Corpn. (1887), 3 T. L. R. 293. Rejd. Tracey, Elliot v. Morley (1907), 51 Sol. Jo. 625.

37. Mill pond formerly part of waste—Presumption as to ownership of soil—In favour of lord—Land comprised in Inclosure Act—Pond not mentioned in Act.]—CLARKE v. MERCER (1859), 1 F. & F. 492.

Inclosure of waste land generally, see COMMONS & RIGHTS OF COMMON, Vol. XI., pp. 57 *et seq*.

38. Parish pound—Presumption in favour of lord—Unless rebutted.]—LITTLE BOWDEN HIGHWAY BOARD (SURVEYOR) v. WANDLY (1883), 47 J. P. Jo. 772.

SECT. 5.—MANORIAL LANDS.

39. Demesne lands—Possession of—Is not possession of manor house.]—Where there is a manor house & demesne land appertaining to it & one lord enters on the land & another on the house the possession of the house will not be the possession of the demesne nor *e converso*.—CROUCH v. WILLS (1658), 2 Sid. 74; 82 E. R. 1265.

40. — Include copyholds.]—WINTER v. LOVEDEN (1697), 1 Ld. Raym. 267; 5 Mod. Rep. 378; 12 Mod. Rep. 147; 1 Freem. K. B. 507; 1 Com. 37; Carth. 427; Holt, K. B. 414; Comb. 371; 2 Salk. 537; 91 E. R. 1075.

Annotations:—Rejd. Campbell v. Leach (1775), Amb. 740; Goodtitle v. Funucan (1781), 2 Doug. K. B. 565; Doe v. Calvert (1802), 2 East, 376; Doe v. Rendle (1814), 3 M. & S. 99; Cardigan v. Armitage (1823), 2 B. & C. 197; Re L. & S. W. Ry. Act, 1856, *Ex p*. Henley (1861), 29 Beav. 311.

41. — Lands of lord of manor.]—(1) James I. granted to T. & his heirs the King's manor & town of A., & the King's hundred of A., with its rights & all other things to the manor & hundred belonging; & also, that they should have free warren & free chase in all their demesne lands in the hundred, manor, town, tenements & hereditaments, & on all other lands & woods being in the hundred, etc., although the demesne & other lands were within the King's forest, etc.:—*Held*: this grant did not confer a right of free warren over the King's lands within the hundred, but that the term "demesne lands" applied to lands held by T. as lord of the manor of A., & that "other lands" applied to tenemental lands held by T. in fee of the King, or of any other lord, within the limits of the grant.

(2) The term demesne lands properly signifies lands of a manor which the lord either has or potentially may have in *propriis manibus*.—A.-G. v. PARSONS (1832), 2 Cr. & J. 279; 2 Tyr. 223; 1 L. J. Ex. 103; 149 E. R. 120.

Annotations:—As to (1) Consd. Chesterfield v. Harris, [1908] 1 Ch. 230. As to (2) Rejd. Morris v. Dimes (1834), 1 Ad. & El. 654.

42. — Granted in fee—Reunited on escheat to lord—Not by repurchase.]—DELACHEROIS v. DELACHEROIS, No. 1, *ante*.

43. Manor house—Possession of—Is not possession of demesne lands.]—CROUCH v. WILLS, No. 39, *ante*.

44. Waste of the manor—Waste adjoining

road—Presumed to belong to adjoining owner.]—STEEL v. PRICKETT (1819), 2 Stark. 463, N. P.

Annotations:—Distd. Simpson v. Dendy (1860), 6 Jur. N. S. 1197. Rejd. Doe d. Molesworth v. Sleeman (1846), 1 New Pract. Cas. 434; Harrison v. Powell (1894), 10 T. L. R. 271. Mentd. Rushworth v. Craven (1825), M'Cle. & Yo. 417; R. v. Brightside Bierlow (1849), 13 Q. B. 933; R. v. United Kingdom Electric Telegraph Co. (1862), 6 L. T. 378; Harvey v. Truro R. C., [1903] 2 Ch. 638.

45. — — — — — Whether freeholder, leaseholder or copyholder.]—The presumption is that waste land, which adjoins to a road, belongs to the owner of the adjoining inclosed land, whether he be a freeholder, leaseholder or copyholder, & not to the lord of the manor.—DOE d. PRING v. PEARSEY (1827), 7 B. & C. 304; 9 Dow. & Ry. K. B. 908; 5 L. J. K. B. O. S. 310; 108 E. R. 737.

Annotations:—Appld. A.-G. v. Tomline (1877), 5 Ch. D. 750. Rejd. R. v. Hatfield (1835), 4 Ad. & El. 156; White v. Hill (1844), 14 L. J. Q. B. 79; Kingsmill v. Millard (1855), 11 Exch. 313; Chamber Colliery Co. v. Rochdale Canal Co., [1895] A. C. 564; Re White's Charities, Charity Comrs. v. London Corpn., [1898] 1 Ch. 659; Mappin v. Liberty, [1903] 1 Ch. 118; City of London Land Tax Comrs. v. C. L. Ry., [1913] A. C. 364; Collis v. Amphlett, [1918] 1 Ch. 232.

— Rights of common over.]—See COMMONS & RIGHTS OF COMMON, Vol. XI., p. 24.

Freeholds "in a manor"—Whether parcel of the manor.]—See No. 35, *ante*.

Presumption as to boundaries of highways.]—See, generally, HIGHWAYS, STREETS & BRIDGES.

SECT. 6.—TRANSMISSION OF MANORS.

SUB-SECT. 1.—BY CROWN GRANT.

46. Grant of manor—With all woods "heretofore" parcel—Grant by Queen Elizabeth—Passes wood parcel in time of Edward VI.]—LEICESTER'S (EARL) CASE (1578), 3 Dyer, 362 a; 73 E. R. 812.

Annotations:—Consd. Finch's Case (1606), 6 Co. Rep. 63 a; Delacherois v. Delacherois (1864), 4 New Rep. 501. Mentd. Gennings v. Lake (1629), Cro. Car. 168.

47. — — — — — Does not pass wood parcel before time of Edward VI.]—LEICESTER'S (EARL) CASE (1578), 3 Dyer, 362 a; 73 E. R. 812.

Annotations:—Consd. Finch's Case (1606), 6 Co. Rep. 63 a; Delacherois v. Delacherois (1864), 4 New Rep. 501. Mentd. Gennings v. Lake (1629), Cro. Car. 168.

48. — With privileges & franchises enjoyed by specified owner—Good.]—If the King grants a manor with such privileges & franchises as D. formerly enjoyed therein, it is a good grant because of the certainty to which it relates.—DARCY'S (LORD) CASE (1596), Cro. Eliz. 512; Moore, K. B. 417; 78 E. R. 762.

Annotations:—Consd. R. & Waller v. Hanger (1615), 3 Bulst. 1; Lyn v. Wyn (1665), O. Bridg. 122.

See, also, No. 132, *post*.

49. — With all closes appurtenant—Particular closes need not be specified.]—Where the Crown grants a manor & closes which are appurtenant thereto, the particularisation of a close is not material, because all closes that are parcel of the manor pass; so the grant of a rectory & the tithes of such & such a place, passes all the rectory, because natural parts of a manor, but a rectory & tithes are not natural parts of a chapel, although they are appurtenant by usage.—GRABHAM v. GRALES (1620), Palm. 94; 81 E. R. 995.

See, generally, CONSTITUTIONAL LAW.

SUB-SECT. 2.—BY SALE.

A. The Contract for Sale.

50. Of crown manor—With all appurtenances—Purchaser not entitled to appendant advowson.]

Sect. 6.—Transmission of manors: Sub-sect. 2, A. & B. (a) &

—The Comrs. of Woods & Forests, having power, under 57 Geo. 3, c. 97, to make sale of any royalties, honours, hundreds, manors, lordships or franchises, or any rights, members or appurtenances thereof, belonging to the Crown, within the ordering & survey of the Exch., contracted for the sale of the crown manor of E., & all cts. baron, cts. leet & all fines, reliefs, rents, profits, waifs, strays, deodands & all other rights, members, emoluments & appurtenances thereunto belonging:—*Held*: this being in effect a contract for sale by the Crown, the advowson of E., which was appendant to the manor, did not pass under the contract, & the purchaser was bound to take a conveyance of the manor without the advowson.

Semble: if the contract had been between subject & subject, the advowson would have passed; although, at the time of the contract, it was not known by either party to be appendant to the manor, & therefore the sale of it was not in their contemplation.—*A.-G. v. SITWELL* (1835), 1 Y. & C. Ex. 559; 5 L. J. Ex. Eq. 86; 160 E. R. 228.

Annotations:—*Mentd. Steele v. Haddock* (1855), 10 Exch. 643; *Wharram v. Wharram* (1864), 3 Sw. & Tr. 301.

See, also, Nos. 69, 70, *post*.

51. With all lord's rights—Valuable rights discovered before completion—& not intended to be sold—Purchaser not entitled.—The sale of a manor with all the lord's rights, indefinitely stated, will not be held to include valuable rights, which, at the time of the sale, the vendor had no contemplation of selling, & which were discovered only in consequence of the inquiries made by the purchaser in investigating the title of the vendor.—*BAXENDALE v. SEALE* (1855), 19 Beav. 601; 24 L. J. Ch. 385; 24 L. T. O. S. 306; 1 Jur. N. S. 581; 52 E. R. 484.

Annotation:—*Mentd. Bettyes v. Maynard* (1882), 46 L. T. 766.

52. Fine becoming due—Between contract & completion—Vendor entitled.—*CUDDON v. TITE*, No. 53, *post*.

53. Tenants acquiring right to compulsory enfranchisement—Before completion—Purchaser not entitled to abatement of purchase price.—*Pltf.*, at an auction, became the purchaser & entered into a contract for the purchase of a manor of which *deft.* was seised in fee. The deposit money was paid & it was agreed that the remainder of the purchase-money should be paid & *pltf.* be let into possession on Feb. 4 next. On Jan. 23, a tenant of the manor died, & the vendors thereupon admitted a new tenant on the *ct.* roll before Feb. 4, without communicating with the purchaser. By this admittance the property was for the first time brought within the operation of the Copyhold Act, 1852 (c. 51), by which the lord may be compelled to enfranchise at the instance of the tenant. *Pltf.* insisted, (a) that he was entitled to the fines paid on this admittance; (b) that having entered into the contract upon the faith of certain statements, he ought not now to be prejudiced by finding the enfranchisable value of the property impaired, & prayed for specific performance of the contract, with an abatement out of the purchase-money:—*Held*: (1) the vendor & not the purchaser was entitled to the fines; (2) the purchaser was not entitled to relief on account of calculations of value, founded on matters of chance, turning out to be fallacious.—*CUDDON v. TITE* (1858), 1 Giff. 395; 31 L. T. O. S. 340; 4 Jur. N. S. 579; 6 W. R. 606; 65 E. R. 971.

B. The Conveyance.

(a) What passes.

See, now, Conveyancing Act, 1881 (c. 41), ss. 2 (iv), 6 (3).

54. Whole manor—On conveyance of moiety of manor of A.—With all vendor's lands in A.—(1) An ancient deed admitted as evidence of the extent of a manor.

(2) On conveyance of a moiety of the manor of A. & all vendor's lands in A.:—*Held*: whole manor passed.—*MOYLE v. EWER* (1602), Cro. Eliz. 905; Noy, 49; 78 E. R. 1127; *subsequent proceedings, sub nom. EWER v. MOIL* (1610), Lane, 83. *Annotation*:—*Generally, Mentd. Storer v. Gordon* (1814), 3 M. & S. 308.

See, also, No. 80, *post*.

55. Reputed manor—Does not pass by fine or common recovery—Of "manor."—A manor in reputation, which is not a manor in truth, will not pass by the name of a manor in a fine or common recovery, for they shall not be taken by intendment; but it is otherwise in a conveyance; for there the intent of the parties will help it (*per CUR.*).—*MALLET v. MALLET* (1599), Cro. Eliz. 524, 707; 78 E. R. 772, 942.

See, now, Conveyancing Act, 1881, s. 2 (iv).

56. — Passes by conveyance—Of "manor."—*MALLET v. MALLET*, No. 55, *ante*.

57. Land reputed parcel of manor—On conveyance of manor—With appurtenances.—A common recovery was suffered of a manor with its appurtenances:—*Held*: land reputed to be parcel of the manor passed by the recovery.—*THIN v. THIN* (1664), 1 Sid. 190; 82 E. R. 1050.

58. — — Passes if formerly parcel of manor—Though no longer parcel.—*LEE v. BROWN* (1676), 2 Mod. Rep. 69; 86 E. R. 946. *Annotation*:—*Consd. Delacherois v. Delacherois* (1864), 4 New Rep. 501.

59. — — Lands treated as parcel of manor from date of original purchase—Pass.—A contract was made for the sale of the borough, lordship & manor of H., with the rights, royalties, members & appurtenances, & all the messuages, lands, tenements & other hereditaments, & their rights, members & appurtenances to the borough, lordship & manor belonging, as set forth & described in a particular referred to in the contract. The vendors derived their title under a conveyance in 1809, by the general description of the borough, lordship & manor of H., with all & singular the rights, members & appurtenances thereunto belonging or appertaining, with a reference to preceding deeds, containing the same description, through which the title was traced, in the same general manner, to 1744. The purchaser objected that the identity of the several lands mentioned in the particular as forming part of the manor, was not made out, & it appeared that some of them had been purchased since 1744, & therefore, could not pass under the ancient & general description. The vendors thereupon produced abstracts of the title to such lands, & showed by stewards' books, that the lands, ever since they had been purchased, had been annexed to & treated as part of the manor; & contended that they passed under the general words appertaining or belonging, in the conveyance of 1809. To obviate the difficulty they also obtained a confirmation of that conveyance, with a declaration that the lands in question were intended to be passed by it, under the general words. Exceptions were taken to the master's report of a good title:—*Held*: these must be overruled on the ground of the deed of confirmation, but specific performance would not be decreed unless that deed were delivered to the

purchaser.—TOWNSEND v. CHAMPERNOWN (1827), 1 Y. & J. 538; 148 E. R. 784.

60. Particular tenement—Soil does not pass—On conveyance of all lands & hereditaments—Defined as rent & services issuing out of tenement.]—CASTLE v. HOBBS (1625), Cro. Car. 21; 79 E. R. 623.

Annotation:—*Refd.* Lodge v. Jennings (*temp.* 1714–27), Gilb. Ch. 255.

61. — Sale by particular—Tenement omitted from particular—Does not pass on conveyance of manor & all parcels.]—TAYLOR v. BEVERSHAM (1674), 2 Cas. in Ch. 194; 22 E. R. 908; *sub nom.* BEVERSHAM'S CASE, 2 Vent. 345.

62. — Not by grant of reputed manor.]—A grant of a reputed manor will not pass a freehold interest in the waste within the ambit of the manor nor in any specific tenement of the grantor.—DOE d. CLAYTON v. WILLIAMS (1843), 11 M. & W. 803; 12 L. J. Ex. 429; 1 L. T. O. S. 316; 152 E. R. 1029.

63. Leaseholds—On feoffment—Not unless possession shown—Special attornment presumed.]—POTTINGER v. CORNEY (1675), 3 Keb. 456; 84 E. R. 820.

See, also, No. 66, *post*.

64. Freehold interest in waste—Within ambit of manor—By grant of reputed manor.]—DOE d. CLAYTON v. WILLIAMS, No. 62, *ante*.

65. Rentcharge—As parcel of manor—Without general words.]—ANON., No. 8, *ante*.

66. Right to services—On feoffment—Express attornment necessary.]—(1) On the sale of a manor a tenant had not attorned to the purchaser:—*Held*: by the feoffment of the manor the services did not pass without an express attornment.

(2) *Qu.*: whether the purchaser could demand a heriot.—FERRERS v. WIGNAL (1595), Cro. Eliz. 400; 78 E. R. 645.

See, also, No. 63, *ante*.

67. Right to fine on part admittance—Does not pass—When time for payment of fine postponed.]—A manor had been sold by debt. to pltf., & the payment of the purchase-money was postponed, at pltf.'s request, to July 24, but interest was to be calculated & payable thereon from June 24. The deed of conveyance was executed on Sept. 8 following. Nearly two years prior to June 24 W. had become entitled to admittance as tenant to certain copyhold tenements, part of the manor, but, at the request of the tenant, no admittance took place until July, but the fine, the amount of which was sought to be recovered in the present action, was not paid to debt. until Dec. 8, following, after the conveyance was executed & possession delivered to pltf.:—*Held*: pltf. was not entitled to recover because the fine was payable at the time the tenant became entitled to admittance, which was long before June 24, & a fine could not be considered to fall within the meaning of the conditions of sale that on the completion of the purchase, the purchaser should be entitled to the rents & profits of such parts of the land as were let.—HARDWICKE (EARL) v. SANDYS (LORD) (1844), 12 M. & W. 761; 13 L. J. Ex. 233; 3 L. T. O. S. 60; 152 E. R. 1406.

Annotation:—*Refd.* Cuddon v. Tite (1858), 1 Giff. 395.

68. Unascertained & undefined rights—On conveyance of manor—With general words—Though not in contemplation of parties.]—A.-G. v. EWEELME HOSPITAL, No. 213, *post*.

69. Advowson—Appendant to manor—Does not pass—Without general words.]—HIGGINS v. GRANT (1583), Cro. Eliz. 18; 78 E. R. 284.

Annotation:—*Mentd.* Arundell v. Meade (1691), Palm. 267.

70. — — — — — If previously granted to

charity—Though grant defective.]—EMANUEL COLLEGE, CAMBRIDGE (MASTER & FELLOWS) v. EVANS (1626), 1 Rep. Ch. 18; 21 E. R. 494.

Whether advowson appendant to manor, *see* No. 50, *ante*.

71. — Passes on feoffment—Though general words not used.]—GILE'S & NEWTON'S CASE, No. 86, *post*.

(b) Effect of Reservations.

72. Of advowson appendant—To manor held of Crown—On alienation of manor—Advowson remains held of Crown.]—If one hold a manor of the King to which an advowson is appendant & then aliens the manor, saving the advowson yet he holds the advowson of the King for the same estate as he held before (*per* CUR.).—ANON. (1500), Y. B. 15 Hen. 7, fo. 6, pl. 2.

Annotation:—*Refd.* Anon. (1586), Gouldsb. 42.

73. Of specific parcel—Two parcels of same name—Grantor construes grant.]—LEE'S CASE (1578), 1 Leon. 268; 74 E. R. 244.

Annotations:—*Refd.* Savill v. Bethell, [1902] 2 Ch. 523. *Mentd.* Forth v. Chapman (1720), 1 P. Wms. 663.

74. Of right to get minerals—By regrant to lord by grantee of manor—Grantee of manor not precluded from getting minerals also.]—M., by deed bargained & sold the manor of C., to B. in fee, & B. covenanted & granted that M., his heirs & assigns might dig for ore in the wastes of C., & also dig turf, allom & copperice:—

Held: (1) a new grant & not a bare covenant; (2) the lord could not divide the interest granted to him, by grant to another to dig one part of the waste, but B., his heirs & assigns, notwithstanding the grant might dig there; (3) the lord might demise his interest & the lessee assign to two assignees, but that they ought not to work severally, but together with one stock & such workmen as belonged to the two; (4) a franchise, such as waifs or strays, cannot be divided, & if it descends to two coparceners no partition can be made of it.—MOUNTJOY'S (LORD) CASE (1594), 1 And. 307; Godb. 17; 123 E. R. 488; *sub nom.* HUNTINGTON (EARL) & MOUNTJOYE'S (LORD) CASE, 4 Leon. 147; Moore, K. B. 174.

Annotations:—*As to* (1) *Consd.* Cheetham v. Williamson (1804), 4 East, 469; Doe d. Hanley v. Wood (1819), 2 B. & Ald. 724; R. v. Trent & Mersey Canal Co. (1825), 3 L. J. O. S. K. B. 140; Sutherland v. Heathcote, [1892] 1 Ch. 475. *Refd.* Townshend v. Windham (1750), 2 Ves. Sen. 1. *As to* (2) *Consd.* Cheetham v. Williamson (1804), 4 East, 469; Goodright d. Fowler v. Forrester (1807), 8 East, 552; Doe d. Hanley v. Wood (1819), 2 B. & Ald. 724; R. v. Trent & Mersey Canal Co. (1825), 3 L. J. O. S. K. B. 140; Sutherland v. Heathcote, [1892] 1 Ch. 475. *Generally, Refd.* Low Moor Co. v. Stanley Coal Co. (1875), 33 L. T. 436. *Mentd.* Harvy v. Thomas (1591), Cro. Eliz. 216; Worcester's Case (1605), 6 Co. Rep. 37 a; R. v. Knowles (1693), 12 Mod. Rep. 55; Doe d. Bartlett v. Rendle (1814), 3 M. & S. 99; Doe d. Shrewsbury v. Wilson (1822), 5 B. & Ald. 363; Delacherois v. Delacherois (1864), 4 New Rep. 501; *Re* Aldams' S. E., [1902] 2 Ch. 46.

75. — — — — — Right demisable.]—MOUNTJOY'S (LORD) CASE, No. 74, *ante*.

76. Of wastes—Severs wastes from manor.]—(1) By a grant of a manor, with an exception of the wastes, they are thereby severed from the manor, though the copyholders continue to have a right of common thereon by immemorial custom, & after a grant of the soil of those wastes to trustees for the use of the copyholders in free socage, the lands, when inclosed, will be freehold, & not copyhold.

(2) A copyhold cannot be created by operation of law, but must have been demised or demisable by copy time out of mind.—REVELL v. JODRELL (1788), 2 Term Rep. 415; 100 E. R. 224.

Annotation:—*Consd.* Doe d. Lowes v. Davidson (1813), 2 M. & S. 175.

77. — — — — — Commoners' rights not affected.]—REVELL v. JODRELL, No. 76, *ante*.

Sect. 6.—Transmission of manors: Sub-sect. 2, B. (b); sub-sects. 3 & 4. Sect. 7: Sub-sect. 1, A. & B.]

78. Of all franchises—Soil of foreshore not reserved.]—By lease & release dated in 1773, B., lord of the manors of M. & P., bargained & sold unto F. & H. all that messuage, tenement, boat-house etc., & also all that & those the sea-grounds, oyster-layings, shores & fisheries of him B., commonly called & known by the name & names of M. & P. shores or sea-grounds, with full & free liberty to F. & H. & their heirs & assigns for ever to fish, dredge & lay oysters thereon, & from thence to take & carry away same; which sea-grounds, oyster-layings, shores & fisheries, extended from the south at low-water mark, to the north at high-water mark, & from certain sea-grounds on the east to other sea-grounds on the west, & all which sea-grounds, oyster-layings, shores & fisheries thereby granted, etc., contained in the whole by estimation eight hundred acres of land covered with water, or thereabouts, as same were beaconed, marked & stubbed out. Reservation to the grantor, his heirs & assigns, lord of the two manors, of all manner of fish-royal, & all wrecks of the sea, flotsam, jetsam & lagan within the manors, & all manner of franchise, & by the *tenendum* the grantees were to hold the messuage, tenement & boathouse, sea-grounds, oyster-layings, shores or fisheries, hereditaments & premises, with the appurtenances, of the grantor, lord of the two manors, by such suit of ct., & other services as were or of right ought to be done & performed by other the freehold tenants of the manors seised of estates of inheritance in fee:—*Held*: by this deed the right of soil in the sea-shore passed to the grantees.—*SCRATTON v. BROWN* (1825), 4 B. & C. 485; 6 Dow. & Ry. K. B. 536; 107 E. R. 1140.

Annotations:—*Consd.* A.-G. v. Hanmer (1858), 27 L. J. Ch. 837; Mellor v. Walmsley, [1905] 2 Ch. 164. *Refd.* *Re Alston's Estate* (1856), 28 L. T. O. S. 337; A.-G. v. Chambers (1859), 4 De G. & J. 55; Hindson v. Ashby, [1896] 2 Ch. 1.

See, generally, Sect. 4, sub-sect. 1, *ante*.

79. River-bed & fishery—May be reserved.]—The Crown can hold a river-bed throughout a manor & the fishery in the river flowing over same, as parcel of the manor, & may grant the manor with the river-bed & fishery to a subject, & the subject may grant the banks of the river with reservation of the river-bed & fishery.—*DEVONSHIRE (DUKE) v. PATTINSON* (1887), 20 Q. B. D. 263; 57 L. J. Q. B. 189; 58 L. T. 392; 52 J. P. 276; 4 T. L. R. 164, C. A.

Annotations:—*Consd.* Pryor v. Petre, [1894] 2 Ch. 11. *Refd.* Tilbury v. Silva (1890), 45 Ch. D. 98; Eliot v. Bristol Corpn. (1895), 72 L. T. 752; Simpson v. Godmanchester Corpn. (1895), 65 L. J. Ch. 154; Ecroyd v. Coulthard, [1897] 2 Ch. 554.

Reservation of courts.]—*See* Nos. 297, 298, 300, 301, *post*.

Effect of omission of particular tenement—On sale of manor by particular.]—*See* No. 61, *ante*.

SUB-SECT. 3.—BY WILL.

80. Devise of lands in H.—Passes part of manor lying partly in H.—Though manor specifically devised.]—*DENNY'S CASE* (1590), 2 Leon. 190; 74 E. R. 468.

See, also, No. 54, *ante*.

81. Devise of manor—Lands escheating to lord—Subsequent to will—Pass.]—*BUNTER v. COKE* (1707), 1 Salk. 237; 91 E. R. 210.

Annotations:—*Mentd.* Gore v. Gore (1733), Kel. W. 254;

Hopkins v. Hopkins (1734), Cas. temp. Talb. 44; *Ashburnham v. Bradshaw* (1740), West temp. Hard. 605; *Carte v. Carte* (1744), 1 Amb. 28; *Taylor d. Atkyns v. Horde* (1757), 1 Burr. 60.

—.]—*DELACHEROIS v.*

DELACHEROIS, No. 1, *ante*.

83. — Copyholds of manor purchased by testator—Subsequent to will—Included notwithstanding subsequent demise from year to year.]—*ROE D. HALE v. WEGG* (1796), 6 Term Rep. 708; 101 E. R. 784.

Annotation:—*Consd.* Delacherois v. Delacherois (1862-3), 11 H. L. Cas. 62.

84. — Passes copyhold land allotted to lord under inclosure Act.]—The manor of W. was by settlement vested in trustees upon such trusts as B. a married woman should by will appoint: before any will was made a piece of copyhold land was under an inclosure Act allotted to the trustees of the settlement as lords of the manor & in compensation of their interest in the soil of the manor: under same Act two copyhold allotments were made to two other persons in respect of copyhold interests. The trustees of the settlement, in exercise of a power vested in them, bought these two allotments & held them upon same trusts as the manor: afterwards in 1807 B. made her will devising the manor to the father of pltf. for life, with remainder to his first son in tail, with remainder to his second son, pltf., & devising the residue of her property to trustees on trust to sell. B. died in 1813, & the copyhold allotment made to the trustees of the settlement & the two allotments purchased by them were then treated by the trustees of the will as part of the residue, & in 1814 were sold to a person from whom deft. subsequently purchased. Pltf., while an infant, became entitled in 1831 by the deaths of his father & older brother to the manor under the devise; he attained twenty-one in 1849, & soon afterwards filed a bill claiming the three allotments as part of the manor:—*Held*: as to each allotment there had been an extinguishment of the copyhold in the manor, & they all passed to pltf. under the devise of the manor.

As a general principle the devise of a manor will carry everything which, originally having been copyhold of the manor, has, after the devise & before the death of testator ceased to be copyhold only by reason of its having been surrendered to the lord to his own use (*Lord CHELMSFORD, C.*).—*HICKS v. SALLITT* (1854), 3 De G. M. & G. 782; 2 Eq. Rep. 818; 23 L. J. Ch. 571; 22 L. T. O. S. 322; 18 Jur. 915; 2 W. R. 173; 43 E. R. 307, L.C. & L.JJ.

Annotations:—*Mentd.* Schroder v. Schroder (1854), Kay, 578; Hope v. Liddell, Liddell v. Norton (1855), 21 Beav. 183; Nanney v. Williams (1856), 22 Beav. 452; Hicks v. Hastings (1857), 3 K. & J. 701; Penny v. Allen (1857), 7 De G. M. & G. 409; Howard v. Shrewsbury (1874), L. R. 17 Eq. 378; Hickman v. Upsall (1876), 4 Ch. D. 144; Thomson v. Eastwood (1877), 2 App. Cas. 215; *Re* Rayner, Rayner v. Rayner, [1904] 1 Ch. 176.

85. — Lands formerly parcel of manor—Repurchased by testator—Subsequent to will—Do not pass.]—*DELACHEROIS v. DELACHEROIS*, No. 1, *ante*.

See, generally, WILLS.

SUB-SECT. 4.—BY DEALINGS WITH OTHER LANDS.

86. Lands, tenements & hereditaments—In D.—Manor of G. & G. grange in D.—Manor does not pass.]—(1) The Queen being seised of the manor of G. & of the grange called G. in D., granted all her lands, tenements & hereditaments in D.:—*Held*: the manor did not pass.

(2) An advowson passes by feoffment of the manor without deed, without the words *cum pertinentiis*, for it is parcel of the manor.—GILE'S & NEWTON'S CASE (1586), Godb. 136; 78 E. R. 83.

87. — Conveyance of—Will pass nominal manor.]—NORRIS v. LE NEVE (1744), 3 Atk. 82; 26 E. R. 850, L. C.

88. — Of which vendor seised or entitled for estate of inheritance—Manor omitted by implication in earlier description in mortgage—Does not pass.]—B. being possessed of the K. estate & the manor of E., both in the county of N., mortgaged to G. the K. estate by particular description, & all other hereditaments, lands & premises comprised in a previous mtge. of the K. estate, & all other lands, tenements & hereditaments in the county of N., whereof B. was seised or entitled for an estate of inheritance:—*Held*: the manor of E., which included copyhold property & manorial rights, & was property of a different description from that already conveyed, was not comprised in the mtge. under the general words of conveyance.—ROOKE v. KENSINGTON (LORD) (1856), 2 K. & J. 753; 25 L. J. Ch. 795; 28 L. T. O. S. 62; 2 Jur. N. S. 755; 4 W. R. 829; 69 E. R. 986.

Annotations:—*Refd.* Crompton v. Jarratt (1885), 30 Ch. D. 298; Early v. Rathbone (1888), 57 L. J. Ch. 652; Barraclough v. Brown, [1897] A. C. 615. *Mentd.* Sells v. Sells (1860), 29 L. J. Ch. 500; Jenner v. Jenner (1866), L. R. 1 Eq. 361; Neam v. Moorsom (1866), 36 L. J. Ch. 274; Cox v. Barker, Barker v. Cox (1876), 3 Ch. D. 359; Clark v. Girdwood (1877), 7 Ch. D. 9; Danby v. Coutts (1885), 29 Ch. D. 500; Williams v. Pinckney (1897), 67 L. J. Ch. 34; Dyson v. A.-G., [1911] 1 K. B. 410; Guaranty Trust Co. of New York v. Hannay, [1915] 2 K. B. 536.

See, also, Nos. 54, 80, *ante*.

SECT. 7.—DIVISION OF MANORS.

SUB-SECT. 1.—BY GRANT.

A. In General.

89. What operates as severance—Grant of specified portion.]—HARRIS & HAIES v. NICHOLS (1583), Cro. Eliz. 19; 78 E. R. 285.

Annotation:—*Refd.* Doe v. Perratt (1826), 5 B. & C. 48.

90. — With all hereditaments.]—A manor cannot begin at this day; but if a lord, being seised in fee of the manor of A. which extends to B. & several other towns, grants all his manor of B. in the town of B. with all his hereditaments in B. the manor of A. is well divided, & the grantee may hold a ct. leet in B.—MORRIS v. SMITH & PAGET (1585), Cro. Eliz. 38; 78 E. R. 303.

— Devise by will.]—*See* No. 80, *ante*.

91. — Demesne lands—Treated as distinct property.]—DELACHEROIS v. DELACHEROIS, No. 1, *ante*.

92. Presumption of former severance—Proof of payment of rent for many years—To lord of one manor—In respect of tenement held of another manor.]—Lord of the manor of A. brought a bill for a rent of 8s. payable out of a copyhold, held of the manor of B. & though it appeared by the rolls of the manor of B. that the copyhold was held of the manor of B. at the rent of 8s.; & though it was admitted by pltf. that the copyhold was held of the manor of B. & he had no other evidence of his title to the rent, but that it had been paid him near twenty years:—*Held*: (1) pltf. was entitled to the arrears & growing rent; (2) after a payment of twenty years a grant of the freehold of the copyhold from the lord of the manor of B. should be presumed; (3) by the rules of law in cases of incroachment of rent, if the tenant made

but one payment of more than is due, he should never go back from it.—STEWART v. BRIDGER (1705), 2 Vern. 516; 23 E. R. 930.

Annotations:—*As to* (2) *Refd.* Searle v. Cooke (1890), 43 Ch. D. 519. *Generally, Mentd.* *Ex p.* M'Dowal (1859), 5 Jur. N. S. 553.

B. Effect of Severance.

93. Severance of demesnes, copyholds & services—Does not create new manor.]—BRIGHT v. FORTH (1595), Cro. Eliz. 442; 78 E. R. 683.

Annotation:—*Refd.* Doe d. Roberts v. Whitaker (1834), 3 Nev. & M. K. B. 225.

94. Copyhold tenure not destroyed—Severed portion having only one tenant—Heir on death of tenant entitled—Without admittance.]—A. was lord of a manor of which B. held Blackacre by copy of ct. roll in fee according to the custom. A. made a feoffment of Blackacre to a stranger. B. died. The point was whether the customary interest was determined against the heir of B., for it was moved that because the feoffee had not any ct. the heir of B. could not be admitted, nor the death of his ancestor presented, because but one copyholder:—*Held*: (1) the copy should bind the feoffee; (2) the ceremony of admittance was not necessary, but the lord had lost his advantages of fines, heriots, etc.—BELL & LANGLEY'S CASE (1587), 4 Leon. 230; 74 E. R. 839.

Annotation:—*As to* (1) *Consd.* Phillips v. Ball (1859), 6 C. B. N. S. 811.

See, also, Nos. 113–116, *post*.

95. — Grantee may hold customary courts.]—(1) If the lord of a manor grants the inheritance of all the copyholds within his manor whereby they are severed, yet the custom remains, & the grantee shall hold customary cts., take surrenders, make & grant by copy.

(2) A lord may make admittances or grants at any place out of the manor, but the steward cannot do so at any ct. held off the manor.

(3) Although it is not a manor in law because it wants for tenants, yet as to the copyhold tenants the feoffee or grantee has such a manor that he may hold a ct. to make admittances & grants of the copyhold tenements.

(4) Every manor which consists of freehold & copyhold tenements comprehends in itself in effect two cts., one which is commonly called the ct. baron, the ct. of freeholders, & in this ct. the suitors, the free tenants, are judges; the other is for the copyholders, & as to that the lord or the steward of the manor is judge.

(5) The lessee of a copyholder for one year may maintain ejectment, such term being warranted by the general custom of the realm.—MELWICH v. LUTER (1588), 4 Co. Rep. 26 a; Cro. Eliz. 102; 76 E. R. 935.

Annotations:—*As to* (1) *Refd.* Thorne v. Tyler (1641), March, 161. *As to* (2) *Consd.* Bright v. Forth (1595), Cro. Eliz. 442. *Refd.* Doe v. Whitaker (1833), 5 B. & Ad. 409. *As to* (3) *Consd.* Neal v. Jackson (1595), 4 Co. Rep. 26 b. *Refd.* Doe d. Roberts v. Whitaker (1833), 3 Nev. & M. K. B. 225. *As to* (5) *Refd.* Jones v. Meredith (1739), 2 Com. 661.

96. — Tenant cannot devise—Can alien only by decree in Chancery.]—(1) A copyhold is not destroyed by severance of the inheritance of the copyhold from the manor; (2) but after such severance the copyholder cannot devise, for the grantee cannot take a surrender nor can the copyholder alien otherwise than by decree in Ch., by which the interest in the land is not bound, but the person only.

(3) The copyholder shall pay his rent, & all such services to the grantee which are due without keeping a ct., though suit of ct. & fines for alienation & admittance are gone, & the grantee shall

Sect. 7.—Division of manors: Sub-sect. 1, B.; sub-sects. 2 & 3. Sect. 8: Sub-sects. 1 & 2. Sects. 9, 10 & 11: Sub-sect. 1.]

take advantage of all those things which were forfeitures before, as the making a feoffment, waste, etc.—**MURREL v. SMITH** (1591), 4 Co. Rep. 24 b; Cro. Eliz. 252; 76 E. R. 928.

Annotations:—As to (2) **Consd. Swayne's Case** (1608), 8 Co. Rep. 63 a. **Generally, Reifd. Hoe v. Taylor** (1595), 4 Co. Rep. 30 b.

97. — Tenant liable to all services—Except suit of court—& fines on alienation & admittance.]—MURREL v. SMITH, No. 96, ante.

98. — — — — —.]—(1) Qu.: whether a recovery of the fee, suffered in the ct. baron by a copyholder for life, is a forfeiture. If it is, the lord & not the remainderman shall take advantage, & hold for the life of the copyholder.

(2) When the custom of a manor warrants only estates for lives, the surrenderee, after admittance, is in under the lord.

(3) If the lord grants the freehold of a copyhold, the copyholder is attendant on the grantee for all things but suit of ct., which is lost.—KERBY'S (ALIAS KIRK'S) CASE (1675), 1 Freem. K. B. 192; 89 E. R. 136; *sub nom.* **BIRD v. KIRKBY**, Cart. 237; *sub nom.* **KEEN v. KIRBY**, 1 Mod. Rep. 32; *sub nom.* **KREN v. KIRBY**, 2 Mod. Rep. 32.

Annotation:—As to (1) **Reifd. Doe v. Trueman** (1831), 1 B. & Ad. 736.

99. On services due by lord—Repair of bridge—All allenees severally liable for whole service.]—R. v. BUCKNAL (1702), 7 Mod. Rep. 54, 98; 2 Ld. Raym. 792, 804; Holt, K. B. 128; 87 E. R. 1120; *sub nom.* **R. v. BUCCLEUGH (DUCHESS)**, 6 Mod. Rep. 150; 1 Salk. 358.

Annotations:—**Consd. R. v. Old Malton** (1794), 4 B. & Ald. 470, n.; **Baker v. Greenhill** (1842), 3 Q. B. 148; **Esher & Dittons U. C. v. Marks** (1902), 71 L. J. K. B. 309. **Reifd. Rider v. Smith** (1790), 3 Term Rep. 766; **Powell v. Salisbury** (1828), 2 Y. & J. 391; **R. v. Sutton** (1835), 3 Ad. & El. 597; **R. v. Barnoldswick** (1843), 4 Q. B. 499; **Hunter v. Hunt** (1845), 1 C. B. 300; **Delacherois v. Delacherois** (1864), 11 H. L. Cas. 62. **Mentd. Metcalfe v. Hetherington** (1855), 11 Exch. 257.

100. — — — Lord may recover expense from allenees—In proportion to value of lands held.]—DICES v. ARDEN (1836), 6 Nev. & M. K. B. 494; 5 L. J. K. B. 158.

Annotation:—**Mentd. Delacherois v. Delacherois** (1864), 4 New Rep. 501.

Severance of demesne lands from services.]—See Nos. 113–116, post.

Severance of demesne by grant—Whether reunited on escheat or repurchase.]—See No. 1, ante.

SUB-SECT. 2.—BY PARTITION.

Between coparceners—Severance of demesne from services.]—See No. 116, post.

101. By writ of partition—Between joint tenants or tenants in common.]—A writ of partition by joint tenants or tenants in common may demand the view of frankpledge together with the manor.—MOOR & BROWN v. ONSLOW (1599), Cro. Eliz. 759; 78 E. R. 991.

102. By commission of partition.]—SPARROW v. FIEND (1761), Dick. 348; 14 Beav. 156; 21 E. R. 303.

Annotations:—**Reifd. Hanbury v. Hussey** (1851), 14 Beav. 152; **Cattley v. Arnold** (1858), 4 K. & J. 595.

103. S. P. LAY v. COX (1772), Dick. 348; 21 E. R. 303.

Annotations:—**Reifd. Hanbury v. Hussey** (1851), 14 Beav. 152; **Cattley v. Arnold** (1858), 4 K. & J. 595.

104. May be compelled in equity—By tenant in common against co-tenant.]—HANBURY v. HUSSEY

(1851), 14 Beav. 152; 20 L. J. Ch. 557; 17 L. T. O. S. 238; 15 Jur. 596; 51 E. R. 244.

Annotation:—**Reifd. Cattley v. Arnold** (1858), 4 K. & J. 595.

See, generally, EQUITY; PARTITION.

SUB-SECT. 3.—BY LEASE.

105. Lease of site, demesnes & whole manor—Reserving ancient rent for site & demesnes—& separate rent for manor—Good lease of site & demesnes.]—TANFIELD v. ROGERS & WATSON (1594), Cro. Eliz. 340; 78 E. R. 589.

Annotation:—**Consd. Orby v. Mohun** (1706), Gilb. Ch. 45.

106. Lease by lord of parcel of manor for life—Subsequent lease of manor to another tenant—Rent issues out of entire manor.]—A lord let 20 acres, parcel of a manor, for life, & after let the manor itself to another rendering rent:—Held: (1) the rent issued out of the entire manor; (2) the heriot reserved would go with the reversion.—GLOCESTER (BP.) v. WOOD (1623), Win. 46, 57; 124 E. R. 39, 49.

Annotation:—**Generally, Mentd. Mill v. Hill** (1852), 3 H. L. Cas. 828.

107. — Reserving heriot—Subsequent lease of manor to another tenant—Heriot goes with reversion.]—GLOCESTER (BP.) v. WOOD, No. 106, ante.

108. Lease of demesne lands from year to year—By owner in fee—Where custom to grant by copy for lives—Severs lands leased from manor.]—A custom of a copyhold manor to grant the demesne lands by copy for lives is destroyed by the grant by the owner in fee of a lease from year to year as to such lands, & they will thereby become severed from the manor & thenceforth cease to be part of the demesne, but such a grant, by a person having a limited interest, as by a lord farmer, has that operation only during the continuance of his estate.—Re LONDON & SOUTH WESTERN RAILWAY ACT, 1856, *Ex p.* **HENLEY (LORD) (1861), 29 Beav. 311; 31 L. J. Ch. 54; 9 W. R. 350; 54 E. R. 647.**

109. — By person having limited interest—Where custom to grant by copy for lives—Severs demesne lands only during grantee's estate.]—Re LONDON & SOUTH WESTERN RAILWAY ACT, 1856, *Ex p.* **HENLEY (LORD), No. 108, ante.**

SECT. 8.—DESTRUCTION OF MANORS.

SUB-SECT. 1.—WHAT OPERATES AS DESTRUCTION.

110. Insufficiency of suitors—One suitor alone insufficient—Destroys manor.]—ANON. (1532), Bro. N. C. 55; 73 E. R. 871.

111. — — — — —.]—ANON., No. 7,

112. — Where temporary only—Suspends manor.]—TONKIN v. CROKER, No. 4, ante.

See, also, No. 94, ante.

113. Severance of demesne—From services of manor—By lease of manor for lives—Manor suspended during lease.]—The Prior of B. leased his manor of A. to C. for life, rendering rent. Afterwards the priory was dissolved, & the King leased the whole manor *cum pertinentiis* to D.:—Held: (1) the lord cannot hold a ct. if such a power be not reserved to him upon the lease; (2) the manor is in suspense during the lease, for a reversion upon an estate for life, & services in possession, cannot be united to make a manor, but contrary if but parcel had been leased.—ANON. (*temp.* 1558–1603), 4 Leon. 199; 74 E. R. 820.

114. — — — By act of party—Destroys manor.]—In replevin on the pleadings the case was, M. was seised for her life of the manor of B.,

remainder to F. in fee; F. took a husband, S. S. & F. & one D. levied a fine of all the demesnes to T. & his heirs, who granted & rendered to D. for 50 years reserving rent, the reversion to S. & F. & the heirs of F. By indentures made before the fine, it was agreed that S. & F. should have free ingress & egress to hold the ct. baron, & it was averred, that the demesnes with the services from the time of the levying the fine during the life of F. were known by the name of the manor of B. :—*Held*: the demesnes of the manor of B. being once by the act of the party absolutely severed in fee simple from the services of the manor, the manor was destroyed for ever.

Where the severance is by act of law a difference is taken; for if there are two coparceners of a manor & on a partition the demesnes are allotted to one & the services to the other, then, although there is an absolute severance, yet if the one dies without issue & the demesnes descend to her who has the services the manor is revived again because on the partition they were in by act of law & the demesnes & services were united again by act of law (*per CUR.*).—FINCH'S CASE (1606), 6 Co. Rep. 63 a; 77 E. R. 348.

Annotations:—*Consd.* Thin v. Thin (1664), 1 Sid. 190. *Reid.* Loftes v. Barker (1623), Palm. 375; Adeson v. Otway (1677), Freem. K. B. 240; R. v. Chester (1696), 1 Ld. Raym. 292; Ford v. Grey (1703), 6 Mod. Rep. 44; Delacherois v. Delacherois (1864), 11 H. L. Cas. 62. *Mentd.* Lynne Regis Corpn. Case (1612), 10 Co. Rep. 120 a; Duncombe v. Wingfield (1617), Hob. 254; Anon. (1641), March, 105; Beckman v. Maplesden (1662), O. Bridg. 60; Dixon v. Harrison (1670), Vaugh. 38; Witherhead v. Harrison (1670), T. Jo. 2; Rice v. Langford (1690), Carth. 140; Lloyd v. Say (1711), 1 Salk. 341; Long v. Buckridge (1718), 1 Stra. 106; Birch v. Wright (1786), 1 Term Rep. 378; A.-G. to Prince of Wales v. St. Aubyn (1811), Wight. 167; Hewson v. Shelley, [1914] 2 Ch. 13.

By act of law—Portions severed may be reunited.]—FINCH'S CASE, No. 114, *ante*.

116. ——— By division between coparceners—Manor may be revived—On descent of demesne to surviving coparcener.]—Where there are two coparceners of a manor to which an advowson is appendant, & the whole demesnes are allotted to one & the services to another, the manor is destroyed & the advowson becomes in gross; but if one die without issue so that the demesnes descend to him who hath the services, the manor is revived & the advowson becomes appendant again.—REYNOLDS v. BLAKE (1697), 3 Salk. 25, 40; 91 E. R. 669, 679.

Annotation:—*Mentd.* Shortridge v. Lamplugh (1702), 2 Ld. Raym. 798.

SUB-SECT. 2.—EFFECT OF DESTRUCTION.

117. Customs & services—Of customary manor held by copy—Lord entitled to—On forfeiture.]—NEVIL'S CASE, No. 6, *ante*.

118. Advowson appendant—Becomes in gross—On destruction of manor—By severance of demesne & services.]—REYNOLDS v. BLAKE, No. 116, *ante*.

119. Right of lord to appoint sexton—Not destroyed—On destruction of manor—For lack of freehold tenants.]—SOANE v. IRELAND, No. 14, *ante*.

See, also, ECCLESIASTICAL LAW.

SECT. 9.—CROWN MANORS.

120. Crown manor—Sovereign is lord—Not Commissioners of Woods & Forests.]—R. v. POWELL (1841), 1 Q. B. 352; 4 Per. & Dav. 719; 113 E. R. 1166; *sub nom.* R. v. RICHMOND

(STEWARDS OF THE MANOR OF), Arn. & H. 290; 10 L. J. Q. B. 148; 5 J. P. 465; 5 Jur. 605.

Annotations:—*Consd.* Re Budge, R. v. Woods & Forests Comrs. (1848), 17 L. J. Q. B. 341; Re Nathan, R. v. I. R. Comrs. (1884), 12 Q. B. D. 461. *Mentd.* London Corpn. v. R. (1848), 13 Q. B. 30; Chabot v. Morpeth (1860), 19 L. J. Q. B. 377; R. v. Lambourn Valley Ry. (1888), 22 Q. B. D. 463.

Manors in Duchy of Cornwall.]—*See* No. 266, *post*.

Crown grants.]—*See* Sect. 6, sub-sect. 1, *ante*
See, generally, CONSTITUTIONAL LAW.

SECT. 10.—SUBINFEUDATION OF MANORS.

121. Proof of—Payment of annual sum—By lord—Insufficient.]—ANGLESEY (MARQUIS) v. HATHERTON (LORD), No. 261, *post*.

122. Statute Quia Emptores—Applied to manors held by knight service—Or in capite.]—By a charter in 1203 a manor was granted by King John to a tenant to be held of the King by knights' service, & was confirmed by letters patent of James I. in 1607. In 1837 the then lord of the manor enfranchised the lands held by a tenant of the manor to such tenant to be held by him of the lord of the manor in free & common socage & by such suit of ct. as had been usual & accustomed for or in respect of the same. In 1910 the successor in title of the enfranchised tenant died a bachelor, intestate, & a bastard. The lord claimed the lands as an escheat & sold them to a purchaser. The Crown claimed that the lord had no power to subinfeudate in 1837, & that the lands had escheated to the Crown as Lord Paramount. By an inquisition held in May 1921, the jurors found that the lands had devolved upon His Majesty as an escheat by virtue of his prerogative Royal. The purchaser presented a petition to traverse the inquisition:—*Held*: (1) after the passing of above Act the tenants of the Crown in capite or ut de corona were equally with other persons deprived of the power to subinfeudate, & after 12 Car. 2, c. 24, held their manors in free & common socage; (2) stat. De Prærogativa Regis, commonly dated 17 Edw. 2, was in fact enacted in the early years of Edward I. before the passing of Quia Emptores; (3) the lord had no right to subinfeudate in 1837, & the lands had escheated to the Crown.—*Re* HOLLIDAY, [1922] 2 Ch. 698; 127 L. T. 585; 38 T. L. R. 709.

SECT. 11.—THE LORD OF THE MANOR.

SUB-SECT. 1.—RIGHTS.

123. Beerhouse held by copy of manor—Subject to fine on admittance—Lord entitled to share in compensation under Licensing Act, 1904 (c. 28).]—The freehold in all the copyhold lands in a manor was vested in appts., who were entitled to all the usual manorial rights, including a fine on the admittance of a tenant. A beerhouse was situate on copyhold land within the manor of which resps. were copyhold tenants holding same by copy of ct. roll. Appts. were registered as owners of the beerhouse. The renewal of the licence of the beerhouse having been refused:—*Held*: appts. were persons interested in the licensed premises as owners, & were entitled to share in the compensation money awarded by a committee of quarter sessions under Licensing Act, 1904.—ECCLESIASTICAL COMRS. FOR ENGLAND v. PAGE, [1911] 2 K. B. 946; 80 L. J. K. B. 1346; 105 L. T. 827; 75 J. P. 548, D. C.

Sect. 11.—The lord of the manor: Sub-sects. 1 & 2.
Part II. Sect. 1: Sub-sects. 1 & 2, A. & B.]

Admittance of tenants.]—See Nos. 1052, 1495, 1685, post.

Appointment of steward.]—See Part VI., Sect. 1, sub-sect. 2, post.

Approvement of waste.]—See COMMONS & RIGHTS OF COMMON, Vol. XI., pp. 43, 44.

Certum laetae.]—See Part XI., Sect. 7, post.

Compensation on enfranchisement.]—See Part XX., Sect. 2, post.

Custody of court rolls.]—See Part V., Sect. 1, sub-sect. 1, post.

Escheat.]—See Part XIX., Sect. 1, sub-sect. 3, post.

Fealty.]—See Part XI., Sect. 6, post.

Fines.]—See Part XI., Sect. 1, post.

Franchises.]—See Part II., Sect. 1, post.

Free warren.]—See COMMONS & RIGHTS OF COMMON, Vol. XI., p. 26.

Guardianship of infant or lunatic tenants.]—See Part IX., Sect. 10, post.

Herlots.]—See Part XI., Sect. 2, post.

Mines, minerals, etc.]—See Part X., Sect. 1, post.

Quit rents.]—See Part XI., Sect. 4, post.

Reliefs.]—See Part XI., Sect. 3, post.

Services.]—See, generally, Part XI., post.

Sporting rights.]—See Part X., Sect. 3, post.

Suit of court.]—See Part XI., Sect. 5, post.

Trees & timber.]—See Part X., Sect. 2, post.

To charge tenants' estates.]—See Part VII., Sect. 4, sub-sect. 4, post.

To hold courts—Court baron.]—See Part IV., Sect. 1, sub-sect. 2, post.

— Customary court.]—See Part IV., Sect. 2, sub-sect. 1, post.

— Court leet.]—See Part IV., Sect. 3, sub-sect. 2, post.

SUB-SECT. 2.—REMEDIES.

124. May be concurrent—With tenant's remedy—Trespass to tenement.]—One of the tenants who held at will of the manor of B. in which R., B. & M. were enfeoffed brought an action of trespass for trees cut down against defts., who pleaded not guilty. Defts. contended that as the tenant was not tenant of a freehold, but tenant at will by the custom of the manor, he could not recover damages for the freehold of another, as the tenant of the freehold could by another action also recover damages:—*Held*: pltf. might recover damages.—ANON. (1401), Y. B. 2 Hen. 4, fo. 12, pl. 49.

Annotations:—Consd. Brown's Case (1581), 4 Co. Rep. 21 a. Rejd. Heyden v. Smith (1610), 2 Brownl. 328; Rowden v. Maltster (1626), Cro. Car. 42; Jefferson v. Jefferson (1683), 3 Lev. 130.

125. For waste—Not by injunction—Lord confined to legal remedy.]—DENCH v. BAMPTON (1799), 4 Ves. 700; 31 E. R. 362, L. C.

Annotations:—Dtd. Parrott v. Palmer (1834), 3 My. & K. 632; Blackmore v. White, [1899] 1 Q. B. 293. Rejd. Doe d. Grubb v. Burlington (1833), 5 B. & Ad. 507.

126. — By injunction.]—RICHARDS v. NOBLE (1807), 3 Mer. 673; 36 E. R. 258, L. C.

Annotations:—Consd. Blackmore v. White, [1899] 1 Q. B. 293. Rejd. Parrott v. Palmer (1834), 3 My. & K. 632.

— Forfeiture.]—See Part XIX., Sect. 1, sub-sect. 2, post.

127. Ejectment—Though against persons coming in under last tenant.]—(1) Land being proved to be copyhold, the lord is entitled to maintain ejectment for the possession, even against those who came in under the last tenant; unless they show a right to the possession by a continuance of the tenancy, according to the custom of the manor. No demand of possession is necessary in such a case before bringing the ejectment.

(2) A tenant of copyholds held for lives, & it was proved that certain persons occupied the premises after that tenant:—*Held*: it must be presumed that they held under the title of that tenant, so that the possession was not adverse until the dropping of the lives & Stat. Limitations did not begin to run until that date, & the lord, bringing ejectment within twenty years, was entitled to recover.—DEN d. SOUTHWOOD v. BLAKE (1827), 6 L. J. O. S. K. B. 141.

128. By action—For dilapidations—Though customary remedy by presentment, fine & forfeiture.]—Testatrix of defts. was admitted tenant for life of certain copyhold tenements of a manor. By the custom of the manor the tenants were bound to repair their tenements, & the only mode in which that obligation had been enforced was by presentment, fine & forfeiture. Upon the death of testatrix the premises were found to be out of repair. More than six months after defts., as her exors., had taken upon themselves the administration of her effects, the lord brought an action against them for dilapidations:—*Held*: (1) testatrix, by accepting the tenancy according to the custom of the manor, impliedly contracted to discharge the customary obligation to repair; (2) for the breach of her implied contract the lord was not confined to his customary remedy by presentment, fine & forfeiture, but had a remedy by action.—BLACKMORE v. WHITE, [1899] 1 Q. B. 293; 68 L. J. Q. B. 180; 80 L. T. 79; 47 W. R. 448.

Annotations:—Distd. Galbraith v. Poynton, [1905] 2 K. B. 258. Mentd. Re G., [1899] 1 Ch. 719.

— For fines.]—See Part XI., Sect. 1, sub-sect. 9, B., post.

Amercement—For failure to perform suit of court.]—See Part XI., Sect. 5, sub-sect. 4, B., post.

Distress—For fealty.]—See Part XI., Sect. 6, sub-sect. 1, post.

— For herlot.]—See Part XI., Sect. 2, sub-sect. 2, B., post.

— For rents.]—See Part XI., Sect. 4, sub-sect. 2, post.

Forfeiture—For alienation of freehold.]—See Part XIX., Sect. 1, sub-sect. 2, B. (a), post.

— Crime.]—See Part XIX., Sect. 1, sub-sect. 2, B. (h), post.

— Failure to take admittance.]—See Part XIX., Sect. 1, sub-sect. 2, B. (g), post.

— For lease unwarranted by custom.]—See Part XIX., Sect. 1, sub-sect. 2, B. (b), post.

— For non-payment of fine.]—See Part XIX., Sect. 1, sub-sect. 2, B. (d), post.

— For refusal of rent.]—See Part XIX., Sect. 1, sub-sect. 2, B. (e), post.

— For refusal of services.]—See Part XIX., Sect. 1, sub-sect. 2, B. (f), post.

— For waste.]—See Part XIX., Sect. 1, sub-sect. 2, B. (c), post.

Seizure—Of herlot.]—See Part XI., Sect. 2, sub-sect. 2, B., post.

Seizure quousque.]—See Part XII., Sect. 7, post.

Part II.—Franchises and other Rights appendant to Manors.

SECT. 1.—FRANCHISES.

SUB-SECT. 1.—IN GENERAL.

129. Not divisible—On descent to coparceners.]—MOUNTJOY'S (LORD) CASE, No. 74, ante.

130. Merger—On manor revesting in Crown—Not where franchise created by Crown.]—(1) When the King grants any privileges, liberties, franchises, etc. which were privileges, liberties, or franchises, in his own hands, as parcel of the flowers of his crown, as *bona & catalla felonum, fugitivorum, utlagatorum*, etc. *bona & catalla waviate, extrabur', deodanda, wreccum maris*, etc. within such possessions, there, if they come again to the King they are merged in the crown, & he has them again *in jure coronæ*: & if the wreck, or goods waived, estrays, etc. were appendant before to possession, now the appendancy is extinct, & the King is seised of them *in jure coronæ*.

(2) When a privilege, liberty, franchise, or jurisdiction was at the beginning created & created by the King, & was not any such flower before in the garland of the crown, there, by the accession of them again to the crown they are not extinct, nor the appendancy of them severed from the possession; as if a fair, market, hundred, leet, park, warren, *et similia*, are appendants to manors, or in gross, & afterwards they come back to the King, they remain as they were before *in esse* not merged in the Crown, for they were at first created & newly erected by the King, & were not *in esse* before, & time & usage has made them appendant. —**STRATA MERCELLA (ABBOT OF) CASE (1591)**, 9 Co. Rep. 24 a; 77 E. R. 765.

Annotations:—As to (1) Rejd. Wiggon v. Branthwait (1698), 1 Ld. Raym. 473; *R. v. Capper, Re Bowler (1817)*, 5 Price, 217. *As to (2) Apld. Northumberland v. Houghton (1870)*, L. R. 5 Exch. 127. *Consd. A.-G. v. Horner*, [1913] 2 Ch. 140. *Generally, Consd. A.-G. v. British Museum*, [1903] 2 Ch. 598. *Rejd. Whistler's Case (1613)*, 10 Co. Rep. 63 a; *Colchester Corp'n. v. Brooke (1845)*, 7 Q. B. 339; *Saltash Corp'n. v. Goodman (1880)*, 5 C. P. D. 431; *Newcastle v. Worksop U. C.*, [1902] 2 Ch. 145. *Mentd. Orde v. Moreton (1610)*, 1 Bulst. 129; *Wale v. Hill (1611)*, 1 Bulst. 149; *R. v. Maidenhead Corp'n. (1620)*, Palm. 76; *Darcy v. Jackson (1622)*, Palm. 224; *Appleton v. Stoughton (1638)*, Cro. Car. 516; *Holland v. Fisher (1662)*, O. Bridg. 181; *Ely's Case (1663)*, 1 Sid. 103; *Beeston's Case (1664)*, 1 Sid. 172; *Woodward v. Fox (1691)*, 2 Vent. 267; *The Bankers' Case (1695)*, Skin. 601; *Anon. (1698)*, 12 Mod. Rep. 224; *Orby v. Mohun (1706)*, Freem. Ch. 291; *Anon. (1707)*, 1 Com. 150; *Watson v. Quilter (1843)*, 11 M. & W. 760.

131. ———.]—If liberties created *de novo* by the King come back to the Crown, they are not merged; but if they were appendant to a manor, the appendancy is extinct on their return to the Crown, & the King is seised of them *jure coronæ*.—**HEDDY v. WHEELHOUSE (1597)**, Cro. Eliz. 591; *Moore, K. B. 474*; 78 E. R. 834.

Annotations:—Consd. Northumberland v. Houghton (1870), L. R. 5 Exch. 127; *Newcastle v. Worksop U. C.*, [1902] 2 Ch. 145. *Rejd. Stamford Corp'n. v. Pawlett (1830)*, 1 Cr. & J. 57; *Egremont v. Saul (1837)*, 6 Ad. & El. 924; *Colchester Corp'n. v. Brooke (1845)*, 7 Q. B. 339; *Saltash Corp'n. v. Goodman (1880)*, 5 C. P. D. 431. *Mentd. R. v. Maidenhead Corp'n. (1620)*, Palm. 76; *Northampton Corp'n. v. Ward (1745)*, 2 Stra. 1238; *R. v. Bell (1816)*, 5 M. & S. 221; *Lowden v. Hierons (1818)*, 2 Moore, C. P. 102; *Wright v. Bruister (1832)*, 4 B. & Ad. 116; *Lockwood v. Wood (1841)*, 6 Q. B. 31; *Young v. Thank (1845)*, 6 L. T. O. S. 146; *Draper v. Sperring (1861)*, 10 C. B. N. S. 113; *Great Yarmouth Corp'n. v. Groom, Great Yarmouth Corp'n. v. Daniel (1862)*, 32 L. J. Ex. 74; *Lawrence v. Hitch (1868)*, L. R. 3 Q. B. 521; *Penryn Corp'n. v. Best (1878)*, 3 Ex. D. 292.

132. Grant of manor by Crown—With all franchise ever held—General words not construed strictly.]—General words in the grant of a manor are not to be construed against the Crown. Hence,

where a manor was granted with "*tot, talia, tanta, qualia aliquis alius unquam habuit*," it was not a sufficient answer on *quo warranto* for using certain liberties within the manor to show that King Henry VIII. had granted the manor to Queen Katherine, with these liberties for her life.—*R. v. WHITE (1617)*, 3 Bulst. 292; 81 E. R. 244.

See, also, No. 48, ante.

SUB-SECT. 2.—PARTICULAR FRANCHISES.

A. Waifs.

133. What are waifs—Stolen goods relinquished by felon—Without intention of retaking possession.]—If a man steals my goods, & brings them into a manor, & there leaves them in his house, or in the house of any other, or in the custody of any other, or hides them in the ground, or other secret place, & afterwards flies, these goods are not forfeited, nor shall be waif in law, for waif is where the felon in pursuit waives the goods, or when the felon for fear of being apprehended, thinking that pursuit was made, having them with him in his possession flies, & waives the goods, in these cases they shall be waived in law: but if he has not the goods with him when he flies being pursued, or for fear of being apprehended, they are not waived nor forfeited, but the owner may take them when he will without any fresh suit.—**FOXLEY'S CASE (1601)**, 5 Co. Rep. 109 a; 77 E. R. 224; *sub nom. FOXLEY v. ANNESLEY*, Cro. Eliz. 693; *Moore, K. B. 572*.

Annotations:—Mentd. Searle v. Williams (1618), Hob. 288; *Daw v. Swayne (1669)*, 1 Mod. Rep. 4; *R. v. Polwart (1841)*, 1 Q. B. 818.

134. ——— Before recovery by owner.]—Goods waived shall be said those which are stolen, & that the felon being pursued, for danger of apprehension waives & flies. Now if they are seised before the owner comes, the property is presently altered out of the owner in the lord, although he made fresh suit, if that suit was not within the view of the felon always. But they all agreed, if the felon does not fly, but is apprehended with the goods, that the owner shall have his goods without question. Or if the owner comes & challenges the goods before seizure; & after the flight of the felon.—**DICKSON'S CASE (1627)**, Het. 64; 124 E. R. 346.

135. Justification of seizure—Felony must be alleged—& waiver of goods by felon.]—To justify the seizing of stolen goods, it must be alleged that a felony was committed, & that the felon waived them.—**DAVIES' CASE (1598)**, Cro. Eliz. 611; 78 E. R. 854.

See, now, Larceny Act, 1861 (c. 96), s. 100, and, generally, CONSTITUTIONAL LAW; CRIMINAL LAW & PROCEDURE.

B. Estrays.

136. What may be—Not the King's beasts.]—(1) The King may grant the privilege of strays to the lord of a manor or he may claim it by prescription which supposeth a grant lost; (2) no lord of a manor can take the King's beasts as strays.—**ANON. (1370)**, Y. B. 44 Edw. 3, fo. 19, pl. 14.

137. ——— Swans.]—A swan may be an estray & so cannot any other fowl.—**CASE OF SWANS (1592)**, 7 Co. Rep. 15 b; 77 E. R. 435.

Annotations:—Rejd. Blades v. Higgs (1865), 20 C. B. N. S. 214. *Mentd. Lyster v. Home (1639)*, Cro. Car. 544;

Sect. 1.—Franchises: Sub-sect. 2, B. & C.]

Davies v. Powell (1738), Willes, 46; *Hannam v. Mockett* (1824), 4 Dow. & Ry. K. B. 518; *R. v. Robinson* (1859), Bell, O. C. 84.

See, also, Nos. 142, 148, 153, *post*.

138. Right to—In the Crown—Unless title derived by grant—Or prescription.]—ANON., No. 136, *ante*.

139. ———.]—The lord of a manor did avow on the taking of a gelding as an estray within his manor:—Held: an estray belongs to the King, of common right & no common person may have it unless by grant, or by prescription.—*HASLEWOODS CASE* (1591), Owen, 13; 74 E. R. 864.

140. ———.]—The reason of estray is that where none can make title to a thing the law gives it to the King, if the owner doth not claim it within a year & a day. (a) If the owner can make any reasonable proof, as if he show the marks it is sufficient & the party *suo periculo* ought to deliver to him the estray. (b) It is not sufficient to keep the estray within the manor, but it ought to be kept in a place parcel of the manor. (c) It ought to be in land in the possession of the lord of the manor & not of any other; (d) if they do go in the land of the lord of the manor, yet it is absurd to maintain that the bailiff might delegate his power to another to keep them until he be satisfied. It is clear that agreement ought to be made with the party for the victual & the quantity thereof shall be tried in this ct. if it come in question.

An estray ought not to be wrought. The lord ought to proclaim them & in his proclamation ought to show of what kind the estray is & ought to tell his name, who seized them, & then it ought to be kept within the lordship & manor.—*TAYLOR & JAMES' CASE* (1607), Godb. 150; 78 E. R. 91.

Annotation:—Reid. Henly v. Welch (1706), 11 Mod. Rep. 89.

See, also, No. 150, *post*.

141. ——— Lessee of manor for life—Lessee dying before expiry of year & day from seizure—Lessee's executor entitled—Not reversioner.]—The lessee for life of a manor seized an estray, & died before the expiry of a year & a day:—*Semble*: it would belong to the lessee's exor., not to the reversioner: for although the lessee had not absolute property during his life, still when the year had expired the property would relate back to the time of the seizure.—*ANON.* (1551), Moore, K. B. 11; 72 E. R. 405.

142. ——— Lessee under lease granted before expiry of year & a day from seizure—Entitled.]—A man seized of a manor to which he had stray appendant by prescription, etc. by his bailiff seized an ox as a stray within the manor, & made proclamations according to law; & within a year & a day let the manor with all royalties, liberties, etc., & after the year & day passed, did move the ct. who should have the estray:—*Held*: (1) the lessee should have it, forasmuch as the property of the stray was not altered nor changed before the year & a day; (2) the lord of the manor until the day & year are past had but the custody so that the owner might rehave it always within the year & day if he would pay for the meat of it; (3) nor can the ox be laboured, or used by the lord before the year & day, & therefore he should be paid for the meat, unless it were such a beast as of necessity ought to be used, as a milch cow, etc.; (4) if one took a stray & within a year & a day it strayed out of the manor, the lord might retake it by seizure.—*ANON.* (1612), 12 Co. Rep. 101; 77 E. R. 1375.

143. When right of property accrues—Not till expiry of year & day from seizure—& proclamation having been made.]—ANON. (1865), Y. B. 39 Edw. 3, fo. 3 B.

Annotation:—Reid. Pleydell v. Gosmoore (1622), Hut. 67.

144. ———.]—TAYLOR & JAMES' CASE, No. 140, *ante*.

145. ———.]—ANON., No. 142, *ante*.

146. ———.]—The lord of a manor gains no property in an estray till the year & day be past, & cannot maintain an action of trespass for taking such estray from him in the interim for he cannot say *quare ovem suam cepit* till the year expired, but he may maintain a special action upon the case for such taking.—*BURDET v. MATHEWMAN* (1633), Clay. 107.

147. ——— On expiry of period title relates back.]—ANON., No. 141, *ante*.

Held: (1) when a beast comes within the manor of another lord, this is a trespass, but after the seizure for an estray, it is a possession of the estray in the lord, & the beginning of property.

(2) The estray within the year is, as a pledge in the custody of the law, till amends be made to the lord; (3) for that reason the lord may not work him; (4) if the estray go into the manor of another lord, & the last lord claims that as an estray, the first lord had lost that, but not before claim; (5) he might fetter the colt being fierce, & wild, for he is answerable for the trespass & wrong which he makes in the land of his neighbours; & if he suffer him by negligent keeping to stray away & never can be found again the owner may have an action for trover & conversion; (6) deft. ought to proclaim an estray, if the year be past, for by that he gains an absolute property.—*PLEADAL v. GOSMORE* (1623), Win. 66, 124; 124 E. R. 57, 104; *sub nom.* *PLEYDELL v. GOSMOORE*, Hut. 67.

149. ——— On proclamation—Proclamation must state nature of estray—& name of taker.]—TAYLOR & JAMES' CASE, No. 140, *ante*.

150. ——— Must be made at parish church.]—A justification in trover as for an estray must allege the patent, & that proclamation was made at the parish church.—*BROWNLOW v. LAMBERT* (1599), Cro. Eliz. 716; 78 E. R. 950.

151. ———.]—BURDET v. MATHEWMAN, No. 146, *ante*.

152. ———.]—HENLY v. WELCH, No. 168, *post*.

153. Nature of property before expiry of year & a day—Custody only—Estray cannot be used.]—In an action of trespass in respect of a horse deft. justified as bailiff for an estray, & that he delivered it to pltf. Pltf. replied that deft. before delivery had used & worked the horse:—*Held*: the estray could not be worked, for the party had no interest, but only custody.—*BAGSHAW v. GAWIN* (1607), Noy. 119; Yelv. 96; Cro. Jac. 147; 74 E. R. 1084.

Annotations:—Reid. Lawton v. Ward (1695), 1 Ld. Raym. 75; *Vaspor v. Edwards* (1701), 12 Mod. Rep. 658; *R. v. Cotton* (1751), Park. 112; *Dye v. Leatherdale* (1769), 3 Wils. 20; *Atkinson v. Toasdale* (1772), 3 Wils. 278. *Mentd. Gates v. Bayley* (1766), 2 Wils. 313; *Sayre v. Rochford* (1777), 2 Wm. Bl. 1165; *Clark v. Gilbert* (1835), 2 Scott, 520.

154. ———.]—TAYLOR & JAMES' CASE, No. 140, *ante*.

155. ——— Unless of necessity—Milch cow.]—ANON., No. 142, *ante*.

156. ———.]—PLEADAL v. GOSMORE, No. 148, *ante*.

157. ———.]—Trespass lies for working an estray, although the original taking be

admitted to be lawful.—*OXLEY v. WATTS* (1785), 1 Term Rep. 12; 99 E. R. 944.

158. — Must be kept in lord's possession—In a place parcel of the manor—Custody cannot be delegated.]—*TAYLOR & JAMES' CASE*, No. 140, *ante*.

159. — Duty to keep safe—Colt may be fettered.]—*PLEADAL v. GOSMORE*, No. 148, *ante*.

160. — Includes right to retake—Straying from manor.]—*ANON.*, No. 142, *ante*.

161. — Unless seized as an estray by lord of another manor.]—*PLEADAL v. GOSMORE*, No. 148, *ante*.

162. — Cannot maintain trespass—For re-taking—May maintain action on case.]—*BURDET v. MATHEWMAN*, No. 146, *ante*.

163. Right of owner to reclaim—Within year & day—On payment for keep.]—*TAYLOR & JAMES' CASE*, No. 140, *ante*.

164. — — — — —.]—*ANON.*, No. 142, *ante*.

165. — — — — — On tender of keep—Tender need not be of sum certain.]—In case of an estray, if the owner come & say, "Tell me what is due to you, & I will pay you," this is *prima facie* a good tender, for it lies only in the privity of the lord how much is due (*HOLT, C.J.*).—*ANON.* (1706), 11 Mod. Rep. 71; 88 E. R. 895.

166. — Lord of manor liable in trover—For negligent loss of estray.]—*PLEADAL v. GOSMORE*, No. 148, *ante*.

167. — Must prove ownership.]—*TAYLOR & JAMES' CASE*, No. 140, *ante*.

168. — — — — —.]—(1) It became an estray after the first proclamation, & not sooner; (2) if the owner of an estray comes to the lord & demands his beast, the lord is not obliged to give it him immediately, until he is satisfied by the owner's description of the marks, that he is the owner (*HOLT, C.J.*).—*HENLY v. WELCH* (1706), 11 Mod. Rep. 89; *Holt, K. B.* 563; 2 Salk. 685; 88 E. R. 914.

Annotations :—*Mentd.* *R. v. Lawley* (1731), 2 Stra. 904; *British Empire Shipping Co. v. Simes* (1858), 27 L. J. Q. B. 397.

169. Remedy of owner—For wrongful seizure—Action of trespass.]—Action lies against deft. for maliciously informing the bailiff of a manor that a certain sheep of pltf.'s was an estray whereon the bailiff wrongfully seized it. It is immaterial that pltf. has a remedy in trespass against the bailiff.—*NEWMAN v. ZACHARY* (1646), *Aleyn*, 3; 82 E. R. 883.

Annotations :—*Mentd.* *Lumley v. Gye* (1853), 2 E. & B. 216; *Moon v. Towers* (1860), 8 O. B. N. S. 611; *Lynch v. Knight* (1861), 5 L. T. 291.

See, generally, TRESPASS.

170. Justification of seizure by lord—Lord must show origin of right—& due proclamation.]—*BROWNLOW v. LAMBERT*, No. 150, *ante*.

See, also, ANIMALS, Vol. II., p. 222, No. 150, 151; *CONSTITUTIONAL LAW*, Vol. XI., pp. 588, 589.

C. Wreck.

What is.]—*See ADMIRALTY*, Vol. I., pp. 153, 155, Nos. 614–616, 622, 625.

171. Right of the lord to—None where property in goods can be proved.]—If the property of goods can be proved, the lord of the manor is not entitled to them as wreck.—*HAMILTON v. DAVIS* (1771), 5 Burr. 2732; 98 E. R. 433.

Annotation :—*Reid.* *Dunwich Corp'n. v. Skerry* (1831), 1 B. & Ad. 831.

172. — Under grant from Crown—No greater right than rights of Crown.]—In many cases lords of manors are grantee of the Crown of those royalties & privileges which may be established by the grants themselves, or by immemorial custom; but the grantees cannot stand on higher

ground than the King (*Lord Stowell*).—*AUGUSTA (OR EUGENIE)* (1822), 1 Hag. Adm. 16.

Annotations :—*Reid.* *Dunwich Corp'n. v. Skerry* (1831), 1 B. & Ad. 831; *R. v. Forty-nine Casks of Brandy* (1836), 3 Hag. Adm. 257.

173. — — — — — General words insufficient to pass.]—Parol evidence cannot be resorted to, in order to support a prescriptive right to wreck, if it appear that the property in respect of which wreck is claimed, was in the Crown in the time of Charles I., as a jury could not infer that it was in those under whom the party claims, from time of legal memory. *Semble*: wreck will not pass under general words in a grant.—*ALCOCK v. COOKE* (1829), 2 Moo. & P. 625; 5 Bing. 340; 2 State Tr. N. S. 327; 7 L. J. C. P. 126; 130 E. R. 1092.

Annotations :—*Generally, Mentd.* *Morgan v. Seaward* (1837), 2 M. & W. 544; *Gledstanes v. Sandwich* (1842), 4 Man. & G. 995; *Jewison v. Tyson* (1842), 6 State Tr. N. S. 1; *Eastern Archipelago Co. v. R.* (1853), 2 E. & B. 856; *G. E. Ry. v. Goldsmid* (1884), 9 App. Cas. 927; *Vancouver City v. Vancouver Lumber Co.*, [1911] A. C. 711.

174. Right of Crown to—In respect of manor vested in Crown—Not divested by grant of office of Lord High Admiral—"With all wrecks at sea."—A manor to which wreck belonged by prescription came to the King's hands, who granted to A. "the office of admiral, with all wrecks at sea, & all profits to the office belonging":—*Held*: not to pass the wreck appurtenant to the manor.—*WIGGAN v. BRANTHWAITE* (1699), 12 Mod. Rep. 259; 1 Ld. Raym. 473; *Holt, K. B.* 758; 88 E. R. 1306.

See, generally, CONSTITUTIONAL LAW, Vol. XI., p. 588.

175. Evidence of right—User for 92 years—Not rebutted by—Two allowances in eyre—& judgment in trespass 400 years old.]—Two allowances in eyre, & a judgment in trespass 400 years since, are not conclusive evidence against usage for 92 years last past to have wreck of the sea.—*BIDDULPH v. ATHER* (1755), 2 Wils. 23; 95 E. R. 665.

176. — If wreck claimed in respect of property held by Crown within legal memory—Parol evidence not admitted.]—*ALCOCK v. COOKE*, No. 173, *ante*.

177. — Admissibility of—Not presentment of jury partly consisting of tenants of manor.]—In trespass brought by the lord of a manor for carrying away dollars claimed by him as wrecks, two instruments dated in 1639 & 1657, purporting to be presentments or answers of a jury, partly consisting of tenants of the manor, to questions by commissioners of survey appointed by the then lord, were put in to prove the boundaries of the manor, & also the lord's title to wreck, which was affirmed in particular passages:—*Held*: they were only evidence of the boundaries, & could not be admitted to declarations by the tenants of the manor of the title of the lord to wreck, that being a matter of private right derived from the Crown, respecting which they could not be taken to have any peculiar knowledge, as they had no concern with it.—*TALBOT v. LEWIS* (1834), 1 Cr. M. & R. 495; 6 O. & P. 603, 605; 5 Tyr. 1; 4 L. J. Ex. 9; 149 E. R. 1175.

Annotation :—*Reid.* *Crease v. Barrett* (1835), 5 Tyr. 458.

178. — Unquestioned exercise of right.]—Manors being part of the *corpus comitatus*, manorial rights are land jurisdictions, but the Crown may in many instances have granted the royalties of certain manors to subjects. In most manors upon the sea coast, the lords claim the royalty of wrecks, & prove their right as against the Crown by the usage of taking them, & by the exercise of such right never having been questioned.—*R. v. Two Casks of Tallow* (1837), 3 Hag. Adm. 294.

Annotations :—*Reid.* *R. v. Le Pauline* (1845), 3 Notes of Cases, 616. *Mentd.* *The Olympic*, [1913] P. 92.

Sect. 1.—Franchises: Sub-sect. 2, C., D. & E. Sect. 2.]

Claim by lord—Under manorial custom—To cable of ship driven ashore.]—See No. 230, post.

Whether grant of wreck carries right to foreshore.]—See WATERS AND WATERCOURSES.

D. Tolls.

179. Right to—Not appendant to manor—Dependent on an easement.]—A right of toll cannot be claimed as a right appendant to a manor, for it depends on the will of the strangers on whom it is levied: it must be claimed as depending on an easement.—ANON. (temp. 1326-77), Keil. 152; 72 E. R. 325.

180. — Claimed by prescription—Consideration must be shown.]—A prescription, generally, for toll of all goods brought within the limits of a certain manor is bad; for every prescription to charge the subject with a duty, must impart a benefit, or show a reason why it is claimed.—WARRINGTON v. MOSELY (1694), 4 Mod. Rep. 319; Holt, K. B. 673; 87 E. R. 419; *sub nom.* WARRINGTON v. MOSELY, Comb. 295.

Annotations:—Consd. Norfolk v. Myers (1819), 4 Madd. 83. *Refd.* Sargent v. Reed (1745), 2 Stra. 1228; Manchester Corpn. & Citizens v. Lyons (1882), 47 L. T. 677.

See, also, Nos. 182, 185, post.

Toll-traverse.]—See, generally, HIGHWAYS, STREETS, & BRIDGES.

181. — May be claimed as appurtenant to a manor—Appurtenancy not destroyed by vesting of manor in Crown.]—A toll-traverse may be claimed as appurtenant to a manor by a *que* estate in the manor. The appurtenancy is not destroyed by the manor coming into the hands of the Crown.—JAMES v. JOHNSON (1677), 1 Mod. Rep. 231; 2 Mod. Rep. 143; 86 E. R. 849.

Annotations:—Consd. Nottingham Corpn. v. Lambert (1738), Willems. 111. *Refd.* Rickards v. Bennett (1823), 1 B. & C. 223.

182. — No special consideration necessary to support—General consideration sufficient.]—To support a claim of toll-traverse, special consideration need not be shown. Where to trespass for distraining goods brought to the market of F. for tolls due in respect thereof, debt. justified the distress by showing a prescriptive right as lord of the manor of F. of which the town of F. formed a part, to take a certain reasonable toll for goods brought within the town for the purpose of being there delivered, & in fact delivered, & averred certain special considerations for taking the toll to which pltf. was no party:—*Held*: the prescriptive right of soil in the manor, the toll being coeval therewith, was a sufficient general consideration for the toll as a toll-traverse, pltf. having brought & delivered goods within the manor.—RICKARDS v. BENNETT (1823), 1 B. & C. 223; 2 Dow. & Ry. K. B. 389; 1 L. J. O. S. K. B. 97; 107 E. R. 83.

Refd. Brecon Markets Co. v. Neath & Brecon Ry. (1872), L. R. 8 C. P. 157.

183. — Not claimable in respect of passage over railway passing through manor—Land acquired by railway company for purposes of their railway.]—In an action for tolls upon certain live stock driven through a borough, & upon waggons & carriages with four wheels passing to, through, & from a borough & manor, pltf. claimed as representing, by virtue of an Act of Parliament, a municipal corpn. who were lords, of the manor in which the borough was, & holders of land within the borough & entitled by prescription or grant to drift tolls & dues payable within the borough on horned cattle, sheep & swine driven through the borough, & waggons & carriages with

four wheels passing to, through, & from the borough, to be entitled to such tolls from defts., who were a railway co. incorporated by Acts passed in 1862 & 1863, & had made a portion of their line of railway & station on lands within the borough, acquired by them for the purposes of their railway, & used their line & station for the conveyance of goods, & live stock & passengers in carriages & trucks into & through the borough:—*Held*: such tolls could only be claimed as tolls-traverse, but inasmuch as the enjoyment of defts. was a proprietary of their own land acquired by them without any reservation of any rights by their vendors, enabling them to earn such tolls (if such rights could legally exist), neither the corpn. as grantees of any such tolls, nor pltf. as their representatives could have a right to take such tolls.—BRECON MARKETS CO. v. NEATH & BRECON RY. CO. (1873), L. R. 8 C. P. 157; 42 L. J. C. P. 63, Ex. Ch.

Annotation:—Refd. A.-G. v. Simpson, [1901] 2 Ch. 671.

Toll-thorough.]—See, generally, HIGHWAYS, STREETS, & BRIDGES.

184. — Not claimable in respect of borough within manor—Unless all streets repairable by lord.]—Prescription for toll through the streets of G. in consideration of repairing divers streets there:—*Held*: bad because pltf. did not say he repaired all the streets there, & pltf. might be passing with his wagon through a street which he did not repair, for anything that appeared to the contrary.—TRUMAN v. WALGHAM & KEY (1766), 2 Wils. 296; 95 E. R. 820.

Annotations:—Consd. Rickards v. Bennett (1823), 1 B. & C. 223; Brett v. Beales (1830), 10 B. & C. 508; Brecon Markets Co. v. Neath & Brecon Ry. (1872), L. R. 7 C. P. 555. *Refd.* Polham v. Pickersgill (1787), 1 Term Rep. 660.

185. Prescription for toll for goods landed at quay—Must be supported by consideration—Does goods not brought within the manor.]

—The maintenance of a quay on the bank of a river, part of which is within a manor & keeping a common bushel for measuring merchandise does not justify distraint of ships' apparel for non-payment of tolls in the case of a ship not coming to the quay.—WARN v. PRIDEUX & BARTON (1673), 3 Keb. 275; 84 E. R. 718; *sub nom.* WARREN v. PRIDEAUX, 1 Mod. Rep. 105; *sub nom.* PRIDEAUX v. WARNE, 1 Freem. K. B. 355; 2 Lev. 96; T. Raym. 232.

Annotation:—Refd. Serjeant v. Read (1745), 1 Wils. 91.

186. — Not confined to goods landed at quay—May extend to all goods landed in manor.]—Prescription as lord of the manor for toll of all goods landed within the manor, in consideration of repairing a wharf within the manor, not confining it to the wharf:—*Held*: good.—COLTON v. SMITH (1774), 1 Cowp. 47; 98 E. R. 960.

Annotations:—Refd. Rickards v. Bennett (1823), 1 B. & C. 223; Brecon Markets Co. v. Neath & Brecon Ry. (1872), L. R. 7 C. P. 555.

landed in manor—Good as a toll-traverse.]—Prescription for toll of goods set on land within a manor, is good as a toll-traverse.—CRISPE v. BELWOOD (1695), 3 Lev. 424; 83 E. R. 762.

Annotations:—Consd. Rickards v. Bennett (1823), 1 B. & C. 223. *Refd.* Nottingham Corpn. v. Lambert (1738), Willems. 111; Brett v. Beales (1830), 10 B. & C. 508; Brecon Markets Co. v. Neath & Brecon Ry. (1872), L. R. 7 C. P. 555.

188. Evidence of right to toll—Not supported by existence of toll bars outside manor.]—A bill was brought for establishing a right to tolls in a manor, & it was laid, that time out of mind there had been a duty payable to the lord of the manor for all carts, etc. coming to the manor:—*Held*: the bill should be dismissed it not appearing that

the place where the toll bars were erected, was within the manor.—A.-G. (AT THE RELATION OF BUCCLEUGH (DUCHESS) *v.* AYRE (1720), Bunb. 68; 145 E. R. 598.

189. — Unsigned account of steward in 1454 admissible—Purporting to show receipt of money.]—In *assumpsit* for tolls, a *computus* of a reeve of 33 Hen. 6, which was brought from the muniment room of the lord of the manor, but which was not signed, & of which no evidence of the handwriting could be given, but in which the receiver purported to charge himself with the receipt of money, & a record of the King's Bench of 7, Ric. 2, of a cause removed by *certiorari* from the maritime court of A.:—*Held*: (1) the *computus* (2) the record were admissible.—BRUNE *v.* THOMPSON (1841), Car. & M. 34, N. P.; *subsequent proceedings* (1842), 2 Q. B. 789.

190. — Record of King's Bench of 1384 admissible—Showing cause removed by *certiorari* from maritime court.]—BRUNE *v.* THOMPSON, No. 189, *ante*.

191. Anchorage toll—Exemption cannot be claimed under charter—Subsequent to creation of right to toll.]—(1) A right to the soil of the sea in an oyster fishery below low-water mark, & to take anchorage toll from a ship which without necessity drops anchor within the limits of the fishery, may have been lawfully granted by the Crown to a subject before the time of legal memory, therefore such an immemorial right to take anchorage toll may be sustained. Where the right to take such toll was shown to have belonged to a manor, an exemption from such toll could not be claimed by a charter of Edw. 4; as the manor, & therefore the right to take the toll, must have been created prior to the charter in question, & it is not in the power of the Crown to derogate from its own prior grant.

(2) Such toll is in respect of the use of the soil, and where such soil is a portion of a manor, the right to take the toll goes with the soil, & is, therefore, not destroyed by a division of the manor.—GANN *v.* WHITSTABLE (FREE FISHERS) (1865), 11 H. L. Cas. 192; 5 New Rep. 432; 35 L. J. C. P. 29; 12 L. T. 150; 29 J. P. 243; 13 W. R. 589; 2 Mar. L. C. 179; 11 E. R. 1305; *sub nom.* WHITSTABLE (FREE FISHERS) *v.* GANN, 20 C. B. N. S. 1, H. L.

Annotations:—As to (1) *Distd.* Foreman *v.* Free Fishers & Dredgers of Whitstable (1869), L. R. 4 H. L. 266. *Consd.* The Bion, [1911] P. 40. *Reid.* Holford *v.* George (1868), L. R. 3 Q. B. 639; Sutton Harbour Improvement Co. *v.* Plymouth Grdns. (1890), 63 L. T. 772; Denaby & Cadeby Main Collieries *v.* Anson, [1911] 1 K. B. 171. *Generally, Mentd.* Bridgwater Trustees *v.* Bootle Cum Linacre Surveyors (1866), 7 B. & S. 348; Jolliffe *v.* Wallasey L. B. (1873), L. R. 9 C. P. 62; R. *v.* Keyn (1876), 2 Ex. D. 63.

192. — Not destroyed by division of manor.]—GANN *v.* WHITSTABLE (FREE FISHERS), No. 191, *ante*.

E. Other Franchises.

193. Right to chattels of felon—Debt payable to felon in other manor—Lord of manor where felon resides entitled.]—The lord of N. had by ancient letters patents *bona & catalla felonum & fugitivorum* within the Isle of E., & one dwelling within the island was attainted of felony, to whom another was indebted by obligation, & the money by the condition of the bond was to be paid at a manor of Lord St. J.'s, who within his manor had also *bona & catalla felonum & fugitivorum*; & at the payment Lord St. J. claimed the money:—*Held*: the lord of N. was entitled to the money.—NORTHAMPTON (LORD) & ST. JOHN'S (LORD) CASE (1587), 2 Leon. 56; 74 E. R. 354.

Annotation:—*Reid.* Southampton Corpn. *v.* Richards (1863), 1 Sid. 142.

See, now, Forfeiture Act, 1870 (c. 23), s. 1.

Forfeiture on attainder.]—*See, generally, CRIMINAL LAW & PROCEDURE.*

194. Market—Right of lord to toll on beasts sold—Lord not entitled to stallage on all beasts sent to market.]—Pltf. was lessee of G., who had letters patent from the Crown granting him, as lord of the manor of S., the right to hold a market in the town of S., with all customs, tolls, stallage, etc. appertaining. The market was held in the open street, & no stalls were used for cattle, & up to 1866 no payment was ever demanded, except on the sale of cattle, when a small sum per head was paid either by the vendor or purchaser:—*Held*: pltf. could not insist upon stallage for all cattle sent into the market in lieu of tolls on the sale thereof.—SWINDON CENTRAL MARKET CO., LTD. *v.* PANTING (1872), 27 L. T. 578; 37 J. P. 118.

Annotation:—*Reid.* Newcastle *v.* Worksop U. C., [1902] 2 Ch. 145.

See, generally, MARKETS & FAIRS.

SECT. 2.—OTHER RIGHTS APPENDANT TO MANORS.

195. Advowson—Appendant to demesnes—Not to services.]—(1) An advowson shall not be appendant to the services but to the demesne of a manor, for the demesnes are of a perpetual duration, but the services are not.

(2) A vicarage may be appendant to a manor because it is derived out of the rectory of common right, & yet by a grant it may be annexed to a manor.—ANON. (1697), 3 Salk. 40; 91 E. R. 679.

196. Advowson appendant to manor—Is appendant to whole manor—But most properly to demesnes—Out of which derived.]—Issue whether L. enfeoffed pltf. of the manor of F. to which an advowson was appendant, & made livery & scisin upon the demesnes, before he granted the advowson to S., who granted it to deft.:—*Held*: there was a sufficient manor to which an advowson might be well appendant & that in law the advowson was appendant to all the manor, but most properly to the demesnes out of which at the commencement it was derived.—LONG & HEMMINGS CASE (1590), 1 Leon. 207; 74 E. R. 191.

197. — Passes by enfeoffment of manor.]—LONG & HEMMINGS CASE, No. 196, *ante*.

198. — When manor mortgaged in fee—Excepting advowson—Becomes in gross.]—(1) Where an advowson is appendant to a manor & the owner mortgages the manor in fee, excepting the advowson, the advowson becomes in gross; (2) if the money is paid punctually at the day fixed, it becomes appendant; (3) if paid after the day fixed it is appendant on reputation, & (4) may pass by the name of an advowson appendant in a grant or the conveyance though in reality the appendancy is destroyed. (5) So where the owner of a manor to which an advowson is appendant accepts a fine of the advowson with a grant & render back of every second turn; for such turn the advowson is in gross, but for other turns the appendancy still continues. (6) So where there are two coparceners of a manor to which an advowson is appendant & partition is made of the manor without reference to the advowson, at every other turn the advowson is appendant; but (7) if there is an express exception of the advowson it is then in gross.—R. *v.* CHESTER (BP.) (1693), 3 Salk. 24, 40; 91 E. R. 669, 679.

199. — — — If money paid punctually—Becomes appendant.]—R. *v.* CHESTER (BP.), No. 198, *ante*.

200. — — — If money paid after date

Sect. 2.—Other rights appendant to manors. Part III.
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fixed—Becomes appendant on reputation.]—R. v. CHESTER (BP.), No. 198, ante.

201. ——— Passes in grant by name of advowson appendant.]—R. v. CHESTER (BP.), No. 198, ante.

202. ——— Where lord accepts fine of advowson with grant & render back of every second turn—For such turn becomes in gross—For other turns remains appendant.]—R. v. CHESTER (BP.), No. 198, ante.

203. ——— Where two coparceners of manor—Partition of manor made without reference to advowson—Advowson appendant at every other turn.]—R. v. CHESTER (BP.), No. 198, ante.

204. ——— Partition of manor made excepting advowson—Advowson becomes in gross.]—R. v. CHESTER (BP.), No. 198, ante.

205. ——— Demesnes allotted to one & services to other—Advowson becomes in gross.]—REYNOLDS v. BLAKE, No. 116, ante.

206. ——— Demesnes descend to coparcener having services—Advowson again becomes appendant.]—REYNOLDS v. BLAKE, No. 116, ante.

207. ——— Assigned for residue of term previously created in manor & advowson—Cesser of term except as to advowson—Appendency not severed.]—In 1790 an advowson appendant to a manor was sold & assigned for the residue of a term of 500 years, created in the manor & advowson in 1745, & which, except as to the advowson ceased:—*Held*: this did not sever the appendency, & the advowson passed by a subsequent release of the manor with general words.—ROOPER v. HARRISON (1855), 2 K. & J. 86; 69 E. R. 704.

Annotations:—*Mentd.* Thorpe v. Holdsworth (1868), L. R. 7 Eq. 139; R. v. Shropshire Union Co. (1873), L. R. 8 Q. B. 420; Ward v. Duncombe, [1893] A. C. 369; Taylor v. London & County Banking Co., London & County Banking Co. v. Nixon, [1901] 2 Ch. 231.

208. Tithe—Lord may prescribe for *decimam garbam*—But not for *decimas garbarum*—Strictly *profit à prendre*.]—The lord of a manor may prescribe to take all tithes within his manor; but he must prescribe to have *decimam garbam*, etc., & not *decimas garbarum*; for it is a *profit à prendre* & not properly tithes.—PIGOT v. HEARN (1598), Cro. Eliz. 599; Moore, K. B. 483; 78 E. R. 841.

Annotations:—*Expld.* Pigot v. Sympton (1600), Cro. Eliz. 763; Knight v. Waterford (1841), 4 Y. & C. Ex. 283; Knight v. Waterford (1846), 15 M. & W. 419. *Refd.* Bury St. Edmund Corpn. v. Evans (1739), 2 Com. 643. *Mentd.* Moore v. Bullock (1618), Cro. Jac. 501.

209. ——— Lord may prescribe for tenth part of all corn within manor—In consideration of annual payment to parson.]—The lord of a manor may prescribe, in consideration of such a sum paid annually to the parson, in satisfaction of all tithes within the manor, to take the tenth part of all corn within the manor.—PIGOT v. SYMPSON (1600), Cro. Eliz. 763; 78 E. R. 994.

Annotations:—*Expld.* Knight v. Waterford (1841), 4 Y. & C. Ex. 283; Knight v. Waterford (1846), 15 M. & W. 419.

210. Vicarage—May be appendant to manor.]—ANON., No. 195, ante.

See, generally, ECCLESIASTICAL LAW.

211. Right to appoint sexton of parish—Claim that lord has immemorially appointed—Sustained by proof of seisin of quondam manor.]—SOANE v. IRELAND, No. 14, ante.

212. Exclusive right to cut seaweed—On rocks below high-water mark—Cannot be established by lord—Except by Crown grant—Or title by prescription.]—The lord of a manor cannot establish a

claim to the exclusive right of cutting seaweed on rocks situate below high-water mark except by a grant from the King, or by such long & undisturbed enjoyment of it as to give him a title by prescription. The possession necessary to constitute a title by prescription must be uninterrupted & peaceable, both according to the law of England, the civil law & that of France, Normandy, & Jersey.—BENEST v. PIPON (1820), 1 Knapp, 60; 2 State Tr. N. S. App. 1012; 12 E. R. 243, P. C.

Annotation:—*Refd.* Mannall v. Fisher (1859), 5 C. B. N. S. 856.

213. Right of nomination of master of almshouse—On attainder of lord—Right incidental to manor not merged—Or extinguished—But vested in Crown.]—In 1437 an almshouse or hospital was founded & endowed by the lord of the manor of Ewelme, for thirteen poor men, two priests, for praying for souls & the education of youth, & the right of nominating the master was vested in the lord of the manor for the time being. Previous to 1513 the manor & the rights of patronage became, on the attainder of the lord, forfeited to the Crown. In 1618 King James I., by letters patent, granted the right of nomination of the master to the University of Oxford, for the support of the Regius Professor of Medicine, & in 1818 the manor, with all its advantages & endowments, was duly granted by the Crown to B.:—*Held*: (1) the rights of nomination & visitation, incidental to the manor, did not, upon the forfeiture by attainder, become merged & extinguished, but vested in the Crown; (2) the founder, by annexing the right of nomination to the manor, could not & had not made them inseparable; but that the right of patronage was in the nature of a lay advowson, which the lord might alien without parting with the manor, & the converse.

(3) By the grant of King James to the University of Oxford, the *jus patronatus* had, *de facto*, been severed from the manor of E.

(4) By the common law, the grant of a manor by the King *cum pertinentibus* would pass an advowson appendant to it, & the statute 17 Edw. 2, c. 15, created a restriction as to advowson of churches only & did not apply to the present case of a lay advowson.

Unascertained & undefined advantages will pass under the general words by a grant of a manor, although not in the contemplation of either party at the time. Thus, for instance, the minerals in the lord's waste would pass, although their existence was neither known nor suspected by any of the parties to the contract. So also, the advowson to a living will pass with a manor by general words, though not specifically named in the grant (SIR J. ROMILLY, M.R.).—A.-G. v. EWELME HOSPITAL (1853), 17 Beav. 366; 1 Eq. Rep. 563; 22 L. J. Ch. 846; 1 W. R. 523; 51 E. R. 1075.

Annotations:—*As to* (1) *Refd.* A.-G. v. Windsor (1860), 30 L. J. Ch. 529. *As to* (2) *Refd.* A.-G. v. Boucherett (1858), 25 Beav. 116.

214. ——— Annexed by founder to lordship of manor—Cannot be made inseparable.]—A.-G. v. EWELME HOSPITAL, No. 213, ante.

—.]—*See, generally, CHARITIES, Vol. VIII., pp. 319, 368, Nos. 1010 et seq., 1738 et seq.*

215. Private chapel annexed to parish church—Prescriptive title in lord—Established by evidence of user.]—A prescriptive title in the lord of a manor to the exclusive use & occupation of a private chapel annexed to a parish church, may be established by evidence of user, & especially

of reparation; & the fact of the freehold being vested in the rector, & not in the person claiming by prescription, will not reduce the possessory right to a mere easement dependent on inhabitancy. —CHURTON v. FREWEN (1866), L. R. 2 Eq. 634;

35 L. J. Ch. 692; 14 L. T. 846; 30 J. P. 803; 12 Jur. N. S. 879.

Annotations:—*Expld.* Proud v. Price (1893), 62 L. J. Q. B. 490. *Refd.* Norfolk v. Arbuthnot (1879), 4 C. P. D. 290; Fowke v. Berington, [1914] 2 Ch. 308. *See, generally, ECCLESIASTICAL LAW.*

Part III.—Custom of the Manor.

SECT. 1.—IN GENERAL.

See, generally, CUSTOM & USAGES.

Must be reasonable.—*See* Nos. 242, 1020, 1123, *post.*

Must be certain.—*See* No. 1020, *post.*

Must be general.—*See* No. 226, *post.*

216. — Distinguished from prescriptive right.—*HANMER v. CHANCE*, No. 1026, *post.*

May be concurrent.—*See* Nos. 236–239, *post.*

See, now, Fines & Recoveries Act, 1833 (c. 74), s. 50.

217. Prescription Act, 1832 (c. 71), does not apply—**Claim by copyholder under custom.**—*HANMER v. CHANCE*, No. 1026, *post.*

SECT. 2.—VALIDITY OF CUSTOMS.

SUB-SECT. 1.—CUSTOMS IN FAVOUR OF LORD.

218. Annuity payable to lord—By all inhabitants of manor—Good.—*ANON.* (1566), Benl. 42; 73 E. R. 961.

219. To pay amercement—For allowing messuage to fall into disrepair—On presentment by homage—Good.—*THORNE v. TYLER* (1642), March, 161; 82 E. R. 457.

220. — For waste—On presentment by homage—Good.—*THORNE v. TYLER* (1642), March, 161; 82 E. R. 457.

221. To distrain on beasts of undertenant—Levant or couchant on customary tenement—For amercement for waste—Good.—*THORNE v. TYLER.*

As to fines. See, generally, Part XI., Sect. 1, post.

222. To bar rights of surrenderee of copyhold—If absent from next court—Good.—*BASPOLE v. LONG*, No. 1868, *post.*

223. To have tenants grind corn at lord's mill—Custom binding all inhabitants of manor—Good.—*HIX v. GARDINER* (1614), 2 Bulst. 195; 80 E. R. 1062.

Annotations:—*Distd.* Broadbent v. Wilks (1742), Willes, 360. *Refd.* Mitchel v. Reynolds (1711), 1 P. Wms. 181.

See, also, No. 289, post.

224. — Mill vested in Crown on severance from manor—Remains good.—*CURRIER v. CRYER* (1655), Hard. 21; 145 E. R. 360.

225. — Whether grain grown within manor or not—Good.—(1) A custom that all the tenants, residents, & inhabitants of a manor, shall grind at the lord's mill all their corn & grain, as well growing within the manor as brought from other places, & spent ground in their houses, may be a good custom. (2) It shall not extend to restrain the inhabitants who do not grow corn & grain, or who have no corn & grain of their own, from using ground corn or flour, though it may not have been ground or grown within the manor.—*RICHARDSON v. WALKER* (1824), 2 B. & C. 827; 4 Dow. & Ry. K. B. 498; 2 L. J. O. S. K. B. 180; 107 E. R. 590.

Annotation:—*As to* (1) *Refd.* Jones v. Waters (1835), 5 Tyr. 361.

226. — Binding only tenant of particular

messuage—Bad.—*NICHOLSON v. SMITH* (1701), 1 Lut. 126; 125 E. R. 66.

Annotation:—*Refd.* Sharp v. Lowthor (1735), Lee temp. Hard. 292.

227. To grind at particular mill—Custom binding all inhabitants of manor—Good.—*CORT v. BIRKBECK* (1779), 1 Doug. K. B. 218; 99 E. R. 143.

Annotations:—*Consd.* Richardson v. Walker (1824), 2 B. & C. 827. *Refd.* Freeman v. Philipps (1816), 4 M. & S. 486.

See, also, MINES, MINERALS & QUARRIES.

228. To have common—Over tenements of tenants for life or years—Bad.—*WHITE v. SAYER* (1621), Palm. 211; 81 E. R. 1047.

Annotations:—*Consd.* Wilkes v. Broadbent (1745), 1 Wils. 63. *Refd.* Paul v. Knight (1732), Kel. W. 222; Hilton v. Granville (1845), 5 Q. B. 701. *Mentd.* Lee v. Shore (1822), 2 Dow. & Ry. K. B. 198.

See, also, COMMONS & RIGHTS OF COMMON, Vol. XI.; MINES, MINERALS & QUARRIES.

229. — In consideration of assistance to persons wrecked—Good.—*SIMPSON v. BITHWOOD* (1691), 3 Lev. 307; 83 E. R. 703.

230. To seize best anchor & cable—Of ship wrecked on shore of manor—Without consideration—Bad.—*GEERE v. BURKENSAM* (1683), 3 Lev. 85; 83 E. R. 589.

See, also, Part II., Sect. 1, sub-sect. 2, C., ante.

Heriot custom.—*See* Part XI., Sect. 2, sub-sect. 3, *post.*

To get minerals—Under waste.—*See* COMMONS & RIGHTS OF COMMON, Vol. XI., pp. 28, 42, Nos. 363, 574–581.

To grant leases—Of waste.—*See* COMMONS & RIGHTS OF COMMON, Vol. XI., p. 41, No. 573.

SUB-SECT. 2.—CUSTOMS IN FAVOUR OF TENANTS.

231. To have estates renewed—On payment of reasonable fine—Bad.—*CHAMBERLAYN v. SYMONDS*, No. 274, *post.*

To dig turf or soil.—*See* Nos. 259, 1025, *post.*

232. For first taker of successive estates for lives—To have absolute power of disposition—Good.—(1) According to the custom of a manor, a grant by copy of ct. roll to A., B., & C., for their lives & the life of the longest liver of them, successively, according to the customs of the manor, gave the first taker an absolute power of disposing of the estate in his life-time:—*Held*: a good custom; & it was sufficiently proved by showing four instances since 1600, of surrender, & admittance of the person first named, in exclusion of the others.

(2) An alienation of the fee by the lord of a manor does not affect the rights of the copyhold tenants. Therefore, where the lord had granted the inheritance of a portion of the manor to A.:—*Held*: it was competent to a copyhold tenant to dispose of his interest to the grantee by an ordinary common-law conveyance; the customary mode of conveyance being rendered impossible by the act of the lord.—*PHILLIPS v. BALL* (1859), 6 C. B. N. S. 811; 29 L. J. C. P. 7; 83 L. T. O. S. 222; 6 Jur. N. S. 48; 7 W. R. 580; 141 E. R. 670.

Sect. 2.—Validity of customs: Sub-sects. 2, 3 & 4.

Sect. 3: Sub-sect. 1, A. (a) & (b), B. & C.]

To take game on waste.]—See COMMONS & RIGHTS OF COMMON, Vol. XI., pp. 42, 43, 59–61.

233. For court leet—To appoint surveyors—To inspect victuals—Good.]—VAUGHAN v. WOOD (1675), 2 Mod. Rep. 56; 86 E. R. 938.

Annotation:—Consd. Willcock v. Windsor (1832), 3 B. & Ad. 43.

234. — To destroy false measures—Good.]—WILLCOCK v. WINDSOR (1832), 3 B. & Ad. 43; 110 E. R. 16.

See, also, No. 286, post.

235. — To present persons to be admitted burgesses of borough—Good—Though manor & borough not co-extensive.]—R. v. BEAUFORT (DUKE) (1833), 5 B. & Ad. 442; 2 Nev. & M. K. B. 815; 2 L. J. M. C. 104; 110 E. R. 854.

Court leet.]—Generally, see Part IV., Sect. 3, post.

To compound for suit of court.]—See Nos. 1283, 84, post.

236. May be concurrent—To bar entail of copyhold—By surrender—Or by recovery.]—EVERALL v. SMALLEY (1743), 2 Stra. 1197; 1 Wils. 26; 93 E. R. 1124.

Annotations:—Folld. Doe d. Whalhead v. Ossingbrooke (1824), 2 Bing. 70. Refd. Doe d. Wightwick v. Truby (1774), 2 Wm. Bl. 944.

237. — — — — —.]—DOE d. WIGHTWICK v. TRUBY (1774), 2 Wm. Bl. 944; 96 E. R. 558.

Annotations:—Expld. Doe d. Dauncey v. Dauncey (1817), 7 Taunt. 674. Folld. Doe d. Whalhead v. Ossingbrooke (1824), 2 Bing. 70.

238. — — — — —.]—DOE d. DAUNCEY v. DAUNCEY (1817), 7 Taunt. 674; 129 E. R. 268.

239. — — — — —.]—DOE d. WHALHEAD v. OSSINGBROOKE (1824), 2 Bing. 70; 9 Moore, C. P. 68; 2 L. J. O. S. C. P. 105; 130 E. R. 231.

See, also, No. 276, post.

SUB-SECT. 3.—CUSTOMS IN FAVOUR OF STRANGERS.

240. Not within the manor—Bad.]—THORNE v. TYLER (1642), March, 161; 82 E. R. 457.

241. For any victualler—To erect booths on waste of manor—At fair time—Paying dues to lord—Good.]—TYSON v. SMITH (1838), 9 Ad. & El. 406; 3 J. P. 65; 112 E. R. 1265; *sub nom.* SMITH v. TYSON, 1 Per. & Dav. 307; 1 Will. Woll. & H. 749, Ex. Ch.

Annotations:—Distd. Elwood v. Bullock (1844), 6 Q. B. 383; Sowerby v. Coleman (1867), L. R. 2 Exch. 96. Consd. London Corpn. v. Cox (1867), L. R. 2 H. L. 239. Expld. Mills v. Colchester Corpn. (1867), L. R. 2 C. P. 476. Refd. Lloyd v. Jones (1848), 6 C. B. 81; Dunraven v. Llewellyn (1850), 14 Jur. 1089; Race v. Ward (1855), 4 E. & B. 702; Mills v. Colchester Corpn. (1864), 17 C. B. N. S. 635; Mercer v. Denne, [1905] 2 Ch. 538. Mentd. Peter v. Daniel (1848), 12 Jur. 604; Bradburn v. Foley (1878), 3 C. P. D. 129.

242. For inhabitants of neighbouring parish—To exercise horses—Bad.]—SOWERBY v. COLEMAN (1867), L. R. 2 Exch. 96; 36 L. J. Ex. 57; 15 L. T. 667; 31 J. P. 263; 15 W. R. 451.

Annotation:—Refd. Brocklebank v. Thompson, [1903] 2 Ch. 344.

SUB-SECT. 4.—OTHER CUSTOMS.

243. For steward of court leet—To nominate persons to be summoned on jury—Good.]—R. v. JOLIFFE (1823), 2 B. & C. 54; 3 Dow. & Ry. K. B. 240; 1 L. J. O. S. K. B. 232; 107 E. R. 303.

Annotations:—Expld. Morgan v. Palmer (1824), 2 B. & C. 729; Arkwright v. Cantrell (1837), 7 Ad. & El. 565. Mentd. Brocklebank v. Thompson, [1903] 2 Ch. 344.

SECT. 3.—PROOF OF CUSTOM.

SUB-SECT. 1.—ADMISSIBILITY OF EVIDENCE.

A. Documentary Evidence.

(a) Manorial Documents.

244. Ancient customary of manor—Kept with court rolls—Though not signed—To prove mode of descent within manor—Admissible.]—A custom within a manor, that lands shall descend to the elder sister, where there is neither a son nor a daughter, does not extend to an eldest niece; but the lands must descend according to the rules of the common law, in default of such a son, daughter, & sister. A customary of a manor, appearing to be of great antiquity, & delivered down with the ct. rolls from steward to steward, although not signed by any person, is good evidence to prove the course of descent within the manor.—DENN v. SPRAY (1786), 1 Term Rep. 466; 99 E. R. 1201.

Annotations:—Consd. Roe d. Beebee v. Parker (1792), 5 Term Rep. 26; Muggleton v. Barnett (1857), 2 H. & N. 653. Refd. Locke v. Colman (1836), 1 My. & Cr. 423; Johnstone v. Spencer (1885), 30 Ch. D. 581. Mentd. Smallman v. Onions (1792), 3 Bro. C. C. 621; Twort v. Twort (1809), 16 Ves. 128; Wilkinson v. Haygarth (1847), 12 Q. B. 837; Rider v. Wood (1855), 1 K. & J. 644.

245. Court rolls—To prove mode of descent within manor—Admissible—Though no evidence of actual instances produced.]—ROE d. BEEBEE v. PARKER (1792), 5 Term Rep. 26; 101 E. R. 15. Annotations:—Consd. Muggleton v. Barnett (1857), 2 H. & N. 653. Refd. Johnstone v. Spencer (1885), 30 Ch. D. 581.

See, also, No. 270, post.

246. — As evidence of reputation of custom—Admissible.]—The right to a heriot in respect of a free tenement held in fee-simple may be derived from custom. Therefore, to prove such right, evidence of the exercise of it in respect of other tenements within the manor is admissible.

Presentments from the ct. rolls are admissible as evidence of reputation of such custom.—DAMERELL v. PROTHEROE (1847), 10 Q. B. 20; 16 L. J. Q. B. 170; 9 L. T. O. S. 100; 11 Jur. 331; 116 E. R. 8.

Annotations:—Refd. Western v. Bailey, [1896] 2 Q. B. 234. Mentd. Warrick v. Queen's College, Oxford (1870), L. R. 10 Eq. 105; Merttens v. Hill, [1901] 1 Ch. 842.

— To prove customary right of tenants—To common in the soil.]—See COMMONS & RIGHTS OF COMMON, Vol. XI., p. 22, No. 251.

247. Ancient record reciting rights of common & agreement to stint—Signed by many copyholders—Though not proved to be signed by majority—Admissible—To prove right of common.]—CHAPMAN v. COWLAN (1810), 13 East, 10; 104 E. R. 269.

Annotation:—Refd. Johnstone v. Spencer (1885), 30 Ch. D. 581.

(b) Other Documents.

248. Depositions in ancient suit—By copyholders—In parl jure with party in action—Admissible.]—LEEDS MILL CASE (circa 1790), cited in 4 M. & S. 491; 105 E. R. 916.

Annotation:—Refd. Freeman v. Phillpotts (1816), 4 M. & S. 486.

249. — By witnesses on behalf of copyholder—Admissible on behalf of lord—In action by copyholder.]—FREEMAN v. PHILLIPPS (1816), 4 M. & S. 486; 105 E. R. 914.

Annotations:—Consd. Ward v. Pomfret (1832), 5 Sim. 475; B. 509. Refd. Evans v. Taylor (1838), 7 Ad. & El. 617; Evans v. Merthyr Tydvil U. D. C. (1898), 79 L. T. 578. Mentd. Shedden v. Patrick (1860), 2 Sw. & Tr. 170.

250. Examined copy of manor books—Admissible without production of originals—To show custom to demise.]—DOE d. CROYDON (CHURCHWARDENS) v. COOK (1805), 5 Esp. 221, N. P.

Admissibility of copies.]—See, generally, EVIDENCE.

251. Deed confirmed by decree in Chancery—Admissible against copyholders.]—ANGLESEY (MARQUIS) v. HATHERTON (LORD), No. 261, *post*.

252. Copy of Chancery decree—Found among papers of lord's predecessor—Admissible against lord—After search for original.]—PRICE v. WOODHOUSE (1849), 3 Exch. 616; 18 L. J. Ex. 271; 13 L. T. O. S. 7; 13 J. P. 636; 154 E. R. 991.

Annotation :—*Mentd.* Harrison v. Powell (1894), 10 T. L. R. 271.

253. Survey by commission—Appointed by Cromwell—Over manor granted by Parliament—Inadmissible as Crown survey.]—(1) In support of a customary payment of 4d. per wey for all coal gotten within a certain manor & seignory & exported to sea, *pltf.* tendered in evidence a book, purporting to be a survey taken in the year 1650, after the manor & seignory had been granted to Oliver Cromwell by Parliament, & by virtue of a commission to certain persons named in the survey given by Oliver Cromwell, Lord-General of the Parliamentary Forces. After specifying certain rents, it stated, that the jury present (*inter alia*) there was 4d. due unto the lord for every wey of coals that was transported out of the lordship. The document was not signed by the jury, nor was any commission proved :—*Held* : this survey was inadmissible either as a public document, or as evidence of reputation.

(2) A private Act of Parliament is not evidence in support of such a claim.—BEAUFORT (DUKE) v. SMITH (1849), 4 Exch. 450; 19 L. J. Ex. 97; 14 L. T. O. S. 183; 154 E. R. 1290.

Annotations :—*Refd.* Bromner v. Hull (1866), L. R. 1 C. P. 748; Bird v. Keep, [1918] 2 K. B. 692. *Mentd.* Mills v. Colchester Corpn. (1867), 36 L. J. C. P. 210.

254. Private Act of Parliament—Not admissible.]—BEAUFORT (DUKE) v. SMITH, No. 253, *ante*.
See, generally, EVIDENCE; STATUTES.

B. Reputation.

255. As to particular custom—Admissible—But not as to private prescription.]—MOREWOOD v. WOOD (1791), 14 East, 327; 4 Term Rep. 157; 104 E. R. 627.

Annotations :—*Refd.* Phythian v. White (1836), 5 L. J. Ex. 148; Higham v. Rabett (1839), 5 Bing. N. C. 622; Peardon v. Underhill (1850), 16 Q. B. 120; Davies v. Williams (1851), 16 Q. B. 546. *Mentd.* Bassett v. Mitchell (1831), 2 B. & Ad. 99; R. v. Antrobus (1835), 2 Ad. & El. 788; Doe d. Mudd v. Suckermore (1836), 5 Ad. & El. 703; Peter v. Daniel (1848), 5 C. B. 568.

256. — Coupled with parol evidence—Admissible.]—BARNES v. MAWSON (1813), 1 M. & S. 77; 105 E. R. 30.

257. As to custom of descent—Admissible.]—DOE d. FOSTER & JAMIESON v. SISSON (1810), 12 East, 62; 104 E. R. 25.

Annotations :—*Consd.* Locke v. Colman (1836), 1 My. & Cr. 423; Muggleton v. Barnett (1857), 2 H. & N. 653. *Mentd.* Re Chenoweth, Ward v. Dwelley (1902), 71 L. J. Ch. 739.

See, also, No. 244, ante; No. 271, post.

Evidence of interested parties.]—*See, generally, EVIDENCE.*

See, also, No. 272, post.

What evidence admissible as.]—*See No. 246, ante.*

C. Custom of other Manors.

258. Not admissible—To prove custom—Except in north of England.]—RUDING v. NEWELL (1733), 2 Stra. 957; 93 E. R. 966; *subsequent proceedings* (1734), 2 Stra. 983.

259. — — —.]—The evidence of a neighbouring manor shall not in general be admitted to show the custom of another manor. Courts of law have admitted evidence with regard to profits of mines out of other manors, where they are similar, to explain the custom of the manor in

question. Copyholders in fenny lands may be intitled to dig up the lord's soil for turf.—ELY (DEAN & CHAPTER) v. WARREN (1741), 2 Atk. 189; 26 E. R. 518, L. C.

Annotation :—*Refd.* Scrutton v. Stone (1893), 9 T. L. R. 478.

260. — — —.]—DOE d. FOSTER & JAMIESON v. SISSON (1810), 12 East, 62; 104 E. R. 25.

Annotations :—*Consd.* Locke v. Colman (1836), 1 My. & Cr. 423; Muggleton v. Barnett (1857), 2 H. & N. 653. *Mentd.* Re Chenoweth, Ward v. Dwelley (1902), 71 L. J. Ch. 739.

261. — — — Though manors within same leet & parish.]—On a question as to the existence of a custom in a particular manor, evidence of a like custom in an adjoining manor, though within the same parish & leet, is not admissible, not even though there be evidence to show that the latter manor was a subinfeudation of the former; unless it be clearly shown that they were separated after the time of legal memory, since otherwise they may have had different immemorial customs.

Evidence of payment of an annual sum of 4s. by the lord of the manor of W. to the lord of the manor of C. for the manor of W. :—Held : not to be sufficient evidence that W. was a of C.

A deed dated in 1605 made between the lord of the manor of C. of the one part, & a number of the copyholders of the manor of the other, reciting that the customs of the manor, of & concerning their copyhold premises, had immemorially been claimed to be as thereafter expressed, proceeded to state in detail various alleged customs, among which no mention was made of any custom for the copyholders to take minerals. This deed was confirmed in terms by a decree in Chancery containing a clause providing that it should not, nor should the said customs, extend but to the complainants & defts., the copyholders who were parties to the deed, the lord & to the complainants' copyhold tenements, & should not be prejudicial to the lord concerning any other copyholds in the manor :—*Held* : this deed was admissible in evidence, against a copyholder deriving title under one of the parties to it, to negative the existence of a custom of the manor for the copyholders to take the minerals under their respective copyholds.

Semble : it would have been evidence for the same purpose, even against a copyholder not deriving title under any of the parties to it.—ANGLESEY (MARQUIS) v. HATHERTON (LORD) (1842), 10 M. & W. 218; 12 L. J. Ex. 57; 6 Jur. 305; 152 E. R. 448.

Annotations :—*Consd.* Portland v. Hill (1866), L. R. 2 Eq. 765. *Refd.* Salisbury v. Gladstone (1860), 6 H. & N. 123; Johnstone v. Spencer (1885), 30 Ch. D. 581.

262. — — — Though one manor a subinfeudation of other—Unless separated within legal memory.]—ANGLESEY (MARQUIS) v. HATHERTON (LORD) No. 261, *ante*.

263. Admissible—To explain custom—Gressam fine payable during lord's infancy.]—CHAMPIAN v. ATKINSON (1672), 3 Keb. 90; 84 E. R. 611.

Annotations :—*Refd.* Somerset v. France (1725), 1 Stra. 654; Thanet v. Paterson (1738), Barn. Ch. 247; Anglesey v. Hatherton (1842), 10 M. & W. 218. *Mentd.* R. v. Bray (1737), Leo temp. Hard. 358.

264. — — — Deeds between lord & tenants of neighbouring manors.]—LOWTHER v. RAW (1735), 2 Bro. Parl. Cas. 451; 1 E. R. 1058, H. L.

265. — — — Custom as to profits of mines.]—ELY (DEAN & CHAPTER) v. WARREN, No. 259, *de*.

266. — — — Lands held by similar peculiar customary tenure.]—Upon a question as to the right to minerals between the lord of the manor & his tenants, holding by a peculiar customary tenure pervading a district which embraces

Sect. 3.—Proof of custom: Sub-sect. 1, C. & D.; sub-sect. 2, A., B. & C.; sub-sects. 3 & 4. Sect. 4.]

several manors held for many centuries by the same lord *in capite*, & during that time governed & administered by persons acting under one commission, issued by the lord at stated intervals, & extending to the whole district, acts of ownership exercised over the minerals in a customary tenement in another manor within the district, are admissible in evidence, although within time of legal memory, the manors may have been held by different lords, & under a subject.

Entries in ct. rolls of amercements imposed are not evidence without proof of payment.

The conventional tenants within the assessionable manors of the Duchy of Cornwall have a perpetual indefeasible right to them & their customary heirs & surrenderees, to renew their estate from seven years to seven years. In order to entitle a tenant of this very peculiar description to minerals which do not upon any reasonable presumption belong to him, the burthen is cast upon him to prove that he has a right to take them, & unless the tenant can show the right to be in him, the right must remain where by law it would be vested, namely, in the lord.—*ROWE v. BRENTON* (1828), 8 B. & C. 737; 2 State Tr. N. S. 251; 3 Man. & Ry. K. B. 133; Concanen's Rep. 36-42; 108 E. R. 1217.

*Annotations:—*Reid. *Anglesey v. Hatherton* (1842), 10 M. & W. 218; *Doe d. Dand v. Thompson* (1845), 7 Q. B. 897; *Rogers v. Brenton* (1847), 10 Q. B. 26; *A.-G. to Prince of Wales v. Crossman* (1866), L. R. 1 Exch. 381; *Mercer v. Denne*, [1905] 2 Ch. 538. *Mentd.* *Doe d. Carthew v. Brenton* (1830), 4 Moo. & P. 186; *Whittingham v. Bloxham* (1831), 4 C. & P. 597; *Evans v. Taylor* (1838), 7 Ad. & El. 617; *R. v. Richmond* (1841), 5 Jur. 805; *Doe d. William IV. v. Roberts* (1844), 13 M. & W. 520; *Ex p. Exeter, Gorham v. Exeter* (1850), 10 C. B. 102; *Shaw v. Beck* (1853), 8 Exch. 392; *Jessop v. Jessop* (1861), 30 L. J. P. M. & A. 193; *Dixon v. Farrer* (1886), 18 Q. B. D. 43; *Sutton Harbour Improvement Co. v. Plymouth Grdns.* (1890), 63 L. T. 772.

D. Other Cases.

267. Evidence of exercise of right claimed—In respect of other tenements within manor—Admissible.]—*DAMERELL v. PROTHEROE*, No. 246, *ante*.

268. Acts of ownership—Exercised in neighbouring manor—Where similar tenure exists—Admissible to prove extent of custom—Though manors held by different lords within legal memory—& under subject.]—*ROWE v. BRENTON*, No. 266, *ante*.

SUB-SECT. 2.—SUFFICIENCY OF PROOF.

A. In General.

269. Custom must be strictly proved.]—*ADDERLEY v. HART* (1718), 1 Bos. & P. 394, n.; 126 E. R. 971.

See, generally, CUSTOM & USAGES.

B. Manorial Documents.

270. Entry on court rolls—Of admission of tenant in remainder—After widow holding during chaste viduity—Sufficient—To prove custom of forfeiture by widow on incontinence.]—Entries on the rolls of a manor ct. of admissions of tenants in remainder after the determination of the estate of the last tenant's widow, who held during her chaste viduity, are evidence of a custom for the widow to hold on that condition, so as to maintain ejectment against her as for a forfeiture, on proof of her incontinence; although there were no instances in fact stated on the rolls or known of such a forfeiture having been enforced.—*DOE d.*

ASKEW v. ASKEW (1809), 10 East, 520; 103 E. R. 873.

271. — Showing customary descent—Insufficient to establish descent to remote collaterals.]

—In ejectment for copyhold premises pltf. claimed as heir-at-law, according to the custom of the manor, upon the death in 1854 of B., the person last seised. M. purchased the premises in 1772, & upon his death, in 1812, they descended to his two infant granddaughters as coparceners; one of these died unmarried, & was succeeded in her moiety by her sister, who, in 1836, married deft. Upon the death of the married sister in 1838, the premises descended to B., the only child of the marriage; & on his death, in 1854, the lineal descendants of M. (the great grandfather of B.) became extinct. Pltf. was the youngest son of the youngest brother of M., the great grandfather of B., the person last seised. In support of pltf.'s title, according to the custom it was proved that the lands in the manor descended lineally to the youngest son of the person last seised *ad infinitum*, & if no son, to the daughters as coparceners; if no lineal heirs, then to the youngest brother of the person last seised, & to the youngest son of such youngest brother; & if the youngest brother died without issue, to the next youngest brother; & if no brother, then among the sisters as parceners. This custom was proved by numerous entries upon the rolls of the manor from 1648 downwards. There was no customary or formal record of the custom, nor any evidence of reputation even that the custom extended to collaterals further than might be inferred from the entries themselves in the particular instances. Amongst such instances, there was one entry of descent & admission of the youngest son of an uncle of the person last seised, & one entry of descent & admission of the youngest sons respectively of two sisters, heirs parceners of the person last seised; but there was no instance on the rolls in which the custom had been extended to more remote relations:—*Held*: the evidence afforded by the entries above mentioned was insufficient to prove that the custom of descent extended to so remote a collateral relation of the persons last seised as pltf., & he was not entitled to recover.—*MUGGLETON v. BARNETT* (1857), 2 H. & N. 653; 27 L. J. Ex. 125; 30 L. T. O. S. 247; 4 Jur. N. S. 139; 6 W. R. 182; 157 E. R. 270, Ex. Ch.

*Annotations:—**Mentd.* *Re Smart, Smart v. Smart* (1881), 18 Ch. D. 165; *Re Chenoweth, Ward v. Dwelley*, [1902] 2 Ch. 488.

272. — Of forfeiture for non-repair of tenements—Customary of manor showing tenants entitled to house-bote—& oral evidence of repairs at instance of lord—Insufficient to prove custom rendering copyhold tenants liable to repair.]—The lord of a manor alleged a custom of the manor imposing upon the copyholders an obligation to keep their holdings in tenantable repair. For breach of this alleged obligation by a deceased copyholder in his lifetime the lord brought an action for damages against his exors. as upon an implied contract to perform it. In support of the alleged custom he produced (a) the customary of the manor, from which it appeared that the copyholders were entitled to house-bote to be used on their copyholds; (b) entries in ct. rolls containing presentments by the homage when copyhold tenements were out of repair & forfeitures consequent on failure of the copyholders to repair them after presentment; also admittances of copyhold tenants containing licences to sub-let provided all due reparations had been performed; (c) oral evidence showing that the copyholders had

repaired their tenements as & when required by the lord without any presentment by the homage :—*Held* : this evidence, being referable to the customary law common to all copyhold tenure whereby a copyhold tenant is liable to forfeiture for waste, was no evidence of any custom imposing on the copyholders a liability from which a contract to keep their holdings in tenantable repair was to be inferred.—*GALBRAITH v. POYNTON*, [1905] 2 K. B. 258 ; 74 L. J. K. B. 649.

—To prove custom for lord to grant parcels of the waste.]—See *COMMONS & RIGHTS OF COMMON*, Vol. XI., p. 44, No. 620.

Customary of manor.]—See No. 272, *ante*.

273. Copy of court roll—To prove customary estate—Sufficient—If supported by other evidence.]—(1) If tenant in tail & the issue in tail of copyhold lands in tail join in a surrender in a ct. baron of the copyhold lands, this is not an estoppel, for it ought to be by fine or deed indented.

(2) Copyhold lands in tail are not within Stat. Westminster II. but it is a customary entail like in its nature to another entail, & such an estate must be docked by fine, or by some other customary way.

(3) If copies of ct. rolls be shown to prove a customary estate, the enjoinment of such estates must also be proved, otherwise the proof is not good.

(4) A seizure by the lord made of copyhold entailed lands within the manor of W. is in the nature of a recovery to dock the entail ; & the manner of doing it is either for the copyholder to let his copyhold for more years than he ought, or to refuse to do his service & then the lord seizes the land for a forfeiture, & grants it to another by the consent of the copyholder that made the forfeiture.

(5) A custom cannot be urged for a thing that finds its beginning since Richard I. if a record can be shown to the contrary.

(6) A common recovery supposes a recompense in value to all persons who lost the estate by the recovery.

Semble : there could be no such custom to cut off entails of copyhold lands by the forfeiture & seizure of the lord, for his seizure upon the forfeiture destroys the copyhold estate by the common law, for it is in the lord's election after the seizure whether he will grant the estate again or no, & it is not proved that the custom binds him to it (*ROLL, C.J.*).—*PILKINGTON v. BAGSHAW* (1655), Sty. 450 ; 82 E. R. 853.

C. Usage.

274. Must be supported by facts—Hearsay & belief insufficient.]—In a particular manor it was held there was no evidence of a custom for the tenants to renew the leases on payment of a certain fine.

The only remaining evidence offered for the pl'ts. was, the depositions of the three witnesses ; but not one of those witnesses mentioned any one instance of a renewal of those leases on the payment of two years ancient rent, or of a fine not exceeding two years value of the land. Those witnesses merely spake to hearsay & belief ; whereas a custom must be supported by instances of fact (*LORD HARDWICKE, C.*).

As the bill was first brought, the custom was laid to be that the tenants had a right to have those estates renewed upon paying a reasonable fine : but there can be no such custom, it being uncertain what a reasonable fine in such cases is (*LORD HARDWICKE, C.*)—*CHAMBERLAYN v. SYMONDS* (1740), Barn. Ch. 98 ; 27 E. R. 570, L. C.

275. Proof of single instance—Of admission of youngest nephew—Sufficient.]—*DOE d. MASON v. MASON* (1770), 3 Wils. 63 ; 95 E. R. 935.

Annotations :—*Refd.* *Muggleton v. Barnett* (1857), 2 H. & N. 653 ; *Hanmer v. Chance* (1865), 4 De G. J. & Sm. 626. *Mentd.* *R. v. Woodham Walter* (1869), 10 B. & S. 439 ; *Re Chenoweth, Ward v. Dwelley*, [1902] 2 Ch. 488.

276. — Of barring of entail by surrender—Sufficient—Notwithstanding instance of barring by recovery.]—*ROE d. BENNETT v. JEFFERY* (1813), 2 M. & S. 92 ; 105 E. R. 316.

Annotations :—*Refd.* *Doe d. Wallhead v. Ossingbrooke* (1824), 9 Moore, C. P. 68 ; *Goold v. White* (1854), Kay, 683 ; *Hanmer v. Chance* (1865), 4 De G. J. & Sm. 626. *Mentd.* *R. v. Woodham Walter* (1869), 10 B. & S. 439.

See, also, Nos. 236, 237, 238, 239, *ante*.

277. Proof of four instances—Of surrender & admittance of first of successive life tenants—In exclusion of others—Sufficient.]—*PHILLIPS v. BALL*, No. 232, *ante*.

278. Evidence of claims extending over nearly 300 years—Followed by nearly 80 years without claim—Sufficient.]—*HARRISON v. POWELL* (1894), 10 T. L. R. 271.

Rebuttal of evidence—Otherwise sufficient.]—See No. 572, *post*.

SUB-SECT. 3.—REBUTTAL OF EVIDENCE.

279. Evidence sufficient to establish custom—Insufficient in face of ancient documents made within legal memory—Negating existence of custom.]—*PORTLAND (DUKE) v. HILL*, No. 572, *post*.

280. Long non-user—Strong evidence of non-existence.]—*HAMMERTON v. HONEY*, No. 291, *post*.
See, also, No. 278, *ante*.

SUB-SECT. 4.—OTHER CASES.

281. Parties—On bill to establish ancient custom—All tenants should be parties.]—On a bill to establish ancient customs of a manor :—*Held* : (1) the suit was maintainable in equity, though the existence of the customs must be established at law on an issue directed for that purpose ; (2) all the tenants of the manor should be parties, either as pl'ts. or defts.—*HUDSON v. FLETCHER* (1673), Cas. temp. Finch, 114 ; 23 E. R. 62.

282. — — — By certain tenants—All other tenants bound.]—Where a bill was brought by some few tenants of a manor against the lord, to settle the custom of the manor, as to fines upon deaths & alienations, & an issue was directed to be tried at law :—*Held* : the other tenants would be bound by the trial ; & further it was no maintenance for all the tenants to contribute, for it was the case of all. *Semble* : the bill should be on behalf of the pl'ts. & all the other tenants.—*BROWN v. HOWARD* (1701), 1 Eq. Cas. Abr. 163, pl. 4 ; 21 E. R. 960.

Annotation :—*Refd.* *York Corpn. v. Pilkington* (1737), West temp. Hard. 293.

SECT. 4.—INTERPRETATION AND EXTENT OF CUSTOM.

283. Custom for husband—To take estate by curtesy—After issue born—Admittance of wife not necessary.]—*EWER d. HEYDON v. ASTWIKK*, No. 908, *post*.

284. — — — — —.]—*DOE d. MILNER v. BRIGHTWEN*, No. 909, *post*.

— — — — —.]—See, generally, Part IX., Sect. 8, *post*.

Custom of descent, see Part XII., *post*.

Sect. 4.—Interpretation and extent of custom. Sect. 5. Part IV. Sect. 1: Sub-sects. 1, 2, 3, 4 & 5.]

285. Custom for all inhabitants—To grind all corn at lord's mill—Whether grown within manor or not—Does not prevent inhabitants with no corn from using ground corn.]—RICHARDSON v. WALKER, No. 225, ante.

286. Custom for jury sworn at court leet—To inspect weights & measures—& seize false weights—Whole jury must be present at inquiry.]—SHEPARD v. HALL (1832), 3 B. & Ad. 433; 1 L. J. K. B. 152; 110 E. R. 156.

Admissibility of evidence.]—See Nos. 263, 264, 265, 266, ante.

287. Custom on alienation—By surrender & bargain & sale—Surrender essential.]—GRAHAM v. JACKSON, No. 608, post.

SECT. 5.—ALTERATION, SUSPENSION AND DESTRUCTION OF CUSTOM.

288. Alteration—By consent of lord—& tenants.]—DYER v. DYER (1602), 6 Vin. Abr. 240, pl. 5.

289. Suspension—By demolition of one of two mills—At which tenants bound to grind.]—By the custom of a manor the tenants, residents & inhabitants thereof were bound to grind all their corn, grain, & malt, as well growing within the manor as brought from other places, & spent ground in their houses, at two ancient mills belonging to the lord, or one of them, at their own option; & the lord having pulled down one of the mills so as to deprive the tenants, etc. of their option:—Held: the custom was suspended.

—RICHARDSON v. CAPES (1824), 2 B. & C. 841; 4 Dow. & Ry. K. B. 512; 2 L. J. O. S. K. B. 182; 107 E. R. 594.

*Annotations:—*Reid. Doe d. Calvert v. Reid (1830), 10 B. & C. 849; Jones v. Waters (1835), 5 Tyr. 361.

290. To grant demesne lands by copy for lives—Destroyed—By grant of lease from year to year—By owner in fee.]—Re LONDON & SOUTH WESTERN RAILWAY ACT, 1856, Ex p. HENLEY (LORD), No. 108, ante.

291. Destruction—Only by statute.]—As a custom is local law, it cannot be got rid of except by statute. But long continued non-user is strong evidence of the custom never having existed.

A bill prayed for a declaration that pl'ts. & other inhabitants of S. were entitled to use & enjoy S. Green, which formed part of the waste lands of a manor & had formerly been unenclosed but had in recent times been leased & fenced without protest on the part of the inhabitants, as a place of recreation & amusement, & deft. claimed under a purchase made by him on the expiration of the lease:—Held: while the right claimed was one which might be claimed by custom, in the present case pl'ts. had failed to produce sufficient evidence in support of their case.—HAMMERTON v. HONEY (1876), 24 W. R. 603.

*Annotations:—*Consd. De La Warr v. Miles (1881), 17 Ch. D. 535; Edwards v. Jenkins, [1896] 1 Ch. 308. Mentd. Harrison v. Powell (1894), 10 T. L. R. 271.

292. — Suspended—By grant of lease from year to year—By owner having limited interest.]—Re LONDON & SOUTH WESTERN RAILWAY ACT, 1856, Ex p. HENLEY (LORD), No. 108, ante.

Extinction of customary right of way.]—See EASEMENTS & PROFITS À PRENDRE; HIGHWAYS; STREETS & BRIDGES.

Part IV.—Manorial Courts.

SECT. 1.—THE COURT BARON.

SUB-SECT. 1.—IN GENERAL.

293. Confined to freehold tenants.]—MELWICH v. LUTER, No. 95, ante.

294. Must have existed from time immemorial.]—ANON., No. 7, ante.

295. Incident of manor—Cannot be prescribed for.]—ANON., No. 7, ante.

296. — — —.]—(1) A ct. baron is of common right & incident to the manor & cannot be prescribed for; (2) it must be held before the suitors; (3) a prescription as to the extent of its authority may be good.—PILL v. TOWERS (1600), Cro. Eliz. 791; 78 E. R. 1021.

297. — Cannot be severed—Except by Crown.]—ACTON'S CASE (1570), 3 Dyer, 288 b; 73 E. R. 647.

298. — — —.]—R. v. STAFFERTON & BROWN, No. 359, post.

299. — — —.]—BROWN v. GOLDSMITH (1615), 1 Brownl. 175; 123 E. R. 738.

300. — Cannot be reserved out of demise of manor.]—ANON. (temp. 1557–1602), Cary, 18; 21 E. R. 10.

301. Separable—May be reserved out of demise.]—O. was seised of the manor of H., in which were divers copyholds; he leased the manor to one H. for twenty-one years, to begin two years after. O. afterwards bargained & sold the reversion to C. Subsequently a composition was made between O. & the lessee, by which the lessee granted & covenanted to & with C. that he would permit C.

peaceably to hold the cts. & to take the profits to his own use, with the proviso that the lessee should have the rents of the copyholders & freeholders. Later the lessee granted over his interest in the term:—Held: the grant was good notwithstanding the exception & the covenant was void, for although C. had authority to hold the cts., yet it ought to be in the name of the lessee.—WHEELER & TWOGOOD'S CASE (1588), 1 Leon. 119; 74 E. R. 110.

*Annotation:—*Reid. Wiggon v. Branthwait (1698), 1 Ld. Raym. 473.

See, also, No. 113, ante.

Proof of judgment of court.]—See No. 480, post.

302. Court of Queen's Bench—Not a Court of Error on appeal from.]—R. v. OLD HALL (LORD OF THE MANOR) (1839), 10 Ad. & El. 248; 2 Per. & Dav. 515; 8 L. J. Q. B. 243; 3 Jur. 868; 113 E. R. 96.

SUB-SECT. 2.—THE RIGHT TO HOLD.

303. Who entitled—Lord of manor—Though parcel of manor demised.]—ANON., No. 113, ante.

See, also, No. 114, ante.

304. — — — Unless manor customary only.]—MELWICH v. LUTER, No. 95, ante.

305. — — —.]—GAY v. KAY, No. 351, post.

306. — — —.]—R. v. STAFFERTON & BROWN, No. 359, post.

307. ———.]—NEVIL'S CASE, No. 6, *ante*.

See No. 1883, *post*.

308. ——— Lessee of manor—Not lessor—Unless power reserved.]—ANON., No. 113, *ante*.

See, also, No. 300, *ante*.

309. ——— Except in name of lessee.]—WHEELER & TWOGOOD'S CASE, No. 301, *ante*.

310. ——— Not doweress—Unless claiming in right of manor.]—BRAGG'S CASE (1587), Godb. 135; 78 E. R. 82.

311. ——— Holding demesne lands only.]—GAY v. KAY, No. 351, *post*.

312. How right tested—Quo warranto.]—R. v. STAFFERTON & BROWN, No. 359, *post*.

Loss of right—By demise of manor.]—*See* No. 303, *ante*.

313. ——— Not by disuse—Though immemorial.]—ANON., No. 334, *post*.

See, also, No. 317, *post*.

-SECT. 3.—DUTY TO HOLD.

314. To accept surrenders—& grant admittance—Enforceable by Court of Chancery.]—ANON., No. 1710, *post*.

315. ———.]—Copyhold tenants exhibited a bill in Ch. against debt, the lord of a manor, who had refused to hold cts. & grant admittances, etc.:—*Held*: the lord should, as occasion might require, hold cts., allow surrenders & admit the surrenderees.—MOOR v. HUNTINGTON (EARL) (1631), Nels. 12; 21 E. R. 777.

316. To admit purchasers of burgage tenements—Enforced by mandamus.]—R. v. MIDHURST BOROUGH (1750), 1 Wils. 283; 95 E. R. 620; *sub nom.* R. v. MONTACUTE (LORD), 1 Wm. Bl. 61. *Annotations*:—*Refd.* R. v. Colebrooke (1757), 2 Kony. 163; R. v. West Looe Corpn. (1822), 2 Dow. & Ry. K. B. 178; R. v. Pitt (1839), 10 Ad. & EL 272; R. v. Powell (1841), 1 Q. B. 352.

317. Permissive right to hold court—For determination of civil suits—Granted by Royal Charter—Creates obligation—Right not lost by non-user.]—By charter the King granted that the steward & suitors of a manor should have power to hold a ct. for the determination of civil suits, & there had been a non-user of the ct. for fifty years, except for the purpose of levying fines & suffering recoveries:—*Held*: (1) this ct. being for the public benefit, the words of permission in the charter were obligatory; (2) the right of determining suits was not lost by the non-user.—R. v. HAVERING ATTE BOWER (STEWARD & SUITORS OF) (1822), 5 B. & Ald. 691; 2 Dow. & Ry. K. B. 176, n.; 1 Dow. & Ry. M. C. 205; 106 E. R. 1343.

Annotations:—*As to* (1) *Refd.* R. v. Headley (1827), 7 B. & C. 496. *Generally*, *Refd.* K. v. Wyllyams (1823), 3 Dow. & Ry. K. B. 75. *Mentd.* R. v. Eye Corpn. (1822), 1 B. & C. 85; Blacket v. Blizard (1829), 9 B. & C. 851; A.-G. of Isle of Man v. Cowley (1859), 12 Moo. P. C. C. 27; Julius v. Oxford (1880), 5 App. Cas. 214; R. v. Turner (1897), 66 L. J. Q. B. 417.

SUB-SECT. 4.—BEFORE WHOM HELD.

318. Suitors—At least two must be present.]—ANON. (1532), Bro. N. O. 55; 73 E. R. 871.

319. ———.]—ANON., No. 7, *ante*.

320. ———.]—LOVELL & GOLSTON'S CASE, No. 373, *post*.

321. ———.]—PILL v. TOWERS, No. 296, *ante*.

322. ——— Steward alone insufficient.]—ARMYN v. APPLETOFT (1620), Cro. Jac. 582; 79 E. R. 497. *Annotation*:—*Mentd.* Anon. (1674), 1 Mod. Rep. 170.

See, also, Nos. 326, 327, 328, 329, 330, 331, *post*.

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—— One of whom is steward of court.]—*See* No. 331, *post*.

323. Freehold tenants.]—MELWICH v. LUTER, No. 95, *ante*.

324. ——— Two at least must be present.]—A ct. baron cannot be holden without two freehold tenants of the manor & such freehold tenants cannot be created at this day.

A lord conveyed a part of the demesnes of the manor to A. & his heirs, & another part to B. & his heirs, to hold as of his manor by fealty & suit of ct., & then he held a ct. before the two tenants as free tenants:—*Held*: the ct. was improperly held & any amercement at that ct. was bad.—CHETWODE v. CREW (1746), Wilses, 614; 125 E. R. 1348.

Annotations:—*Consd.* Delacherois v. Delacherois (1864), 11 H. L. Cas. 62. *Refd.* Brown v. Gill (1846), 2 C. B. 861; *Re* Holliday (1922), 127 L. T. 585.

325. ———.]—(1) If the lord of a manor conveys a customary estate to the tenant, he cannot reserve to himself the ancient services, for the tenant by reason of Stat. Quia Emptores must then hold of the superior lord.

(2) To constitute a ct. baron, it must be holden before two free suitors at least.—BRADSHAW v. LAWSON (1791), 4 Term Rep. 443; 100 E. R. 1109. *Annotations*:—*As to* (1) *Distd.* Chichester v. Hall (1851), 17 L. T. O. S. 121. *Refd.* Delacherois v. Delacherois (1864), 11 H. L. Cas. 62.

326. ——— Steward alone insufficient.]—RUMSEY v. WALTON (1760), cited in 4 Term Rep. 446, N. P.

Annotation:—*Consd.* Bradshaw v. Lawson (1791), 4 Term Rep. 443.

See, also, No. 322, *ante*, Nos. 327, 328, 329, 330, 331, *post*.

327. Steward of manor—By prescription.]—BROWNE v. HARTSHORNE (1671), Freem. K. B. 19; 89 E. R. 17.

328. ——— By custom.]—HARLAND v. COCKE (1673), Freem. K. B. 315; 89 E. R. 233.

329. ———.]—EURE v. WELLS (1672), T. Jo. 22; 84 E. R. 1128.

Annotation:—*Refd.* Tonkin v. Crocker (1694), 2 Lut. 1211.

330. ———.]—TONKIN v. CROKER, No. 4, *ante*.

331. Steward of court being a free suitor—& other free suitors—Steward not also steward of manor.]—(1) An omission to state in the plaint in a ct. baron the nature of the action is a mere irregularity, which may be waived.

In a suit in a ct. baron the proceedings were alleged to have been taken at a ct. held before A., the steward of the ct., a free suitor thereof, & B. & C. & others, free suitors of the ct.:—*Held*: (2) the ct. was properly constituted, it being alleged that A. was a free suitor; (3) A. was properly described as steward of the ct., though it was not alleged that he was steward of the manor; (4) the ct. was properly described, & it was sufficient to set forth the names of two only of the free suitors who attended.—BROWN v. GILL (1846), 2 C. B. 861; 3 Dow. & L. 823; 15 L. J. C. P. 187; 7 L. T. O. S. 87; 10 Jur. 666; 135 E. R. 1183.

Annotation:—*Generally*, *Mentd.* Sterry v. Clifton (1850), 9 C. B. 110.

SUB-SECT. 5.—TIME AND PLACE FOR HOLDING.

332. May be held after sunset.]—ANON. (1564), Moore, K. B. 68; 72 E. R. 446.

333. Must be held every three weeks.]—TONKIN v. CROKER, No. 4, *ante*.

334. May be held at any place within manor.]—A ct. baron may be held at any place within the manor, but not out of the manor, & so a leet may be held in any place within the liberty & franchise, & although no ct. hath time out of mind been

Sect. 1.—The court baron: Sub-sects. 5, 6 & 7. Sect. 2: Sub-sects. 1 & 2. Sect. 3: Sub-sects. 1, 2 & 3.]

holden within the manor yet it is not thereby lost for it is incident to a manor of common right.—ANON. (1571), Owen, 35; 74 E. R. 881.

335. Must be held within manor.]—ANON., No. 334, ante.

336. — Except by custom.]—(1) If the steward of a manor holds a ct. out of it, all the grants & admittances there made are void; for a ct. baron ought to be held within the manor, unless there be a custom to hold it out of the manor.

(2) If a *feme* copyholder for life takes husband who commits waste against the custom of the manor, & dies, it is a forfeiture of her estate; *secus* if waste be committed by a stranger without the consent of the husband.—CLIFTON v. MOLINEUX (1585), 4 Co. Rep. 27 a; 76 E. R. 939.

Annotations:—As to (1) *Reid.* Doe d. Leach v. Whitaker (1833), 5 B. & Ad. 409. As to (2) *Reid.* Doe d. Grubb v. Burlington (1833), 5 B. & Ad. 507.

Several manors owned by one lord.]—

See No. 1595, *post*.

337. In accustomed place—Mandamus will lie to permit.]—A mandamus issued to permit a ct. leet & ct. baron to be held in the accustomed place.—R. v. GRANTHAM CORPN. (1770), 2 Wm. Bl. 716; 96 E. R. 420.

Annotations:—Consd. R. v. Ilchester Corpn. (1823), 2 Dow. & Ry. K. B. 724. *Reid.* R. v. Milverton (1835), 1 Har. & W. 282.

SUB-SECT. 6.—THE STEWARD OF THE COURT.

338. Is judicial officer—Not liable for mistake of bailiff.]—HOLROYD v. BREARE (1819), 2 B. & Ald. 473; 106 E. R. 439.

Annotations:—Consd. Tunno v. Morris (1835), 2 Cr. M. & R. 298; Bradley v. Carr (1841), 3 Man. & G. 221. *Reid.* Tinsley v. Nassau (1827), Mood. & M. 52; *Re* Yarrington, Rawes v. Rawes (1836), 5 L. J. Ch. 114; Sterry v. Clifton (1850), 9 C. B. 110; Gelen v. Hall (1857), 2 H. & N. 379. *Mentd.* Houlden v. Smith (1850), 14 Q. B. 841.

339. — Not liable for acts of regular bailiffs of court—In executing process of court.]—(1) The steward of a ct. baron is a judicial officer, & is not liable for the acts of the regular bailiffs of the ct. in executing the process of the ct.

(2) But where the steward issued an attachment, to compel a deft.'s appearance, addressed to special bailiffs, nominated by the party who sued out the process, & who gave the steward an indemnity to protect him from the consequence of any misconduct of the bailiffs:—*Held*: he was liable for their act in wrongfully seizing the goods of a third party.—BRADLEY v. CARR (1841), 3 Man. & G. 221; 3 Scott, N. R. 523; 11 L. J. C. P. 22; 133 E. R. 1123.

Annotation:—As to (1) *Reid.* Sterry v. Clifton (1850), 9 C. B. 110.

See, also, No. 331, *ante*.

340. May amerce.]—The steward of a ct. baron may amerce, & the bailiff for the King may thereupon *ex officio* distrain without special warrant.—ROWLESTON v. ALMAN (1600), Cro. Eliz. 748; 78 E. R. 979.

Annotation:—*Reid.* Matthews v. Carew (1702), 1 Salk. 107.

341. Mandamus will not lie to swear in.]—ANON. (1702), 12 Mod. Rep. 666; 88 E. R. 1589.

342. Information granted—Against steward guilty of misconduct—Soliciting jury.]—R. v. HEMINGWAY (1731), 1 Barn. K. B. 436; 94 E. R. 293.

343. Restoration to office—Mandamus will not lie for.]—STAMP'S CASE, No. 384, *post*.

344. — — —.]—Mandamus lies to restore the steward of a leet, for his office tends to the

administration of justice, but it does not lie to restore the steward of a ct. baron to his office, for it is private.—MIDDLETON'S CASE (1663), 1 Sid. 169; cited in 15 Vin. Abr. 197, pl. 4; 82 E. R. 1037.

345. — Mandamus will lie for—Unless steward at will only.]—Mandamus lies for a steward of a leet, & also, if he be not at will only, for the steward of a ct. baron (HALL, C.J.).—R. v. KINGSCLEERE (CHURCHWARDENS) (1671), 2 Lev. 18; 83 E. R. 432.

Annotation:—*Mentd.* Peak v. Bourne (1732), 2 Stra. 942.

346. Joint grantees in reversion of stewardship of honour—With keeping of courts baron—May maintain debt—For fees wrongly taken by another.]—HOWARD v. WOOD, No. 491, *post*.

The steward as officer of manor.]—*See* Part VI., Sect. 1, *post*.

SUB-SECT. 7.—JURISDICTION.

347. Jurisdiction of court—May be determined by prescription.]—PILL v. TOWERS, No. 296, *ante*.

348. — As to appointment of officers—Limited to manor.]—The appointment by a ct. baron to an office to be exercised in the whole of a township, in which township are several other manors & no manor paramount, is a bad appointment, & no settlement is conferred by having served the office.—R. v. NEWMARKET ST. MARY (INHABITANTS) (1835), 3 Ad. & El. 151; 1 Har. & W. 154; 4 L. J. M. C. 89; 111 E. R. 370.

SECT. 2.—THE CUSTOMARY COURT.

SUB-SECT. 1.—THE RIGHT TO HOLD.

See, now, Copyhold Act, 1894 (c. 46), s. 82.

349. Grantee of all copyholds.]—MELWICH v. LUTER, No. 95, *ante*.

350. —.]—JACKSON v. NEAL, No. 1883, *post*.

351. Lord of customary manor—Manor composed of demesne lands only—Without services.]—(1) Where the custom of a manor is *quod dominus pro tempore* may demise in possession or reversion, the grant of a tenant in dower shall bind the heir, though the reversion does not fall into possession during the estate of him who made the grant.

(2) The lord of a manor having no services, but demesnes only, may hold a special ct., but not a ct. baron.—GAY v. KAY (1599), Cro. Eliz. 661; 78 E. R. 900.

Annotations:—As to (1) *Consd.* R. v. Venn (1875), 44 L. J. Q. B. 158. *Reid.* Doe d. Rayer v. Strickland (1842), 2 Q. B. 792.

352. —.]—NEVIL'S CASE, No. 6, *ante*.

SUB-SECT. 2.—OTHER CASES.

353. What is—Court attended by customary tenants—Though described in court rolls as court baron.]—DOE d. EVANS v. WALKER, No. 1759, *post*.

354. May be held before steward—By custom.]—TONKIN v. CROKER, No. 4, *ante*.

See, now, Copyhold Act, 1894 (c. 46), s. 82.

355. Must be held within manor—Except by custom.]—(1) It is no objection to a copyhold grant that it is made upon the surrender of a former grantee in remainder, whose admittance had, upon such former grant, been expressly respited, & of whose admittance at any subsequent time there was no entry in the ct. rolls; (2) nor is it an objection to the grant of several customary

tenements by one copy of ct. roll, that several rents are reserved, without specifying which is reserved out of each tenement, it appearing that former entire grants of same several tenements have contained similar entire reservations; (3) nor is it an objection that two heriots are expressed to be reserved, where in former grants only one heriot has been reserved.

(4) A customary ct. cannot be held out of the manor unless there be a custom to warrant it, & if a ct. be so held, all that is done at it is void, but the nullity of such ct. only affects such things as are required to be done at a ct.

(5) A lord may grant to & admit a copyhold tenant, not only out of ct., but also out of the manor.

(6) A grant by the lord in person is good, although it purport to be made at a ct. within the manor, which in fact was held out of the manor.

(7) The steward of a manor may take a surrender out of ct., but a steward cannot admit out of ct.

(8) A voluntary grant of a copyhold, made by the steward at a ct. held off the manor, is sufficient where such steward is also clothed with a power of attorney, which expressly authorises him to make voluntary grants, even though the grant purport to be made by such steward as steward, & without any reference being made in the grant to the special authority.

(9) In order to constitute the grantee of a copyhold a perfect customary tenant, where the grant is made out of ct., such grant must be notified at the next customary ct., or at such other subsequent ct. as the custom points out, & must be entered on the rolls of the ct., but it is sufficient if, having been entered on the ct. rolls at a void ct. as at a good ct., it appears on the ct. rolls at a subsequent good ct., & be not then objected to by the tenants.—*DOE d. LEACH v. WHITAKER* (1833), 5 B. & Ad. 409; 110 E. R. 841; *sub nom.* *DOE d. ROBERTS v. WHITAKER*, 3 Nev. & M. K. B. 225.

Annotation :—*As to* (7) *Refd.* *Doe d. Gutteridge v. Sowerby* (1860), 7 C. B. N. S. 599.

356. When Court of Chancery will correct judgment of.]—*PLUNKETT v. BURLINGTON* (LORD) (1837), 1 Jur. 376.

SECT. 3.—THE COURT LEET.

SUB-SECT. 1.—NATURE.

357. Nature—Is court of record.]—A leet is a ct. of record, & the steward is judge there.—*GRIESLEY'S CASE* (1588), 8 Co. Rep. 38 a; 77 E. R. 530; *sub nom.* *GRISLEY'S CASE*, Sav. 93.

Annotations :—*Mentd.* *Godfrey's Case* (1614), 11 Co. Rep. 42 a; *James v. Tutney* (1639), Cro. Car. 532; *Crawley's Case* (1640), Cro. Car. 567; *Langham's Case* (1641), March, 179; *Fletcher v. Ingram* (1695), 1 Ld. Raym. 69; *Saville v. Roberts* (1696), 1 Ld. Raym. 374; *Groenvelt v. Burwell* (1700), 1 Ld. Raym. 454; *R. v. Layton* (1709), 11 Mod. Rep. 236; *Edwards v. Hughes* (1726), Gilb. Ch. 209; *R. v. Adlard* (1825), 4 B. & C. 772; *R. v. Faulkner* (1835), 5 Tyr. 915; *R. v. Mosley* (1835), 3 Ad. & El. 488.

358. ———.]—*BULLEN v. GODFREY* (1614), 1 Roll. Rep. 73; 81 E. R. 337.

359. ——— Not incident of manor.]—(1) A ct. baron is incident, to every manor, but as to this, it is to be understood to be of a manor *in facto*, & in truth, but not to be a manor only in intendment, & a nominal manor. A man cannot have a ct. baron without a manor, for this ct. is incident to a manor, & cannot be severed from it.

(2) The lord of the manor cannot grant away his cts. to another, & if he grants away the manor or fair, he cannot reserve such cts. unto himself, for they are incident to the manor.

(3) Manors cannot be at this day created, unless it be by way of derivation, as being derived out of the ancient manor, which descends unto coparceners, in this case upon partition of such a manor between them, the same shall now be in them as several manors.

(4) A manor & also the ct. which is incident to such a manor may exist without being derived out of the Crown, but a ct. leet is not incident to a manor, & he who has a manor, may also have a ct. leet to be by him held within his manor, but this ought to be by a special grant from the King, & not otherwise. He may then punish offenders, which he cannot do in his ct. baron. He cannot be ousted of his ct. baron, unless he be ousted of his manor; for if he have a manor, he ought to have such a ct. baron, for this is as an incident, & follows the manor, as a necessary subsequent & adjunct unto the manor, & therefore if he have the one, the manor, he shall also have the other, the ct. baron.

(5) A *quo warranto* lies for holding a ct. baron.—*R. v. STAFFERTON & BROWN* (1610), 1 Bulst. 54; 80 E. R. 756; *sub nom.* *R. v. STAVERTON*, Yelv. 191; *sub nom.* *R. v. STANTON*, Cro. Jac. 259. *Annotation* :—*Generally*, *Mentd.* *R. v. London* (1690), 12 Mod. Rep. 17.

— May be appurtenant to manor.]—*See* No. 367, *post*.

360. Creation of—By royal grant.]—*R. v. STAFFERTON & BROWN*, No. 359, *ante*.

SUB-SECT. 2.—THE RIGHT TO HOLD.

361. Leet appurtenant to manor—Coparceners owners of part of manor—On apportionment—Entitled to hold.]—*ANON.*, No. 367, *post*.

362. Grantee of portion of manor—On severance.]—*MORRIS v. SMITH & PAGET*, No. 90, *ante*.

363. How tested—Whether by quo warranto.]—*R. v. MEDLICOAT* (1732), 2 Barn. K. B. 221; 94 E. R. 462.

364. ——— Quo warranto refused.]—*R. v. CANN* (1737), Andr. 14; 95 E. R. 276.

Annotation :—*Refd.* *R. v. Marsden* (1765), 3 Burr. 1812.

365. ——— Granted after long disuser.]—*DARELL v. BRIDGE*, *R. v. BRIDGE* (1748), 1 Wm. Bl. 46; 96 E. R. 25.

366. Transmission of right—Must be by deed.]—*PORTER v. GRAY*, No. 376, *post*.

367. Loss of right—Not by apportionment of manor—To which appurtenant.]—If there are three coparceners of a manor to which leet or lawday appertains, & the King purchases two parts of the manor with the appurtenances, the leet is not extinct, but remains appendant to the third part of the manor.—*ANON.* (1537), 1 And. 26; Ben. & D. 20; Benl. 11; 123 E. R. 334.

368. ——— Not by non-user.]—*ANON.*, No. 334, *ante*.

SUB-SECT. 3.—DUTY TO HOLD.

369. For presentment of election of mayor—Enforced by mandamus—Directed to steward.]—*R. v. WILLIS* (1738), Andr. 279; 7 Mod. Rep. 261; 95 E. R. 398.

370. To swear in constable—Enforced by mandamus—Directed to lord.]—*R. v. COLEBROOKE* (1757), 2 Keny. 163; 96 E. R. 1142.

371. To appoint officers—Enforced by mandamus—Directed to lord.]—*R. v. MILVERTON* (LORD

Sect. 3.—The court leet: Sub-sects. 3, 4, 5, 6 & 7.

Sect. 4. Part V. Sect. 1: Sub-sects. 1 & 2, A. (a) & (b).]

OF HUNDRED) (1835), 3 Ad. & El. 284; 1 Har. & W. 282; 4 L. J. M. C. 88; 111 E. R. 421.

Annotation:—Mentd. Grace v. Clinch (1843), 4 Q. B. 606.

372. Mandamus to summon specific jurors—Refused.]—R. v. BANKES (1764), 1 Wm. Bl. 452; 3 Burr. 1452; 96 E. R. 260.

SUB-SECT. 4.—BEFORE WHOM HELD.

373. Before steward.]—Every ct. baron is to be held before the suitors, if there be no prescription to the contrary; but a leet always before the steward.—LOVELL & GOLSTON'S CASE (1587), Godb. 68; 78 E. R. 42.

374. —.]—GRIESLEY'S CASE, No. 357, ante.

SUB-SECT. 5.—TIME AND PLACE FOR HOLDING.

375. Time for holding—Often more than twice a year—By prescription.]—R. v. PARTRIDGE (1588), 2 Leon. 28; 74 E. R. 331.

376. — On day mentioned in grant—Leet created by grant.]—A leet cannot be granted but by deed, & it must then be held on the day mentioned in the grant.—PORTER v. GRAY (1591), Cro. Eliz. 245; 78 E. R. 500.

See, also, No. 371, ante.

377. Place for holding—Any place within liberty & franchise.]—ANON., No. 334, ante.

— Several manors owned by one lord.]—See No. 1595, post.

378. — Accustomed place—Town hall—Mandamus to mayor to give key refused.]—R. v. WIGAN CORPN. (1744), 1 Wils. 76; 95 E. R. 501.

Annotation:—Refd. R. v. Ilchester Corpn. (1823), 2 Dow. & Ry. K. B. 724.

379. — — — Lordship formerly vested in burgesses granted to another.]—The bailiff & burgesses of I., a corpn. by prescription, had from time immemorial been lords of the manor of I., & as such, had during all that time held a ct. leet for the manor on certain days in the Guildhall of the borough, which was their property. In 1553 they accepted a charter which purported to grant to them a ct. leet to be held in the Guildhall, as of ancient time had been used. By an award afterwards made in pursuance of a private Act of Parliament, the manor of I., with the rights, members, cts., view of frankpledge, etc., royalties & appurtenances, excepting to the bailiff & burgesses the Guildhall, houses, buildings, ct. or garden belonging to same, etc. were conveyed to H.:—*Held*: although the exception retained in the bailiff & burgesses the property in the Guildhall, yet the lord of the manor had a right to hold the ct. leet there.—R. v. ILCHESTER CORPN. (1824), 2 B. & C. 764; 4 Dow. & Ry. K. B. 324; 2 L. J. O. S. K. B. 147; 107 E. R. 567.

380. — — — Grant of permission enforceable by mandamus.]—R. v. GRANTHAM CORPN., No. 337, ante.

SUB-SECT. 6.—THE STEWARD OF THE COURT.

381. Jurisdiction of—On failure to do suit—Cannot fine—Without presentment.]—HALL v. TURBETT (1591), Cro. Eliz. 241; 78 E. R. 497.

See, also, Nos. 373, 374, ante.

382. Liable to information by quo warranto—For misconduct—Impanelling jury improperly summoned.]—R. v. HARRISON (1723), 8 Mod. Rep. 135; 88 E. R. 103.

383. Right to office—Tested by quo warranto.]—R. v. HULSTON (1725), 1 Stra. 621; 93 E. R. 738.

Annotation:—Refd. Darley v. R. (1846), 12 Cl. & Fin. 520.

384. Restoration to office—Enforceable by mandamus.]—*Semble*: a writ of mandamus will lie to restore one to the stewardship of a ct. leet, but not to a ct. baron.—STAMP'S CASE (1661), 1 Sid. 40; 1 Keb. 5; 82 E. R. 957.

385. — — —.]—R. v. KINGSCLEERE (CHURCHWARDENS), No. 345, ante.

386. — — —.]—MIDDLETON'S CASE, No. 344, ante.

SUB-SECT. 7.—JURISDICTION.

387. As to bye-laws—Bye-law imposing fine—For receiving inmate into house—Without giving security—To parish overseers—Good.]—ANON. (1659), Hard. 471; 145 E. R. 553.

Annotation:—Mentd. Whitrong v. Blaney (1675), 2 Mod. Rep. 10.

388. — For regulation of rights of commoners—As to fishery.]—The jury in a ct. leet of a manor made a bye-law regulating the rights of the commoners in respect of a fishery in the manor. The jury were not composed exclusively of commoners, though the majority were commoners:—*Held*: the bye-law was bad.—PLATT v. JESSETT (1900), 17 T. L. R. 105, D. C.

— For regulation of commons.]—See COMMONS & RIGHTS OF COMMON, Vol. XI., p. 87, Nos. 1063, 1064, 1065.

389. As to appointment of officers—To choose constable.]—R. v. BERNARD (1696), 2 Salk. 502; 1 Ld. Raym. 94; 12 Mod. Rep. 115; 91 E. R. 429.

390. — — — Person chosen must serve under penalty—Penalty not distrainable—Save by custom.]—FLETCHER v. INGRAM (1697), 1 Salk. 175; 5 Mod. Rep. 127; 12 Mod. Rep. 87; 1 Ld. Raym. 69; 3 Ld. Raym. 80; Comb. 350; Skin. 635; Holt, K. B. 187; 91 E. R. 161.

Annotations:—Refd. R. v. Howson (1697), 12 Mod. Rep. 180; R. v. Lone (1730), Sess. Cas. K. B. 118; R. v. Lane (1731), 2 Barn. K. B. 56.

391. — — — Sessions have no jurisdiction to discharge.]—LIMINGTON (CONSTABLES') CASE (1728), 2 Stra. 798; 93 E. R. 855.

SECT. 4.—SUIT OF COURT.

See Part XI., Sect. 5, post.

Part V.—The Court Rolls and other Manorial Documents.

SECT. 1.—THE COURT ROLLS.

SUB-SECT. 1.—CUSTODY.

392. Who entitled to—Lord of manor.]—(1) The right to the custody of the ct. rolls of a manor is in the lord, & not in the steward.

(2) On motion in a cause where infant plffs. were lords of a manor:—*Held*: the rolls should be delivered up by the steward, who was also a solr., to the receiver in the cause.—*RAWES v. RAWES* (1836), 7 Sim. 624; 58 E. R. 977; *sub nom. Re YARRINGTON*, *RAWES v. RAWES*, 5 L. J. Ch. 114.

Annotations:—*As to* (1) *Distd. Windham v. Giubilei* (1871), 40 L. J. Ch. 505. *Expld. Re Jennings*, [1903] 1 Ch. 906.

393. ——— Qualified right only.]—Both the lord of a manor & the steward have a qualified right to the custody of the ct. rolls. The steward is entitled to keep them for the purpose of discharging the duties of his office, & there is no rule that the lord is entitled as of right, in the absence of misconduct, to call upon the steward to give them up to him.—*Re JENNINGS* (A SOLICITOR), [1903] 1 Ch. 906; 72 L. J. Ch. 454; 88 L. T. 387; 67 J. P. 367; 51 W. R. 425; 47 Sol. Jo. 420.

394. ——— Steward—For purposes of duties of office.]—*Re JENNINGS* (A SOLICITOR), No. 393, *ante*.

395. To whom ordered to be delivered—Person appointed to hold courts.]—*BROWN v. BROWN* (1732), Dick. 62; 21 E. R. 191.

396. S. P. DAVY v. ACLAND (1744), Dick. 62; 21 E. R. 191.

397. S. P. COMPTON v. COMPTON (1760), Dick. 62; 21 E. R. 191.

398. ——— Not steward of testamentary guardian—Rolls in hands of steward of trustees.]—*MOTT v. BUXTON* (1802), 7 Ves. 200; 32 E. R. 81.

399. ——— Receiver—On behalf of infant lord.]—*RAWES v. RAWES*, No. 392, *ante*.

See, also, No. 403, *post*.

400. Jurisdiction of court—To order delivery up—On motion—Where steward a solicitor.]—*Ex p. GRUBB* (1813), 5 Taunt. 206; 128 E. R. 666. *Annotations*:—*Distd. Ex p. ———* (1855), 19 J. P. Jo. 373. *Consd. Re Jennings*, [1903] 1 Ch. 906. *Reid. Rawes v. Rawes* (1836), 7 Sim. 624.

401. ——— ——— ———.]—The ct. will entertain a summary jurisdiction over one of its officers who is employed as steward of a manor, to make him deliver up ct. rolls & muniments of his employer, & to compel him to pay over rents received.—*Ex p. CORPUS CHRISTI COLLEGE* (1815), 6 Taunt. 105; 128 E. R. 972.

Annotation:—*Consd. Re Jennings*, [1903] 1 Ch. 906.

402. ——— ——— ———.]—*RAWES v. RAWES*, No. 392, *ante*.

See, also, No. 483, *post*.

403. ——— Only on misconduct of steward.]—(1) On the application of the guardian *ad litem* of an infant lord of the manor, the ct. will not order the steward to deliver up the ct. rolls to the receiver in the cause, if there is no suggestion of any improper conduct on the part of the steward.

(2) The ct. will not displace one steward without seeing that there is another to perform his functions.—*WINDHAM v. GIUBILEI* (1871), 40 L. J. Ch. 505; 24 L. T. 653.

Annotation:—*Consd. Re Jennings*, [1903] 1 Ch. 906.

404. ——— ——— ———.]—*Re JENNINGS* (A SOLICITOR), No. 393, *ante*.

Custody of indexes—Prepared by steward.]—*See* No. 484, *post*.

SUB-SECT. 2.—INSPECTION AND PRODUCTION.

A. Who Entitled to Inspect.

(a) Tenants.

See R. S. C., Ord. 31, r. 19.

405. Tenant of manor.]—*ROE d. HARE v. AYLMAR* (1754), Barnes, 236; 94 E. R. 893.

406. ———.]—*R. v. SHELLEY* (1789), 3 Term Rep. 141; 100 E. R. 498.

Annotation:—*Expld. R. v. Allgood* (1798), 7 Term Rep. 746.

— *As prosecutor—In indictment of lord for nuisance.]—**See* No. 420, *post*.

407. Copyhold tenant.]—*STACY'S CASE* (1626), Lat. 182; 82 E. R. 330.

408. ——— With prima facie title.]—One who has a *prima facie* title to a copyhold is entitled to inspect the ct. rolls, & take copies of them, so far as relates to the copyhold claimed, though no cause be depending for it at the time.—*R. v. LUCAS* (1808), 10 East, 235; 103 E. R. 765.

Annotations:—*Distd. R. v. Smallpiece* (1821), 2 Chlt. 288; *Ex p. Barnes* (1842), 7 Jur. 217. *Reid. R. v. Tower* (1815), 4 M. & S. 162; *Mutter v. Eastern & Mid. Ry.* (1888), 38 Ch. D. 92.

409. Freehold tenant.]—*ADDINGTON v. CLODE* (1775), 2 Wm. Bl. 1030; 96 E. R. 605.

410. ——— Only when cause depending—Involving tenant's right.]—*R. v. ALLGOOD* (1798), 7 Term Rep. 746; 101 E. R. 1232.

Annotation:—*Consd. R. v. Merchant Taylors' Co.* (1831), 2 B. & Ad. 115.

411. ——— Of enfranchised land.]—*R. v. HORNBY* (LORD OF THE MANOR) (1844), 8 J. P. Jo. 853.

412. ———.]—*WARRICK v. QUEEN'S COLLEGE, OXFORD*, No. 429, *post*.

*Freeholder's tenant.]—**See* No. 421, *post*.

(b) Other Persons.

413. Co-owner—Manor held by tenants in common.]—A tenant in common of a manor, for a long time occupied wholly by the other tenant in common, who does not know the quantity of the manor, because the other has also sold lands intermingled, may have the sight of the ct. rolls & writings of his companion, concerning only the quantity of the manor, but not concerning the sold lands, nor his title to the manor, & the other will be ordered also to show the like on his part.—*CAPELL v. MYM* (1599), Cary, 16; 21 E. R. 9.

414. Owner of another manor—In dispute between two lords—Not entitled.]—*DAVIS d. SALOP CORPN. v. EDWARDS* (1732), Cooke, Pr. Cas. 70; 125 E. R. 963.

415. Adverse claimant to manor—Not entitled.]—*WOOD v. WHITCOMB* (1707), 12 Vin. Abr. 146, pl. 9.

416. ———.]—*TALBOT v. VILLEBOYS* (1783), cited in 3 Term Rep. 142; 100 E. R. 499.

Annotation:—*Consd. R. v. Shelley* (1789), 3 Term Rep. 141.

417. Owner of adjoining lands—Claiming right of common—Within manor—Entitled.]—*MINET v. MORGAN* (1871), L. R. 11 Eq. 284; 23 L. T. 280; 24 L. T. 120; 18 W. R. 1015; 19 W. R. 374; *subsequent proceedings* (1873), 8 Ch. App. 361, L. C. & L. J.

418. Party claiming to hold land in fee simple—Alleged by lord to be freehold tenant of manor—Not entitled.]—*OWEN v. WYNN* (1878), 9 Ch. D. 29; 38 L. T. 623; 26 W. R. 644, C. A.

Annotation:—*Consd. A.-G. v. Newcastle-upon-Tyne Corpn.*, [1899] 2 Q. B. 478.

419. Owner of tithes—To ascertain proportion

Sect. 1.—The court rolls: Sub-sect. 2, A. (b) & B., C. & D.; sub-sect. 3, A.]

paid by lord & tenant—Not entitled.]—HEREFORD (BP.) v. BRIDGEWATER (DUKE) (1729), Bunb. 269; 145 E. R. 670.

Annotation:—Mentd. Harcastle v. Smithson (1745), 3 Atk. 245.

420. Prosecutor in criminal proceedings—Indictment of lord for nuisance—Not entitled—Though tenant of manor.]—R. v. CADOGAN (EARL) (1822), 5 B. & Ald. 902; 1 Dow. & Ry. K. B. 559; 1 Dow. & Ry. M. C. 132; 106 E. R. 1421.

Annotation:—Consd. Re Great Marlow Bridge; R. v. Bucks. (1828), 2 Man. & Ry. K. B. 412.

421. Any person interested in property—Not agent—Though authorised by power of attorney.]—Ex p. HUTT, No. 437, post.

422. Inhabitants as such — Not entitled.]—QUEEN'S COLLEGE, OXFORD (WARDEN & FELLOWS) v. WARWICK (1866), 30 J. P. Jo. 759; subsequent proceedings, sub nom. WARRICK v. QUEEN'S COLLEGE, OXFORD (1867), L. R. 3 Eq. 683.

423. Devisee of rentcharge—To complete title—Entitled.]—A rule absolute in the first instance for the limited inspection of the rolls of a manor will be granted where a devisee of a rentcharge is desirous of completing his title, even though appct. be not a copyholder.—Ex p. BARNES (1842), 7 Jur. 217.

See, generally, DISCOVERY, INSPECTION & INTERROGATORIES.

B. In what Actions and Disputes Inspection will be Ordered.

424. In action between copyholders.]—SLADE v. WALTER (1708), 12 Vin. Abr. 146, pl. 8.

425. — For encroachment on common.]—FOLKARD v. HEMET (1776), 2 Wm. Bl. 1061; 96 E. R. 624.

426. — As to right of common.]—ROGERS v. JONES (1825), 5 Dow. & Ry. K. B. 484; 2 Dow. & Ry. M. C. 510.

Annotation:—Distd. R. v. Whichford (1839), 3 Jur. 533.

427. Dispute as to title—Of lands forming part of manor.]—DRAPER v. ZOUCH (1676), Cas. temp. Finch, 249; 23 E. R. 137.

428. Dispute between lord & freehold tenant—As to a copyhold—Not allowed.]—SMITH v. DAVIES (1745), 1 Wils. 104; 95 E. R. 517.

429. — Claiming right of common & estovers—Lord may not seal up entries alleged to be irrelevant.]—In a suit by the freehold tenants of a manor with respect to right of common & estover, they are entitled to see the ct. rolls. The lord of the manor may not seal up such parts as he swears do not relate to the matters in dispute.—WARRICK v. QUEEN'S COLLEGE, OXFORD (1867), L. R. 3 Eq. 683; sub nom. WARWICK v. QUEEN'S COLLEGE, 36 L. J. Ch. 505; subsequent proceedings, L. R. 4 Eq. 254.

Annotation:—Distd. Owen v. Wynn (1878), 9 Ch. D. 29.

430. In action for amercement at court baron—Inspection limited to entries relating to amercements.]—BALDWIN v. TUDGE (1755), Barnes, 237; 2 Wils. 20; 94 E. R. 894.

431. In dispute between lord & copyhold tenant—Claiming right to cut underwood.]—A copyhold tenant was forbidden by the lord to cut underwood upon the copyhold without the lord's licence:—Held: a mandamus to the lord must be granted to permit the tenant to inspect the ct. rolls so far as related to the cutting of underwood, although there was no suit pending.—R. v. TOWER (1815), 4 M. & S. 162; 105 E. R. 795.

Annotations:—Consd. Re Jennings, [1903] 1 Ch. 906. Rejd. R. v. Merchant Taylors' Co. (1831), 2 B. & Ad. 116.

432. In action by copyhold tenant against lord.]—A copyhold tenant, in a suit against the lord of the manor, is entitled to the usual order for the production of documents, including the ct. rolls, without payment to the steward of the customary fees.—HOARE v. WILSON (1867), L. R. 4 Eq. 1; 16 L. T. 112; 15 W. R. 548.

433. In action of trespass by freeholder—Against his tenant claiming right of common.]—HOBSON v. PARKER (1756), Barnes, 237; 94 E. R. 893.

434. For copyholder to take copies—Original copy of admission lost.]—CULLEY v. BROWN (1727), 1 Barn. K. B. 40; 94 E. R. 28.

435. — So far as relating to copyhold claimed—Though no action pending.]—R. v. LUCAS, No. 408, ante.

C. Enforcement of Right to Inspect.

See R. S. C., Ord. 31, r. 19.

436. By attachment—Against lord.]—ANON. (1707), 11 Mod. Rep. 111; 88 E. R. 932.

437. By mandamus—On application by one of several persons interested—Not by agent—Though authorised by power of attorney.]—Any of the persons interested in copyhold property are entitled to examine the rolls of the manor without the others joining in the application, & a mandamus will be granted on the application of one of several persons interested. The demand to inspect the rolls cannot, for the purposes of an application for a mandamus, be made by an agent authorised by power of attorney to make the demand, although the agent's authority is in writing, & a mandamus will be refused, where the application has been made by such a person.—Ex p. HUTT (1839), 7 Dowl. 690; 3 Jur. 1105.

Annotation:—Apld. Ex p. Barnes (1842), 7 Jur. 217.

438. — Application must show that issue relates to manorial lands.]—R. v. DAWSON (1845), 5 L. T. O. S. 213.

439. — Application by copyholder—Must be supported by affidavit showing title.]—On an application for a mandamus to inspect the ct. rolls of a manor to a copyhold, in which appct. claims to be entitled, the affidavit in support must state positively that he is entitled to the copyhold land in question, or set out the title on which he grounds his claim, so that the ct. may see whether there is a reasonable foundation for it.—Ex p. COOKE (1848), 5 Dow. & L. 413; 2 Saund. & C. 205; 12 J. P. Jo. 119.

—.]—See,

440. Form of order—Rule nisi in first instance.]—Ex p. BEST (1834), 3 Dowl. 38.

441. — Rule absolute in first instance—On application by devisee of rentcharge—Desirous of completing title.]—Ex p. BARNES, No. 423, ante.

D. Production.

442. To counsel—To distinguish copyhold from freehold.]—CORBET v. PESHALL (1614), Toth. 47; 21 E. R. 119.

443. Under subpcena duces tecum—Steward not bound to produce.]—R. v. WOODLEY (1834), 1 Mood. & R. 390, N. P.

Annotation:—Rejd. Doe d. Egremont v. Langdon (1848), 13 Jur. 96.

444. Right to covenant for production—Purchaser from tenant for life entitled.]—POULETT (EARL) v. HOOD (1868), L. R. 5 Eq. 115; 37 L. J. Ch. 224; 17 L. T. 486; 16 W. R. 323.

Annotation:—Rejd. Re Sawyer & Baring's Contract (1884), 53 L. J. Ch. 1104.

445. — On purchase from copyholder—& compulsory enfranchisement—Under Lands Clauses Consolidation Act, 1845 (c. 18).]—Copyhold land

having been taken by a corpn. under Lands Clauses Consolidation Act, 1845, & a draft conveyance from the copyholder being in the course of settlement, the corpn. applied to the lord of the manor under s. 96 for enfranchisement upon certain terms which were agreed to. In settling the draft enfranchisement deed, the corpn. claimed to have from the lord & his trustee to uses an acknowledgment of the right of the corpn. to production of the documents of title to the manor & of the ct. rolls, relating to the hereditaments enfranchised & to delivery of copies, & also from both an undertaking for the safe custody of same:—*Held*: the corpn. were entitled to no more than an acknowledgment by the lord & his trustee of the right of the corpn. to the production of the documents of title to the manor & of the ct. rolls, so far as they related to the hereditaments enfranchised & to delivery of copies thereof, & an undertaking by the lord alone for safe custody.—*Re AGG-GARDNER* (1884), 25 Ch. D. 600; 53 L. J. Ch. 347; 49 L. T. 804; 32 W. R. 356.

See, generally, COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., pp. 272, 274.

—.]—*See, generally, SALE OF LAND*.

446. Place of production—Rolls in possession of acting steward—Order to lodge in court refused.]—*CAREW v. DAVIS* (1855), 21 Beav. 213; 52 E. R. 841.

447. Costs of production—In action by tenant against lord—Steward not entitled to fees.]—*HOARE v. WILSON*, No. 432, *ante*.

Recovery of excessive fees paid.]—*See* No. 529, *post*.

SUB-SECT. 3.—THE COURT ROLLS AS EVIDENCE.

A. Original Entries.

448. Entries in paper book—Admissible.]—*ANON.* (prior to 1733), cited in 2 Barn. K. B. 406; 94 E. R. 583.

449. — Not admissible.]—In an action of ejectment for lands, part freehold & part copyhold, to prove an admission to these lands questions as to the admissibility of certain evidence were raised:—*Held*: (1) a paper book of the acts of the ct. in which the admissions & surrenders of the copyhold estates were entered was not admissible; (2) a copy of the admission was admissible; (3) a paper writing testifying a surrender of the lands to the lord to the use of the surrenderor's will, signed by the lord himself, the signature being proved by the affidavit of pltf.'s attorney, was admissible; (4) evidence other than the ct. rolls was admissible to prove the lands to be copyhold; (5) a parchment book of the admission was admissible.—*CHANCE v. DOD* (1733), 2 Barn. K. B. 405; 94 E. R. 583, N. P.

450. Proof of rolls—By deputy steward acting for eighteen years—Though verbally appointed.]—The admission of B. in 1812 was proved by an entry on the rolls, & a surrender by him to pltf. in 1824 by entry of presentment of surrender out of ct., but no admission. The rolls were proved by S., his deputy, who had been appointed by word of mouth only, & who had acted as steward for eighteen years:—*Held*: since he acted as such, that was sufficient; signing the rolls was not necessary, but it was sufficient that they were proved to be the rolls.—*BRIDGER v. HUETT* (1860), 2 F. & F. 35, N. P.

451. How far conclusive—May be disproved—By evidence aliunde.]—A surrender & regrant of copyholds was entered in the ct. roll as of May 2,

which was an error:—*Held*: the misentry of the date of the ct. should not prejudice the party, for the entry was not a matter of record, & if the parties had been at issue at the time of the surrender made, or ct. held, same would have been tried not by ct. roll, but by a jury, & the party might give evidence of the true date.—*BURGESS v. FOSTER* (1584), 1 Leon. 289; 74 E. R. 263.

Annotation:—*Consd. Doe d. Priestley v. Calloway* (1827), 6 B. & C. 484.

452. — By entry in steward's book—& parol evidence of foreman of jury.]—*HILL v. WIGGETT* (1706), 2 Vern. 547; 23 E. R. 954.

453. — Only against lord & tenants.]—With respect to the ct. rolls of the manor, taken by themselves, they are only evidence against the tenants of the manor & the lord of the manor. It is competent to the ct. baron to enter upon their records my land to be their common, & I have no means to dispute it. Their record, therefore, is of itself but *ex parte* evidence, & does not of itself bind third persons (*PLUMER, M.R.*).—*A.-G. v. HOTHAM (LORD)* (1823), Turn. & R. 209; 37 E. R. 1077; *affd.* on other grounds (1827), 3 Russ. 415, L. C.

Annotations:—*Mentd. A.-G. v. Hungerford* (1834), 8 Bl. N. S. 437; *A.-G. v. Webster* (1875), L. R. 20 Eq. 483; *Re St. Botolph without Bishopsgate Parish Estates* (1887), 35 Ch. D. 142; *Re St. Stephen, Coleman Street, Re St. Mary the Virgin, Aldermanbury* (1888), 39 Ch. D. 492; *Haigh v. West*, [1893] 2 Q. B. 19.

454. — As evidence of fines—Not without proof of payment.]—*ROWE v. BRENTON*, No. 266, *ante*.

455. — Capable of correction—Surrender to use of second son of surrenderor in tail—Entered as surrender to use of heirs general.]—*BREND v. BREND* (1676), Cas. temp. Finch, 254; 23 E. R. 139.

Annotation:—*Refd. Doe d. Priestley v. Calloway* (1827), 6 B. & C. 484.

456. — Only with consent of lord or when lord party to suit—Entry giving interest in fraud of mortgage.]—*ELSTON v. WOOD* (1833), 2 My. & K. 678; 39 E. R. 1103.

457. — Surrender to use of person misnamed.]—*GARNER v. GARNER* (1862), 7 L. T. 182.

458. Entry of presentment by jury—As to extent of common in manor—Not admissible—To show whether particular parcel of manor subject to rights of common.]—Pltf. in trespass was the occupier of a farm called T., situate within a manor adjoining a mountain, & claimed to be exclusive owner of that part of the mountain next adjoining his farm. The question in the cause being whether he was exclusive owner of the soil, or had a right of common only over that part of the mountain, deft., in order to show that pltf. had not the right of soil, produced from the rolls of the manor an instrument, purporting to be a presentment in 1759, wherein the jurors, after reciting that they were sworn to view such part of the waste land as lay within the lordship as was claimed by A. to belong to his tenement called T., upon their oaths said that they had considered the claim & the evidence, & presented that all the land within the boundaries were part & parcel of the common called K., & that neither A. nor the tenants or occupiers of the tenement called T. had any right to same, or any further or greater right than such as the other freehold tenants of the lordship had for their commonable cattle:—*Held*: this instrument was not admissible in evidence either as a presentment, because the homage had no right to decide the claim made by an individual to the freehold, they being interested, nor as an award, because there was no mutual submission, nor as

Sect. 1.—The court rolls: Sub-sect. 3, A. & B.; sub-sect. 4. Sect. 2: Sub-sects. 1 & 2.]

evidence of reputation, because it was the declaration of the homage *post litem motam*.—**RICHARDS v. BASSETT** (1830), 10 B. & C. 657; 8 L. J. O. S. K. B. 289; 109 E. R. 594.

Annotation:—*Reid*. **Brisco v. Lomax** (1838), 3 Nev. & P. K. B. 308.

459. Entries of accounts—By reeve—Admissible only where against reeve's interest—Or referred to by such entries.]—(1) Admissions in the ct. rolls of a manor *pro pastura bosci et sub-bosci*, & for the pasture, wood, & underwood, of etc. are sufficient to pass the land.

(2) Entries in the ancient rolls of a manor of items in the accounts rendered by the reeve of the manor, by which he charges himself with the receipt of money, are admissible in evidence; but entries in same accounts of disbursements of the money so received, discharging the reeve, are not admissible unless they are referred to by the charging items, or are necessary to explain them.

(3) *Semble*: where an account of the reeve of a manor in the ct. rolls contains a *quietus*, the whole account is admissible in evidence, on the ground that the *quietus* discharging the reeve is an admission of the whole by the lord against his own interest.—**DOE d. KINGLAKE v. BEVISS** (1849), 7 C. B. 456; 18 L. J. C. P. 128; 12 L. T. O. S. 452; 137 E. R. 181.

Annotations:—*Generally*, *Mentd.* **Waterpark v. Fennell** (1859), 7 H. L. Cas. 651; **De La Warr v. Miles** (1881), 29 W. R. 809; **Hastings v. N. E. Ry.**, [1899] 1 Ch. 656; **Hudson & Humphrey v. The Swiftsure, The Swiftsure** (1900), 82 L. T. 389; **Ward v. Pitt**, [1913] 1 K. B. 130.

See, also, No. 473, *post*.

As proof of extent of manor.]—*See* Part I., Sect. 4, sub-sect. 1, *ante*.

As proof of custom of manor.]—*See* Part III., Sect. 3, *ante*.

As proof of surrender.]—*See* Part XVIII., Sect. 2, sub-sect. 1, G.

As proof of admission of tenant.]—*See* Part XVIII., Sect. 2, sub-sect. 2, F.

B. Copies.

460. Grounds of impeachment—Copy indirectly entered by steward's clerk.]—**HOLDEN v. CLERK** (1576), Cary, 55; 21 E. R. 30.

461. When admissible—When original roll lost—To prove copyholder's estate—Not to prove recovery suffered.]—**SNOW v. CUTLER & STANLY** (1663), 1 Keb. 567; 83 E. R. 1115.

462. Recital of devise—In copy of admittance—Evidence as between lord & devisee—Not as between heir & devisee.]—(1) The recital of a devise in the admittance to a copyhold is good evidence as between the lord & the devisee, but not as between the heir & the devisee.

(2) The steward's rough draft is good evidence of the admittance.—**ANON.** (1693), 1 Ld. Raym. 735; 91 E. R. 1391.

Annotation:—*As to* (2) *Reid*. **Doe d. Priestley v. Calloway** (1827), 6 B. & C. 484.

Proof of existence of manor.]—*See* Part I., Sect. 3, *ante*.

Proof of surrender.]—*See* Part XVIII., Sect. 2, sub-sect. 1, G., *post*.

Proof of admittance.]—*See* Part XVIII., Sect. 2, sub-sect. 2, F., *post*.

Admissibility of evidence.]—*See, generally*, EVIDENCE.

463. Proof of—By acknowledgment by steward.]—(1) An examined copy of the ct. roll of a manor, made for the purpose of being given in evidence on a trial, does not require a stamp.

(2) A copy of ct. roll, duly stamped, purported to be signed by V., who was proved to be the steward of the manor. The attorney of the lessor of pltf., who produced it, did not know the handwriting of V., but he stated that he had shown this copy of ct. roll to V., who stated that it had been delivered out by him, as steward of the manor to the lessor of pltf.:—*Held*: this acknowledgment of it by V. was equivalent to the witness having received it from V., as steward of the manor.—**DOE d. BURROWS v. FREEMAN** (1844), 12 M. & W. 844; 14 L. J. Ex. 142; 3 L. T. O. S. 58; 15 E. R. 1441.

464. ——— Though not copy delivered to tenant.]—**BREEZE v. HAWKER** (1844), 14 Sim. 350; 60 E. R. 393.

465. Whether requiring to be stamped—Admittance of surrenderee—In trust for grantee of annuity—& subject thereto to use of purchaser—Requires ad valorem stamp on purchase-money.]—**DOE d. CHAPEAU v. REYNOLDS** (1833), 2 Nev. & M. K. B. 383.

466. ——— Not examined copy—To be given in evidence at trial.]—**DOE d. BURROWS v. FREEMAN**, No. 463, *ante*.

SUB-SECT. 4.—WHETHER CONSTRUCTIVE NOTICE AGAINST PURCHASER.

467. Direct notice of admittance—Imports notice of surrender.]—*Qu.*: whether a purchaser of copyhold must be presumed to have notice of everything on the ct. rolls.

It is sufficient to say that, in the deed of 1788 there is an express reference to the admittance of F. under the surrender by E. There is direct notice of that admittance; & consequently of the surrender, upon which it proceeds, & to which it referred (*SIR WILLIAM GRANT, M.R.*).—**HANSARD v. HARDY** (1812), 18 Ves. 455; 34 E. R. 389.

468. Constructive notice—Of all contents—As far back as search necessary for title.]—**PEARCE v. NEWLYN**, No. 981, *post*.

469. Not constructive notice of prior incumbrances—To purchaser of copyholds.]—**BUGDEN v. BIGNOLD**, No. 1487, *post*.

See, generally, EQUITY; SALE OF LAND.

SECT. 2.—OTHER MANORIAL DOCUMENTS.

SUB-SECT. 1.—AS EVIDENCE.

470. Steward's books—Entry by deceased steward—Admissible—To prove right to soil.]—**BARRY v. BEBBINGTON** (1792), 4 Term Rep. 514; 100 E. R. 1149.

Annotations:—*Reid*. **Bullen v. Michel** (1816), 2 Price, 399. *Mentd.* **Outram v. Morewood** (1793), 5 Term Rep. 121; **Rowe v. Brenton** (1828), 3 Man. & Ry. K. B. 133; **Middleton v. Melton** (1829), 10 B. & C. 317; **Gleadow v. Atkin** (1833), 3 Tyr. 289.

471. ——— Copy of lease by steward—Not admissible—To prove identity of parcel of manor.]—**DOE d. PADWICK v. SKINNER** (1848), 3 Exch. 84; 18 L. J. Ex. 107; 12 L. T. O. S. 131; 13 J. P. 200; 154 E. R. 766.

472. ——— Entries relating to fines assessed & fines paid & unpaid—Not evidence of fines paid.]—**ELY (DEAN & CHAPTER) v. CALDECOTT** (1831), 7 Bing. 433; 5 Moo. & P. 272; 9 L. J. O. S. C. P. 171; 131 E. R. 167.

473. ——— Entries in steward's favour—Not evidence—Unless connected with entries against interest.]—**WATERFORD (MARQUESS) v. KNIGHT**

(1844), 11 Cl. & Fin. 653; 9 Jur. 335; 8 E. R. 1250, H. L.

Annotations :—*Refd.* Raine v. Cairns (1841), 4 Hare, 327; Shepherd v. Londonderry (1852), 16 Jur. 796. *Mentd.* Nixon v. Taff Vale Ry. (1848), 7 Hare, 136; South Staffordshire Ry. v. Hall (1851), 3 Mac. & G. 353.

See, also, No. 452, *ante*.

474. — Entry against interest—Fifty-five years old—Admissible—Without proving death of steward.]—In ejectment, the question being whether the premises were parcel or no parcel of a manor, the lessor of pltf. produced from his muniments books purporting to be the books of V. steward to pltf.'s ancestor, A. In one of those books V. was debited, in 1782, with the receipt of rent for the premises in question. The balance of the account for the half year was struck but was not signed: under it was written in a different hand, "The above balance is accounted for in a general statement at the end of the year's account ending Michaelmas 1793, entered in a subsequent book." This entry was dated Feb. 18, 1795, & was signed by A. & by W. The balance was carried down in the account, & balances were struck in each half year: none were signed by V. but under each was a similar entry signed by A. & W. until the end of the last book, where was entered: "Balance due to V. £76. Feb. 18, 1795. The above account was this day settled; & the balance, £76, due thereon to V. senior, was paid by A. to W., & the vouchers delivered up to A." This was signed by A. & W. No evidence was given of the character or position of W. or that he was dead, or that he had ever existed:—*Held*: (1) inasmuch as the entry was produced from the proper custody, & purported to be fifty-five years old, it was not necessary to prove that W. was dead; (2) inasmuch as W. charged himself with the receipt of the last balance, & the entry of the payment of rent was part of the balance in that year which was carried down so as to form part of the last balance, the entry was admissible evidence of the payment of rent.—*DOE d. ASHBURNHAM (EARL.) v. MICHAEL* (1851), 17 Q. B. 276; 20 L. J. Q. B. 480; 17 L. T. O. S. 154; 15 Jur. 677; 117 E. R. 1286.

Annotations :—*Mentd.* Irwin v. Grey (1865), 19 C. B. N. S. 585; Wells v. Cooper (1874), 30 L. T. 721; Montreal Street Ry. v. Normandin, [1917] A. C. 170.

475. Lord's contract book—Entry by steward in—Not evidence of agreement for lease—Between lord & tenant.]—*CHARLEWOOD v. BEDFORD (DUKE)* (1738), 1 Atk. 497; 26 E. R. 314.

Annotations :—*Mentd.* Wills v. Stradling (1797), 3 Ves. 378; Williams v. Byrnes (1863), 1 Moo. P. C. C. N. S. 154.

476. Counterparts of leases from lord's repository—Evidence of demise—Without proof of enjoyment.]—Counterparts of old leases from the repository of a lord of a manor are evidence of the demise of the premises, without proof of enjoyment.—*CLARKSON v. WOODHOUSE* (1782), 3 Doug. K. B. 189; 5 Term Rep. 414; 99 E. R. 606; *affd.* (1786), 3 Doug. K. B. 194, Ex. Ch.

Annotations :—*Distd.* Arlett v. Ellis (1827), 7 B. & C. 346. *Refd.* Tyson v. Smith (1839), 9 Ad. & El. 406; Hilton v. Granville (1845), 5 Q. B. 701; Wakefield v. Buccleuch (1866-7), L. R. 4 Eq. 613. *Mentd.* Doe d. Egremont v. Pulman (1842), 3 Q. B. 622; Bristow v. Cormican (1878), 3 App. Cas. 641.

477. Ancient manor book—Custody must be proved.]—Where an ancient manor book is offered in evidence, the custody must be proved by a sworn witness. It is not enough that the book is produced in ct. by the counsel or steward of the lord of the manor, nor, as it seems, by the lord of the manor in person.—*EVANS v. REES* (1839), 10 Ad. & El. 151; 2 Per. & Dav. 626; 113 E. R. 58. *Annotations* :—*Refd.* Wenman v. Mackenzie (1855), 5 E. & B. 447. *Mentd.* Andrew v. Motley (1862), 12 C. B. N. S. 514.

478. Reeve's account—Admissible—As evidence of right to toll.]—*BRUNE v. THOMPSON*, No. 189, *ante*.

479. Original written verdict of jury of manor—Evidence only as against persons privy to verdict.]—The finding of the jurors of a certain manor is only evidence between parties privy to it; that is to say, it may be evidence between tenants & those claiming under tenants; it may be evidence to prove a custom, as between the lord & his tenants; or it may be evidence against the lord, to show the title of descendants of any individual tenant; that is, supposing B. to have been once admitted tenant of a manor, his admission would be evidence as against the lord, of the title of a party proving a customary descent from B., to be admitted a tenant of the manor; but, a document of this nature would be no evidence against third parties.—*MAULE v. MOUNSEY* (1844), 1 Rob. Eccl. 40; 8 Jur. 850; 163 E. R. 958.

480. Brief memorandum of judgment in court books—Followed by writ of *levari facias* reciting judgment—Supported by *viva voce* evidence of officer of court—Evidence of judgment.]—The judgment of a manor ct. in a plea of debt is sufficiently proved by production of a minute in the ct. books, containing entries of the pleadings, but setting forth, as to the judgment, only a form of caption, names of parties & suitors of the ct., & a memorandum that a *venire facias* was executed, verdict found for pltf., & final judgment entered for debt & costs, specifying the amounts: the deputy steward of the ct. stating that he was present at the trial, & that it was not usual to draw up a more formal judgment; & it appearing that a *levari facias* had issued, reciting a judgment in terms corresponding with the entry.—*DAWSON v. GREGORY* (1845), 7 Q. B. 756; 14 L. J. Q. B. 286; 5 L. T. O. S. 241; 9 Jur. 688; 115 E. R. 673.

481. Map used by steward—Not distinguishing between public & private roads—Not admissible—To prove public highway.]—In order to show that there was a public highway over certain closes, which were copyhold of a manor, the steward of the manor produced a map which had been used by a deceased steward for the purpose of defining the copyholds. Various roads, with their names, were marked upon it, & among them one traversing the closes in question, & called M. Lane. It was admitted that some of the roads were private, & there was nothing to show which were public & which were private:—*Held*: the map was not admissible in evidence.—*PIPE v. FULCHER* (1858), 1 E. & E. 111; 28 L. J. Q. B. 12; 32 L. T. O. S. 105; 5 Jur. N. S. 146; 7 W. R. 19; 120 E. R. 850. *Annotations* :—*Consd.* A.-G. v. Horner, [1913] 2 Ch. 140. *Refd.* Fowke v. Berington, [1914] 2 Ch. 308. *Mentd.* Vyner v. Wirral R. D. C. (1909), 73 J. P. 242.

Manorial survey—As evidence of boundaries.]—*See* BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., pp. 315, 316, 318, 319, Nos. 353, 354, 356, 357, 390, 393-5.

Proof of surrender.]—*See* Part XVIII., Sect. 2, sub-sect. 1, G.

Proof of admittance.]—*See* Part XVIII., Sect. 2, sub-sect. 2, F.

Evidence of extent of manor.]—*See* Part I., Sect. 4, sub-sect. 1.

SUB-SECT. 2.—PRODUCTION AND CUSTODY.

482. Books of manor court—May be ordered to be produced.]—Public books, as of a manor ct., ordered to be produced; but not books in private

Sect. 2.—Other manorial documents: Sub-sect. 2.
Part VI. Sect. 1: Sub-sects. 1, 2, 3 & 4.]

hands, & so a customary of a manor, appearing to be of great antiquity, & delivered down with the ct. rolls from steward to steward, though not signed by any one, is good evidence to prove the course of descent within the manor.—ANON. (1754), 2 Ves. Sen. 578; 28 E. R. 368, L. C.

See, also, No. 459, *ante*, & generally, EVIDENCE.

483. — Ordered to be delivered up—By

solicitor to steward.]—MARSHALL'S CASE (1773), 2 Wm. Bl. 912; 96 E. R. 539.

484. Indexes—Prepared by deputy steward—Ordered to be produced for inspection—In action by lord for delivery of all manorial documents.]—WINCHESTER (BP.) v. BOWKER (1861), 29 Beav. 479; 9 W. R. 404; 54 E. R. 713.

See, generally, DISCOVERY, INSPECTION & INTERROGATORIES.

See, also, No. 400 *et seq.*, *ante*.

Part VI.—Officers of the Manor.

SECT. 1.—THE STEWARD.

SUB-SECT. 1.—IN GENERAL.

485. Not a servant—Within bequest of wages to "servants living with" testator.]—TOWNSHEND v. WINDHAM & ROBINSON (1706), 2 Vern. 546; 23 E. R. 954, L. C.

Annotations:—*Refd.* Blackwell v. Pennant (1852), 22 L. J. Ch. 155; Ogle v. Morgan (1852), 1 De G. M. & G. 359; Thrupp v. Collett (1858), 26 Beav. 147.

As officer of court baron.]—See Part IV., Sect. 1, sub-sect. 6, *ante*.

As officer of customary court.]—See No. 4, *ante*.

As officer of court leet.]—See Part IV., Sect. 3, sub-sect. 6, *ante*.

SUB-SECT. 2.—APPOINTMENT.

486. Who may appoint—To hold King's courts—Not auditor or receiver for Crown.]—(1) The lord of a manor may retain one to be steward of his manor by parol, & it continues until his discharge; (2) a grant by the King's steward of a copyhold escheated, without warrant, is good, though not agreeable to his duty; (3) the King's auditor or receiver has no power to retain a steward to hold the King's cts., but he ought to have letters patent of the stewardships of the manor, to make voluntary grants; (4) the lord of a manor, or his steward *de jure*, may grant lands by copy, which anciently had been copyhold, though upon escheat they had been kept in the lord's hands for many years, but such a grant, as it is not an act of necessity, is not good by a steward *de facto* only.—HARRIS v. JAY (1599), 4 Co. Rep. 30 a; Cro. Eliz. 699; 76 E. R. 956.

Annotations:—*Generally*, *Refd.* R. v. Lisle (1738), Andr. 163; R. v. Richmond (1841), 5 Jur. 605. *Mentd.* Appleton v. Stoughton (1638), Cro. Car. 516.

487. Who may be appointed—Not infant—Unless office to be exercised personally or by deputy.]—SCAMBLER v. WATERS (1598), Cro. Eliz. 636; 78 E. R. 876.

Annotations:—*Consd.* Young v. Fowler (1839), Cro. Car. 555. *Refd.* Eddleston v. Collins (1852), 10 Hare, 99. *Mentd.* Salisbury's Case (1613), 10 Co. Rep. 58 b; Gee v. Freedland (1626), Cro. Car. 47.

See, also, No. 1453, *post*.

488. May be for term.]—A man may retain another to be the steward of his cts. for a time as for a year or more & he shall have so much for his labour & all this without any deed; & if he holds his cts. according to the retainer, he shall have an action of debt for his salary against the lord; but he shall not have a writ of annuity without a

writing of his office.—ANON. (1566), 2 Dyer, 248 a; 73 E. R. 549.

See, also, No. 491, *post*.

489. May be for life.]—BARTLETT v. DOWNES (1825), 3 B. & C. 616; 5 Dow. & Ry. K. B. 526; 3 L. J. O. S. K. B. 90; 107 E. R. 861.

Annotation:—*Generally*, *Mentd.* Wynne v. Griffith (1826), 8 Dow. & Ry. K. B. 470.

See, also, No. 491, *post*.

490. May be granted in reversion.]—WALTON'S CASE (1567), 3 Dyer, 270 b; 73 E. R. 601.

Annotations:—*Refd.* Shrewsbury's Case (1610), 9 Co. Rep. 46 b. *Mentd.* Ughtred's Case (1591), 7 Co. Rep. 9 b; Re Royal British Bank, *Ex p.* Walton's Exors. & *Ex p.* Hue (1857), 29 L. T. O. S. 322.

491. — For term if grantee lives so long.]—A grant was made to A. & his son of the stewardship of the King's honour of P. & the keeping of the cts. leet & baron within the honour to hold, after the determination of a prior grant, for 30 years if the grantees or either of them lived so long:—*Held*: (1) this was a good grant; (2) an action of trespass would lie for money received in connection therewith to the use of the grantees.—HOWARD v. WOOD (1679), T. Jo. 126; 2 Lev. 245; 84 E. R. 1179.

Annotation:—*Generally*, *Mentd.* Lamine v. Dorrell (1705), 2 Ld. Raym. 1216.

492. May be by parol.]—(1) The lord of a manor may by word retain one to be steward of his manor & to hold the cts. thereof & also a bailiff may be retained by word & this retainer shall serve till he is discharged.

(2) A custom to grant lands to a man for life & to his wife *durante viduitate* is good.—DOWN v. HOPKINS (1594), 4 Co. Rep. 29 b; Cro. Eliz. 323; 76 E. R. 954.

Annotations:—*As to* (1) *Refd.* Harris v. Jay (1599), 4 Co. Rep. 30 a. *Generally*, *Refd.* Fisher v. Wigg (1700), 1 P. Wms. 14; Smartle v. Penhallow (1703), 2 Ld. Raym. 994. *Mentd.* R. v. London (Bp.) & Birch (1694), 2 Salk. 539.

493. —.]—HARRIS v. JAY, No. 486, *ante*.

494. — Or by deed.]—HOLCROFT'S (LADY) CASE, No. 501, *post*.

See, also, No. 502, *post*.

495. — For term.]—ANON., No. 488, *ante*.

496. Appointment by Crown—To specified manors—Need not state county in which manors lie.]—(1) A grant by the Crown of the office of steward of the manors of B. & H. is sufficiently certain without saying in what county the manors lie.

(2) If the King grant the office of steward of certain manors to an earl, the grantee may appoint a deputy.

(3) The jury having found in a special verdict that S. was the deputy of the grantee of an office, it shall be intended that the deputy was made by

deed as he ought to be.—**SHREWSBURY'S (EARL) CASE** (1610), 9 Co. Rep. 46 b; 77 E. R. 798.

Annotations :—*Generally*, *Refd.* Hunt v. Bourne (1702), 1 Com. 124; Doe d. Devine v. Wilson (1855), 10 Moo. P. C. C. 502. *Mentd.* Darcy v. Jackson (1622), Palm. 224; Sury v. Pigot (1626), Poph. 166; Tyffyn v. Wingfield (1633), Cro. Car. 325; Holmes's Case (1634), Cro. Car. 376; Cooper v. St. John (1648), Sty. 130; Lyn v. Wyn (1665), O. Bridg. 122; R. v. Knollys (1693), 1 Ld. Raym. 10; R. v. Larwood (1694), 1 Salk. 167; Vaspour v. Edwards (1701), 12 Mod. Rep. 658; R. v. Ipswich (1705), 2 Ld. Raym. 1232; Peak v. Bourne (1732), 2 Stra. 942; R. v. Ponsonby (1753), 1 Keny. 1; R. v. Wells (1767), 4 Burr. 1998; Rafael v. Verelst (1776), 2 Wm. Bl. 1055.

SUB-SECT. 3.—POWERS.

As agent of the lord to make contracts.]—*See* AGENCY, Vol. I., p. 324, No. 411.

As steward of the court baron.]—*See* Part IV., Sect. 1, sub-sect. 6, *ante*.

As steward of the customary court.]—*See* No. 4, *ante*.

As steward of the court leet.]—*See* Part IV., Sect. 3, sub-sect. 6, *ante*.

497. Steward de jure—May grant lands to be held by copy—If anciently copyhold—Though many years in lord's hands by escheat—Not steward de facto.]—**HARRIS v. JAY**, No. 486, *ante*.

498. ——— According to custom of manor—Consent of committee of lunatic lord not necessary.]—*Held*: (1) the committee of a lunatic lord of a manor could not grant estates by copy according to the custom of his manor, for they had by law no estate in his manor nor were lords thereof, for the time being: but the lunatic by his steward appointed before his lunacy, might do so; (2) the steward, though a grant by him was good in law, should not, as a matter of caution, make any grant without the privity of the committee & the authority of the ct.—**BLEWIT'S CASE** (1611), Ley, 47; 80 E. R. 620.

499. ——— Admittance cannot be out of manor.]—The steward of a manor may take the surrender of a copyhold out of the manor, & a custom to the contrary is void; but he cannot admit out of the manor.—**TUKELY v. HAWKINS** (1696), 1 Ld. Raym. 76; 91 E. R. 947.

Annotation :—*Refd.* Doe d. Leach v. Whitaker (1833), 5 B. & Ad. 409.

500. ———.]—**DOE d. LEACH v. WHITAKER**, No. 355, *ante*.

501. ——— May take surrenders out of court—Though appointed by parol only.]—A steward of a manor retained generally by parol may take surrenders out of ct., for, till he be discharged, he is steward of the manor as well when retained by parol as by deed.—**HOLCROFT'S (LADY) CASE** (1594), 4 Co. Rep. 30 b; 76 E. R. 957.

502. ———.]—The steward by parol of a manor may take a surrender, & examine a *feme covert* out of ct.—**SMITHSON v. CAGE** (1619), Cro. Jac. 526; 79 E. R. 450.

503. ——— May not appoint attorney to take surrender.]—**WALRON v. CORHAM** (1613), Toth. 179; 21 E. R. 161.

504. ——— May authorise another to take surrender out of court.]—**PARKER v. KETT**, No. 550, *post*.

505. ——— May take surrender out of manor—Custom to contrary void.]—**TUKELY v. HAWKINS**, No. 499, *ante*.

506. ———.]—**DUDFIELD v. ANDREWS** (1689), 1 Salk. 184; 91 E. R. 168.

Annotation :—*Refd.* Doe d. Leach v. Whitaker (1833), 5 B. & Ad. 409.

507. ——— May examine feme covert out of

court—Though appointed by parol only.]—**SMITHSON v. CAGE**, No. 502, *ante*.

See, also, Nos. 486, 492, 496, *ante*.

508. ——— May enter on forfeited tenement—For non-payment of fine on admittance—After personal demand on tenant—Followed by refusal to pay.]—The steward of a manor may enter on a copyhold forfeited for the non-payment of the fine assessed upon admittance, without making a precept for seizure or having a written authority from the lord, provided he has made a personal demand on the tenant & the tenant has expressly refused to pay the fine.—**TROTTER v. BLAKE** (1677), 2 Mod. Rep. 229; 86 E. R. 1042.

Annotations :—*Refd.* Dimes v. Grand Junction Canal Co. (1846), 9 Q. B. 469; Bridges v. Garrett (1870), 39 L. J. C. P. 251. *Mentd.* Fraser v. Mason (1883), 31 W. R. 550.

509. ——— Steward appointed by Crown—May appoint deputy.]—**RUTLAND'S (EARL) CASE** (1610), 2 Brownl. 330; 123 E. R. 971.

Annotations :—*Refd.* Lyn v. Wyn (1662), O'Bridg. 122. *Mentd.* Cross v. Smith (1702), 2 Ld. Raym. 836.

510. ——— Earl appointed as steward.]—**SHREWSBURY'S (EARL) CASE**, No. 496, *ante*.

511. Steward de facto—Acts good.]—**PARKER v. KETT**, No. 550, *post*.

512. Infant steward—May exercise office—If of sufficient discretion.]—**EDDLESTON v. COLLINS**, No. 1453, *post*.

See No. 487, *ante*.

513. Joint steward—Grant by to hold by copy—Good.]—Two individuals were appointed joint stewards of the lands of a fugitive & the Lord Treasurer made to them a warrant to keep cts., grant copies, etc.; but one of them only kept ct. & granted copies:—*Held*: though in strictness he had no power without his colleague yet the grants were good, being made by one who had a colour to keep cts., etc.—**KNOWLES v. LUCE** (1579), Moore, K. B. 109; 72 E. R. 473.

Annotations :—*Consd.* Parker v. Kett (1701), 12 Mod. Rep. 466; R. v. Bedford Level Corpn. (1805), 6 East. 358. *Mentd.* R. v. Larwood (1694), 1 Ld. Raym. 29.

Deputy & under-stewards.]—*See* Sect. 2, *post*.

Person having concurrent authority—With steward.]—*See* No. 551, *post*.

SUB-SECT. 4.—RIGHTS, DUTIES AND LIABILITIES.

Right to custody of court rolls.]—*See* Part V., Sect. 1, sub-sect. 1, *ante*.

514. Right to prepare surrenders—By special custom.]—**R. v. RIGGE** (1819), 2 B. & Ald. 550; 106 E. R. 467.

Annotation :—*Consd.* R. v. Bishop's Stoke (1840), 8 Dowl. 608.

515. ———.]—**R. v. BISHOP'S STOKE (LORD OF MANOR)**, No. 1597, *post*.

516. Duty to enter certificate of enfranchisement—& furnish copy of entry—On receipt of certificate of enfranchisement—Under Union & Parish Property Act, 1837 (c. 50), ss. 2, 3—Enforceable by mandamus.]—(1) A mandamus lies to the steward of a manor to enter a certificate of the enfranchisement of copyhold lands, bought by the guardians of the poor of a union, for the purposes of the poor law, & to furnish a copy of such entry, under the above sect., upon receipt of a certificate under the hands & seals of the poor law comrs. that the valuation of such lands has been made & the enfranchisement thereof has been effected in the manner prescribed by s. 2 of the Act.

(2) It is not necessary that the guardians should be admitted for the purpose of having a common law conveyance made to them by the lord, & therefore a fine in respect of such admittance is

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not payable by them to the lord.—*R. v. TOLLE-MACHE* (1844), 1 New Mag. Cas. 39; 3 L. T. O. S. 159; 9 J. P. 40.

517. On taking accounts—Whether credits for gratuities given will be allowed—Without proof of payment or particulars.]—Qu.: whether on taking accounts against a steward, he will be allowed credit for gratuities on his statement in examination, without proof of payment, or giving particulars.—*TREDCROFT v. WHITE* (1671), 3 Rep. Ch. 72; 21 E. R. 732.

518. Covenant by steward to pay annuity to retiring steward—New steward appointed at will—Subsequently appointed for life—Liability not terminated.]—S. was lord of the manor of T., & the office of steward of the manor was in his gift. The former steward resigned his office, upon S. agreeing to execute a bond to him for an annuity for his life. Deft., in consideration of S. permitting deft. to hold the office at the will of S., promised S. to pay out of the fees of the office the above annuity to the late steward during his life, & to indemnify S. therefrom so long as he, deft., should execute the office, either by himself or deputy, to be approved of by S. S. appointed deft. accordingly, & afterwards appointed him by deed for life. S. died, & deft. refusing to pay the annuity to the late steward, on the ground that his promise only extended to his continuing in office at the will of S., which had been terminated by the grant for life, he was thereupon sued on the promise by the exors. of S.:—*Held:* he was liable.—*MATTOCK v. KINGLAKE* (1838), 8 Ad. & El. 795; 1 Per. & Dav. 46; 1 Will. Woll. & H. 667; 8 L. J. Q. B. 56; 112 E. R. 1039.

Liability as steward of court baron—For acts of bailiff of court.]—See Nos. 338, 339, ante.

Summary jurisdiction of courts—Over solicitor steward.]—See Sect. 1, sub-sect. 6, post.

SUB-SECT. 5.—FEES AND CHARGES.

A. What Fees Payable.

519. Fees not regulated by custom—Charged on quantum meruit.]—The steward of a manor brought an action for a particular rate of fees claimed to be due to him from a tenant on his admission to six several copyhold estates:—*Held:* where a person is admitted to several distinct copyhold tenements, the steward of the manor is not entitled, without proving a custom, to full fees on each admission, separately, but he may stand on his *quantum meruit*.—*EVEREST v. GLYN* (1815), Holt, N. P. 1, N. P.; *subsequent proceedings*, 6 Taunt. 425. *Annotation:*—*Consd. Traherne v. Gardner* (1856), 5 E. & B. 913.

See, also, No. 522, post.

520. Admittance of single tenant—To tenement formerly held by tenants in common—Fees payable on several interests.]—Devisees of a copyhold holding as tenants in common have several estates to which they must be severally admitted, & for which several services are due to the lord & several heriots on the death of each tenant; & the multiplication of heriots & fees on admission still continues, notwithstanding the reunion of the same land afterwards in one person, the estates or interests in the land, once divided in severalty continuing several.—*ATTREE v. SCUTT* (1805), 6 East, 476; 2 Smith, K. B. 449; 102 E. R. 1370. *Annotations:*—*Expld. & Dbtd. Garland v. Jekyll* (1824), 2 Bing. 273; *Holloway v. Berkeley* (1826), 6 B. & C. 2.

Refd. R. v. Eton College (1846), 8 Q. B. 526; *Padwick v. Tyndale* (1858), 1 E. & E. 184.

See, also, No. 1078, post.

521. — To several tenements—Fee payable on each admittance—Proportioned to work done—Except by special custom.]—EVEREST v. GLYN, No. 519, ante.

522. — — — — — Tenements formerly parcel of single tenement.]—(1) Where a steward of a copyhold ct. refuses to admit except upon payment by the tenant of fines & fees not duly payable, as where the steward insists on payments as for four admittances where payments are due in respect of one only, or of higher fees to himself upon the admittance of joint tenants than are due in respect of a single tenant, the tenant, if he pays the money under protest, is entitled to recover it back as money had & received. His right to recover the full excess is not lessened by his having, on one occasion, offered to pay, upon admittance, a sum including part of such excess, the steward not having accepted such offer.

(2) If a copyhold tenant convey his tenement in several parcels to different parties, & some only of those parcels afterwards devolve upon a single person, such person, in the absence of special custom, is not entitled to be admitted by a single admittance; but the lord may insist upon several admittances, whether in a single instrument or not, in respect of each parcel which has so devolved, & there must be stamps in respect of each.

(3) The steward is entitled to fees in respect of each, but not necessarily to an equal fee in respect of each; his payment is to be in proportion to his labour.

(4) Under 55 Geo. 3, c. 192, s. 2, if copyhold lands are devised, the steward is entitled to fees as in respect of a surrender to the use of the will, though such surrender is no longer necessary, to same amount as would have been payable for an actual surrender. Where, by the custom of the manor, surrenders were, before the statute, sometimes made in ct., & sometimes out of ct. & then presented in court, registered & enrolled, the payment is still to be made, the labour of the steward having been practically the same in each case.

(5) Where admittance is claimed on behalf of joint tenants, the steward, in the absence of special custom, is not entitled to higher fees than upon the admittance of a single tenant.—*TRAHERNE v. GARDNER* (1856), 5 E. & B. 913; 25 L. J. Q. B. 201; 2 Jur. N. S. 394; 119 E. R. 721; *sub nom. TREHERNE v. GARDNER*, 26 L. T. O. S. 271; 4 W. R. 281; *subsequent proceedings*, *TRAHERNE v. GARDNER* (1857), 8 E. & B. 161.

Annotations:—*As to (2) Consd. Johnstone v. Spencer* (1885), 30 Ch. D. 581. *As to (3) Refd. Bryant v. Foot* (1868), L. R. 3 Q. B. 497.

523. Admittance of purchaser—Of part of allotment under inclosure Act—In respect of sixteen tenements held under five titles—Custom entitling steward to same admittance fee for part as for whole—Steward entitled to sixteen fees.]—U., a copyhold tenant of the manor of S., was owner of sixteen separate tenements, holden by sixteen separate copies of ct. roll, & sixteen yearly quit rents. He was admitted to the tenements at five different times, & by five different titles. An inclosure Act passed directing comrs. to allot the waste lands in S. among the owners thereof, in proportion to their rights & interests in same. The Act also directed that the allotted lands should be held by the allottees under same tenures, rents, customs & services as the lands in respect of which they were allotted would have been in case the Act had not been passed, & that, where the lands were held under different titles, or for

different estates, the comrs. should distinguish the lands held for each of such estates & titles, & set out the allotments accordingly. The comrs. allotted to U., in respect of his sixteen copyhold tenements, five pieces of land, amounting in the whole to forty-nine acres, but did not distinguish in respect of which of the sixteen tenements, or of what particular estates, the five pieces were allotted. U. afterwards surrendered to deft. the fifth allotment, & deft. was duly admitted to same. Before the inclosure Act passed, when any person was admitted in severalty to a part of a copyhold tenement, the steward of the manor was entitled, upon such admission, to same fees as if such person had been admitted to the whole of such tenement. In an action by the steward to recover sixteen fees in respect of deft.'s admission to the fifth allotment:—*Held*: such allotment must be considered as an allotment of a portion of each of the sixteen former tenements, & the steward was entitled to recover sixteen fees.—*EVANS v. UPSHER* (1847), 16 M. & W. 675; 16 L. J. Ex. 185; 9 L. T. O. S. 106; 11 J. P. 759; 153 E. R. 1361.

Annotation:—*Reid*. *Cooper v. Norfolk Ry.* (1849), 3 Exch. 546.

524. Admittance of tenants in common—Fees payable as though held in severalty.—*ATTREE v. SCUTT*, No. 520, *ante*.

525. Admittance of joint tenants—Fee payable as on admission of single tenant—Except by special custom.—*TRAHERNE v. GARDNER*, No. 522, *ante*.

526. Surrender by tenants in common—In one conveyance—Fee payable as though each held severally.—*R. v. ETON COLLEGE*, No. 1078, *post*.

See, also, No. 520, *ante*.

527. On devise by will—Fee payable as on surrender to use of will—Whether by custom surrenders formerly made in or out of court.—*TRAHERNE v. GARDNER*, No. 522, *ante*.

Right of steward to prepare surrender.—*See* Nos. 514, 515, *ante*.

On surrender & admittance—On compulsory acquisition of copyhold tenement.—*See* COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., p. 273, No. 2002.

On production of court rolls—In action by copyhold tenants against lord.—*See* No. 432, *ante*.

Of solicitor steward.—*See* Sub-sect. 6, *post*.

528. Whether right to fees for copies of court roll lost—By delay in delivery—Not by delay caused by person other than steward.—*Qu.*: whether the steward of a manor, who neglects to comply with Probate & Legacy Duties Act, 1808 (c. 149), s. 33, as to delivering out copies of ct. roll within four months, can maintain an action for his fee in respect of them.

Where such ct. rolls were delivered to a person who filled an equivocal character as between the steward & the tenant:—*Held*: such delivery was substantially a compliance by the steward with the provisions of the Act.—*UNDERWOOD v. WOODHOUSE* (1832), 1 L. J. K. B. 219.

B. Recovery of Excess.

529. Recoverable as money had & received—Payment through necessity—Excessive fees for producing court rolls.—An action was brought to recover back money paid to the steward of a manor, for producing at a trial some deeds & ct. rolls, for which he had charged extravagantly. Objection was taken, that the money was voluntarily paid & so could not be recovered back again. On proof that the party could not do without the deeds:—*Held*: the money was paid through necessity & the urgency of the case & was recover-

able.—*— v. PIGOTT* (prior to 1799), cited in 2 Esp. 723.

Annotations:—*Consd.* *Cartwright v. Rowley* (1799), 2 Esp. 723. *Apld.* *Parker v. G. W. Ry.* (1844), 3 Ry. & Can. Cas. 563. *Reid.* *Close v. Phipps* (1844), 7 Man. & G. 586.

530. ——— Payment under protest—Refusal by steward to admit.—*TRAHERNE v. GARDNER*, No. 522, *ante*.

SUB-SECT. 6.—SOLICITOR STEWARD.

531. What charges are taxable—Charges for holding court leet—If included in bill containing other taxable items.—Charges for holding the cts. leet of a manor by the steward, are charges for business connected with his professional character as an attorney, & are like conveyancing charges taxable, when found in a bill containing other taxable items.—*LUXMORE v. LETHBRIDGE* (1822), 5 B. & Ald. 898; 106 E. R. 1419; *sub nom.* *LETHBRIDGE v. LUXMORE*, 1 Dow. & Ry. K. B. 511.

532. ——— Not charges for preparing surrender & admittance—On purchase of lands held of manor—In character of steward only.—The bill of fees & charges of a steward of a manor, who is a solr., but is employed only for the purpose of preparing a surrender, admittance, etc. of a purchaser to lands held of the manor, in his character of steward, is not taxable under Solicitors Act, 1843 (c. 73). The Act does not confer the right to tax every bill of a solr., for all kinds of employment in which he may at any time be engaged.—*Re WARD, ALLEN v. ALDRIDGE* (1844), 5 Beav. 401; 13 L. J. Ch. 155; 2 L. T. O. S. 438; 8 Jur. 435; 49 E. R. 633. *Annotations*:—*Consd.* *Re Collis* (1854), 23 L. T. O. S. 40; *Re Baker, Lees*, [1903] 1 K. B. 189. *Mentd.* *Re Osborne* (1858), 25 Beav. 353.

533. Jurisdiction of court over—Summary order for delivery of lord's muniments—After satisfaction of lien—Allowed.—The ct. will entertain summary jurisdiction over an attorney of the ct. in obliging him to deliver up deeds, etc. on satisfaction of his lien, though they came into his hands as steward of a ct. & receiver of rents, but if it appear that a third person is interested in the deeds, etc. the ct. will take a security from the person to whom they are delivered to produce them on demand for the inspection of such third person.—*HUGHES v. MAYRE* (1789), 3 Term Rep. 275; 100 E. R. 572.

Annotations:—*Distd.* *Cocks v. Harman* (1805), 6 East, 404; *Re Lowe* (1807), 8 East, 237. *Apld.* *Ex p. Grubb* (1813), 5 Taunt. 206. *Expld. & Apld.* *Rawes v. Rawes* (1836), 7 Sim. 624. *Consd.* *Re Jennings*, [1903] 1 Ch. 906. *Mentd.* *Ex p. Uxbridge* (1801), 6 Ves. 425.

534. ——— Refused.—The ct. refused to proceed summarily against a steward who was an attorney, to compel him to account before the master for receipts & payments in respect of a mortgaged estate, & to pay the balance to his employer, & to deliver up upon oath all deeds, writings, etc. relative to the estate; this being the proper subject of a bill in equity, & not a case for a mandamus to compel a steward of a manor to deliver up ct. rolls, etc.; in lieu of which this summary mode of proceeding has been adopted where the steward of the manor is an attorney.—*COCKS v. HARMAN* (1805), 6 East, 404; 2 Smith, K. B. 409; 102 E. R. 1341.

Annotations:—*Reid.* *Re Lowe* (1807), 8 East, 237; *Re Murray* (1826), 1 Russ. 519; *Re Barker* (1834), 6 Sim. 476.

535. ——— Allowed.—*Ex p. CORPUS CHRISTI COLLEGE*, No. 401, *ante*.

536. ——— Summary order to account for money received—& payment of balance—In respect of mortgaged estate—Refused.—*COCKS v. HARMAN*, No. 534, *ante*.

Sect. 1.—The steward: Sub-sects. 6 & 7. Sects. 2, 3, 4 & 5. Part VII. Sect. 1: Sub-sect. 1.]

537. ——— Not allowed—Unless misconduct proved.]—The ct. will not, on a summary application, order a steward of a manor to account for fines & moneys received, & to pay over to the lord what may be due, merely because the steward is an attorney, unless the application is made in respect of conduct as an attorney.—ANON. (1855), 25 L. T. O. S. 161; *sub nom. Ex p.* ———, 19 J. P. Jo. 373; *sub nom. Re AN ATTORNEY*, 3 W. R. 515.

538. ——— Summary order for payment of rents received—Allowed.]—*Ex p.* CORPUS CHRISTI COLLEGE, No. 401, *ante*.

539. ——— Summary order for refund of purchase-money—Paid to steward acting as solicitor for purchaser—Refused.]—A. purchased parcel of a manor for building, & paid money to an attorney, who acted for him in the purchase, in his capacity of steward of the manor:—*Held*: the attorney could be compelled to refund the money by summary proceedings.—*Ex p.* FAITH (1841), 9 Dowl. 973; 5 Jur. 751.

540. Entitled to costs as solicitor—On voluntary enfranchisement—Right not lost by costs being claimed as steward.]—Pltf., as steward of a manor, sued in the county court a copyhold tenant for solr.'s costs attending the enfranchisement of his tenement. Deft. agreed to abide by the valuation of the surveyor named by the steward, & paid over the consideration & the surveyor's fee in accordance with that valuation. Pltf.'s claim consisted of the costs of the enfranchisement deed, which deft. received from pltf.:—*Held*: this being a voluntary enfranchisement, the Copyhold Acts, 1852 (c. 51) & 1858 (c. 94) did not apply, & pltf. was entitled to the charges for work done on deft.'s behalf, & the words "as steward," by which pltf. described himself in the plaint, might be treated as surplusage.—BLAKER *v.* WELLS (1873), 28 L. T. 21.

541. Steward partner of trustee of manor—Not bound to account to trust estate—For fees received as steward—Though fees brought into partnership accounts.]—E. & his co-trustee appointed E.'s partner steward of a manor which formed part of the trust estate, & fees for manorial business were paid to the steward by the tenants & brought into the partnership accounts:—*Held*: the fees, not being received by the steward in his character of solr., were not liable to be accounted for to the trust estate.—*Re CORSELLIS, LAWTON v. ELWES* (1887), 34 Ch. D. 675; 56 L. J. Ch. 294; 56 L. T. 411; 51 J. P. 597; 35 W. R. 309; 3 T. L. R. 355, C. A.

Annotation:—*Mentd. Re Doody, Fisher v. Doody, Hibbert v. Lloyd*, [1893] 1 Ch. 129.

SUB-SECT. 7.—TERMINATION OF APPOINTMENT.

542. By dismemberment of manor—By grantor of office.]—HOWARD'S CASE (1627), Hut. 86; Cro. Car. 59; 123 E. R. 1119.

Annotation:—*Mentd. Pease v. Courtney*, [1904] 2 Ch. 503.

543. By removal—Only when another available to perform functions.]—WINDHAM *v.* GIUBILEI, No. 403, *ante*.

—.]—*See, also*, Nos. 560, 561, 562, *post*.

SECT. 2.—UNDER-STEWARDS AND DEPUTY STEWARDS.

544. Under-steward—May grant lands to hold by copy—In court baron—Without authority of

lord or a steward.]—If an under-steward holds a ct. baron, & grants copyholds to the tenants by copy of ct. roll, without authority of the lord, or high steward, this is a good grant, for *in plend curid*. It is otherwise if he does it out of ct., without such authority.—ANON. (1548), Bro. N. C. 56; 73 E. R. 871.

545. ——— Out of court—Only by authority of lord or steward.]—ANON., No. 544, *ante*.

Deputy steward—Power of steward to appoint.]—*See* Nos. 496, 509, *ante*.

546. ——— Who may be appointed—Infant—Surrender of copyholds by married woman—Taken by deputy aged twenty—Valid.]—EDDLESTON *v.* COLLINS, No. 1453, *post*.

547. ——— Appointment must be in writing.]—SHREWSBURY'S (EARL) CASE, No. 496, *ante*.

548. ——— May take conditional surrender—Though appointed to take surrender in fee.]—BURDET'S CASE (1586), Cro. Eliz. 48; 78 E. R. 311.

May prove court rolls.]—*See* No. 1763, *post*.

May take surrender by married woman.]—*See* No. 1453, *post*.

— Production of indexes prepared by.]—*See* No. 484, *ante*.

549. ——— May appoint under-deputy.]—The lord of a manor granted the stewardship of the manor to W., who appointed C. to be his deputy to keep the ct. & he delivered certain copyhold lands on the death of the tenant. C. committed one H. his servant to keep the ct. & grant the land by copy. It was done accordingly, & the lord of the manor subsigned it & confirmed it:—*Held*: the delegation of authority by C. was good, especially since the lord of the manor agreed to it.—DACRES' (LORD) CASE (1584), 1 Leon. 288; 74 E. R. 263.

550. ——— To do particular act.]—The deputy of the steward of a manor may by writing under his hand authorise a person to receive the surrender of a copyhold estate to the use of the will of the surrenderor, out of ct.; for although a deputy cannot make a deputy generally, he may authorise another to do any particular act within the limit of his power as deputy; for the steward might authorise another to take such a surrender, & it is essential to the character of a deputy that he should have as extensive a power as his principal.

Acts of a steward *de facto* are good.—PARKER *v.* KETT (1701), 12 Mod. Rep. 466; 1 Com. 84; Holt, K. B. 221; 1 Ld. Raym. 658; 1 Salk. 95; 88 E. R. 1454.

Annotations:—*Reid. Bridges v. Garrett* (1869), L. R. 4 C. P. 580. *Mentd. R. v. Lisle* (1738), Andr. 163; *Andrews v. Emmot* (1788), 2 Bro. C. O. 297; *Mountford v. Gibson* (1804), 4 East, 441; *R. v. Bedford Level Corpn.* (1805), 6 East, 356; *Langley v. Sneyd, Alcock v. Sneyd* (1822), 7 Moore, C. P. 165; *Woolley v. Clark* (1822), 1 Dow. & Ry. K. B. 409; *Doe d. Nowell v. Roake* (1825), 2 Bing. 497; *Doe d. Hornby v. Glenn* (1834), 3 Nev. & M. K. B. 837; *Thomson v. Harding* (1853), 2 E. & B. 630; *Ellis v. Ellis* (1905), 53 W. R. 617.

551. Clerk of castle lying in manor—May take surrender—By custom.]—A surrender of copyhold lands in the manor of F. was proved to have been taken by S., who stated that he held the office of clerk of the castle of F., which was in the manor, by patent from the lord; that there was a custom for him to take surrenders; that the steward also took them, & that he, S., had a concurrent jurisdiction with the steward. The patent contained no authority to that effect:—*Held*: evidence for a jury that S. was entitled by custom to take the surrender.—DOE d. STILWELL *v.* MELLERSH (1836), 5 Ad. & El. 540; 2 Har. & W. 341; 1 Nev. & P. K. B. 80; 6 L. J. K. B. 41; 111 E. R. 1270.

SECT. 3.—THE BAILIFF.

552. Appointment—May be by parol.]—Down v. HOPKINS, No. 492, *ante*.

553. — Of lessee of manor—For term of years—Does not operate as surrender of lease—Though lease made subject to void exceptions.]—(1) If the lessee for years of a manor, with exception of wards, marriages, reliefs, etc. afterwards takes a lease of the bailiwick, this shall not operate as surrender of the first lease notwithstanding the exception is void.

(2) A bailiff of a manor, although he has no interest in the land may receive rents, take fealty, etc.—GYBSON v. SEARL (1607), Cro. Jac. 176; 79 E. R. 154.

Annotation:—*As to* (1) *Refd.* Roe d. Berkeley v. York (1805), 6 East, 86.

554. — How tested—Quo warranto.]—Information in nature of *quo warranto* lies for the office of bailiff of a ct. leet, being a prescriptive officer having power to summon & select the jury.—R. v. BINGHAM (1802), 2 East, 308; 102 E. R. 386.

Annotation:—*Refd.* Darley v. R. (1846), 12 Cl. & Fin. 520.

Removal.]—See Nos. 560, 562, *post*.

555. Powers—Whether may distrain *ex officio*.]—STEVERTON v. SCROGS (1598), Cro. Eliz. 698; Moore, K. B. 607; 78 E. R. 933.

Annotations:—*Refd.* Matthews v. Carew (1702), 1 Salk. 107; Wicker v. Norris (1735), Lee temp. Hard. 116.

556. — May receive rents.]—GYBSON v. SEARL, No. 553, *ante*.

557. — May take fealty.]—GYBSON v. SEARL, No. 553, *ante*.

Liability of steward of court baron—For acts of bailiff.]—See Nos. 338, 339, *ante*.

of the field, or his farmer. Certain disputes within the lordship were tried at a customary ct. called the barmote ct., before the deputy steward & a jury who were summoned by the barmaster, or his deputy, on precept from the deputy steward. The summoning officer selected them at his discretion. The lord granted, by indenture, to A. for years, in consideration of a certain fine & rent, all the mines in the district, with the duties of lot & cope, & also, for same term, the office called the barmastership, with all profits, etc., thereto belonging, at a rent, with a proviso, for re-entry, if the grantee should make a deputation of the office without license, or without having such deputation enrolled:—*Held*: (1) the grant, as to the barmastership, was void, because the grantee took an interest, as lessee or farmer, incompatible with the duties of barmaster; (2) the grant was not void as giving incompatible offices, the lease not conferring an office; (3) on an issue whether or not A. was barmaster at a certain time, the verdict ought to be entered in the negative.—ARKWRIGHT v. CANTRELL (1837), 7 Ad. & El. 565; 2 Nev. & P. K. B. 582; Will. Woll. & Dav. 686; 7 L. J. Q. B. 63; 2 Jur. 11; 112 E. R. 583.

559. Layer keeper of Swansea harbour—Is manorial officer—Not within Municipal Corporations Act, 1835 (c. 76)—Form of oath.]—HALL v. SWANSEA CORPN. (1844), 5 Q. B. 526; 1 Dav. & Mer. 475; 13 L. J. Q. B. 107; 2 L. T. O. S. 345; 8 J. P. 503; 8 Jur. 213; 114 E. R. 1348.

Annotations:—*Mentd.* Lowe v. L. & N. W. Ry. (1852), 18 Q. B. 632; Lawford v. Billericay R. C., [1903] 1 K. B. 772.

Gamekeepers.]—See No. 1040, *post*, & generally, GAME.

SECT. 5.—REMOVAL.

560. Office with profits—Without rendering account—Grantor cannot remove.]—If one grant an office of bailiff or steward, or the like, with the profits thereof, without rendering an account, he cannot discharge the grantee, but he shall continue to have the profits of the office; but otherwise it is, if no fee or profits had been granted for the exercising thereof.—FERRER v. JOHNSON (1594), Cro. Eliz. 336; 78 E. R. 585.

561. Office without fee or profits—May be removed by grantor.]—FERRER v. JOHNSON, No. 560, *ante*.

562. — Appointed by vendor of manor—May be removed by purchaser.]—HARVEY v. NEWLYN (1601), Cro. Eliz. 859; 78 E. R. 1085.

Annotation:—*Consd.* Bartlett v. Downes (1825), 3 B. & C. 616.

SECT. 4.—OTHER OFFICERS.

558. Barmaster in leadmining district—Grant of office combined with grant of mines—Void as to grant of office.]—By the custom of a lordship in a leadmining district, there was an officer called a barmaster, appointed by the lord to see that the duties of lot & cope, etc., were properly accounted for to the lord; to be indifferent & to do justice between miner & miner, & miner & adventurer, & miner & lord; to apportion veins of ore newly discovered between the discoverer & other adventurers, & the lord; to enforce proper working of the veins; to keep a dish by which all the ore was to be measured; to punish small depredations, & to collect fines. In case of certain defaults, he was himself liable to fines, payable to the lord

Part VII.—Manorial Tenures.

SECT. 1.—CUSTOMARY FREEHOLDS.

SUB-SECT. 1.—IN GENERAL.

563. Estates not held at will of lord—Though granted by copy of court roll.]—An estate granted by copy, etc. omitting the words *ad voluntatem domini*, shall be intended a customary freehold.—HUGHES v. HARRYS (1631), Cro. Car. 229; 79 E. R. 800.

564. — Though passing by surrender—According to the custom of the manor.]—Whatever may pass by deed without surrender is no copyhold; so also whatever may pass by surrender according to the custom of the manor without saying "at the will of the lord" is no copyhold.

Where copyhold is forfeited seizure by the lord is not necessary.

An admission of a copyholder who has forfeited his holding by the lord who for the time being has the title to the manor dispenses with the forfeiture but not where the admission is by a lord who has no title.

A surrender to two copyholders out of court to the use of W. R. is a good surrender within a covenant to surrender to W. R.—PAGE v. SMITH (1696), 3 Salk. 100; 91 E. R. 716.

565. — — — — —.]—Lands granted *tenendum secundum consuetudinem manerii* are not copyhold but customary freehold.

Sect. 1.—Customary freeholds: Sub-sects. 1, 2 & 3, A. & B.; sub-sect. 4. Sect. 2.]

Upon a trial at bar in ejectment for lands, parcel of the manor of O., which by very ancient books of that manor appeared to be parcel of the Duchy of Cornwall, & still pass by surrender & copy of ct.-roll, but yet are not copyhold, because it did not appear in any of the rolls or copies now produced, that they are granted *ad voluntatem domini manerii*, but only *tenendum secundum consuetudinem manerii*:—**Held**: these lands are not copyhold, but a customary freehold; & for that reason the verdict was for pltf.—**GALE v. NOBLE** (1897), Carth. 432; 90 E. R. 850.

Annotations:—**Consd.** **Brown v. Rawlins** (1806), 7 East, 409. **Refd.** **Portland v. Hill** (1866), L. R. 2 Eq. 765.

566. Estates passing by deed—Without surrender.]—PAGE v. SMITH, No. 564, *ante*.

567. Proof of tenure—Ancient admissions to hold by custom of manor—Modern admissions to hold at will of lord—Insufficient.]—Where, in a manor, the copies of admissions were anciently to hold of the lord according to the custom of husbandry of the said manor, but other copies were to hold at the will of the lord also, & all the modern copies were so:—Held: this land was copyhold & not customary freehold.—**BROWN v. RAWLINS** (1806), 7 East, 409; 103 E. R. 158; *sub nom.* **BOURN v. RAWLINS**, 3 Smith, K. B. 405.

568. — Tenants holding of manor where no copyholds—At rent increased from time to time—Holding not traced back more than 200 years—Insufficient.]—A piece of land parcel of a manor, of which there were no copyhold tenants, had been held since 1709 at a rent which had from time to time increased from 1s. to 5s. 1d. Some of the additions to the rent were traceable to additions to the holding, but some were not so traceable. There was no trace of the holding prior to 1709:—Held: defts. the present holders, were not freehold tenants at a quit-rent, but merely annual tenants of the lord of the manor.—**FOLJAMBE v. SMITH'S TADCASTER BREWERY CO.** (1904), 73 L. J. Ch. 722; 91 L. T. 312; 48 Sol. Jo. 699.

569. Application of Land Transfer Act, 1897 (c. 65) s. 1 (4).]—Land Transfer Act, 1897 (c. 65), s. 1 (4) provides that the expression real estate in Part I is not to be deemed to include land of copyhold tenure or customary freehold in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant, & the concluding words apply to land of copyhold tenure as well as customary freehold.

Therefore an equitable estate or interest in copyholds devolves, on the death of the owner, on his personal representative or personal representatives as if it were a chattel real vesting in him or them.—**Re SOMERVILLE & TURNER'S CONTRACT**, [1903] 2 Ch. 583; 72 L. J. Ch. 727; 89 L. T. 405; 52 W. R. 101; 47 Sol. Jo. 727.

Enfranchisement.]—See Part XIII., post.

SUB-SECT. 2.—IN WHOM FREEHOLD VESTED.

570. Freehold in lord—Estate held by custom of the manor—Though not at will of lord—Passing by surrender & admittance.]—The freehold of an estate, parcel of a manor & demiseable only by the licence of the lord, passing by surrender & admittance, to which the tenant was admitted by the description of a customary tenement, *habendum* to her & her heirs, *tenendum* of the lord by the rod, according to the custom of the manor, by the

accustomed rent, suit of ct., customs & other services, is in the lord & not in the tenant, though not holden *ad voluntatem domini*. But such an estate, whether strictly copyhold or not to all purposes, may well pass under the description of copyhold in a will; the intention to pass it under that description being apparent.—**DOE d. COOK v. DANVERS** (1806), 7 East, 299; 3 Smith, K. B. 291; 103 E. R. 115.

Annotations:—**Consd.** **Thompson v. Hardinge** (1845), 1 C. B. 940; **Portland v. Hill** (1866), 12 Jur. N. S. 286. **Refd.** **Bingham v. Woodgate** (1829), 1 Russ. & M. 32; **Delacherols v. Delacherols** (1864), 4 New Rep. 501. **Mentd.** **Hume v. Rundell** (1822), 6 Madd. 331; **Cholmondeley v. Clinton** (1823), Turn. & R. 107.

571. — — — — Passing by lease, release & admittance.]—THOMPSON v. HARDINGE (1845), 1 C. B. 940; 14 L. J. C. P. 268; 5 L. T. O. S. 330; 9 Jur. 927; 135 E. R. 813.

Annotations:—**Refd.** **Passingham v. Pitty** (1855), 17 C. B. 299; **Delacherols v. Delacherols** (1864), 11 H. L. Cas. 62. **Mentd.** **Ryan v. Clarke** (1849), 13 Jur. 1000.

572. — — — —.]—In lands held by copy of court roll not at the will of the lord but according to the custom of the manor the freehold is in the lord, & in the absence of custom, the onus of establishing which lies upon the tenant, the tenant has no right to work the minerals.

The existence of a customary, compiled within the period of legal memory, is conclusive evidence against the existence of a custom not mentioned therein.

The customary of a manor, compiled within the period of legal memory, recognised a right in the tenants to dig coal *propriis usis*. It appeared, from subsequent documents, that the privilege of digging coal for their own consumption had been enjoyed by the tenants under the waste, but there was no evidence of a similar restricted enjoyment by the tenants under their customary inclosures. There was evidence of tenants having, during a long period, dug coal in their customary inclosures for sale:—**Held**: the custom was restricted to digging in the waste for coal for the tenants' own consumption, & the tenants had no right of digging coals under their customary inclosures.—**PORTLAND (DUKE) v. HILL** (1866), L. R. 2 Eq. 765; 35 L. J. Ch. 439; 12 Jur. N. S. 286; 15 W. R. 38.

Annotations:—**Refd.** **Heath v. Deane**, [1905] 2 Ch. 86. **Mentd.** **Morley v. Clifford** (1882), 20 Ch. D. 753; **Johnstone v. Spencer** (1885), 30 Ch. D. 581; **Coote v. Ford** (1900), 83 L. T. 482.

SUB-SECT. 3.—ALIENATION.

A. Inter vivos.

573. By surrender & admittance—By special custom.]—Held: for pltf., because the consuance was insufficient; for the lands whereupon the distress was taken, being freehold (for so they must be taken to be, though it was shown that M. was seised according to the manor, because it was not said at the will of the Lord) could not be conveyed by surrender in ct., & an admittance without an especial custom to pass them in that form; & it was not enough to say, that he surrendered them *secundum consuetudinem manerii*, but the custom should have been fully set forth.—**ROGERS v. BRADLY** (1690), 2 Vent. 143; 86 E. R. 358.

Annotation:—**Refd.** **Burrell v. Dodd** (1803), 3 Bos. & P. 378.

574. — — — —.]—Where a custom is, that all lands held of that manor shall pass by surrender & admittance; yet the lands may be freehold; & the manner of conveyance is customary, inasmuch as livery is not requisite (HOLT, C.J.).—ANON. (1705), 11 Mod. Rep. 53; 88 E. R. 880.

575. Not by common recovery—In Common Pleas.]—A common recovery suffered in the Common Pleas will not pass copyhold lands; otherwise as to customary freeholds.—*OLIVER v. TAYLOR* (1738), 1 Atk. 474; 26 E. R. 302.

576. By bargain, sale & surrender—Custom of manor of Shap.]—By the custom of the manor of Shap, the legal interest in lands of customary tenure, parcel of the manor, is not devisable, but is transferred by a deed of bargain & sale, having the effect of a surrender, in which the operating words are, "bargain, sell & surrender," & on the presentment or production of which, admittance is granted to the alienee. An equitable interest in such customary lands is capable of being passed by devise without regard to the custom. Tenant of this manor, who was seised of customary lands, conveyed them by a deed of bargain, sale & surrender, to a trustee, upon trust for such person as the tenant, by any deed or instrument in writing or by his last will or any codicil thereto or any instrument in the nature of a last will or codicil, to be by him legally executed, should appoint or devise the same; & under this conveyance the trustee was admitted:—*Held*: the equitable interest in the lands would not pass by an unattested codicil of the tenant.—*WILLAN v. LANCASTER* (1826), 3 Russ. 108; 38 E. R. 516.

577. Mortgage by married woman—By deed enrolled under Fines & Recoveries Act, 1833 (c. 7)—Bars power of appointment by will.]—The legal estate of a married woman, in customary freeholds, was vested in a lunatic trustee, in trust for the married woman, during the joint lives of herself & her husband, for her separate use without restriction as to alienation or anticipation, with remainder in case she survived her husband, to her absolutely; but in case she died in his lifetime, to such uses as she should appoint; no trusts were declared in default of appointment. She mortgaged the estate by deed enrolled under the Fines & Recoveries Act:—*Held*: legal estate vested in mtgee.

The question is has she extinguished the power of appointment by will. I am of opinion that she has. If this had been a freehold estate, she would have barred it. The Fines & Recovery Act, 1833, c. 7 (4), provides that the Act shall not extend to lands held by copy of court-roll, of or to which a married woman, or she & her husband, in her right may be seised in any case in which any of the objects to be effected could have been effected by surrender into the hands of the lord of the manor of which the lands may be parcel. The provisions of that Act apply only to estates which pass by surrender; the result therefore is that she has barred her power, & has converted the estate into a fee-simple (*LORD TRURO, C.*)—*TORBUCK v. HEWITSON, Re HEWITSON* (1852), 19 L. T. O. S. 342, L. C.

578. Equitable interests in—Do not pass by unattested codicil.]—*WILLAN v. LANCASTER*, No. 576, *ante*.

579. Particular customs affecting—Alienation void—If not presented at next court—Good.]—A custom that the feoffments or other alienations of freehold lands held of a certain manor shall be presented at the next court of the manor, etc. & if not that they shall be void, is good.

A custom that none shall use his common till the lord enters, is not good.—*PERRYMAN'S CASE* (1599), 5 Co. Rep. 84 a; 75 E. R. 181.

Annotations:—*Reid. R. v. Bosworth* (1739), 2 Stra. 1112; *Hawkins v. Kemp* (1803), 3 East, 410. *Mentd. Foorde v. Hoskins* (1815), 2 Bulst. 336; *Bushell v. Pasmore* (1704), 6 Mod. Rep. 217; *Graham v. Graham* (1791), 1 Ves. 272; *Coare v. Giblett* (1803), 4 East, 85; *Lockwood v. Wood* J.—VOL. XIII.

(1844), 6 Q. B. 50; *Mercer v. Denne*, [1904] 2 Ch. 534; *Foundling Hospital Governors & Grdns. v. Crane*, [1911] 2 K. B. 367.

580. ——— If grantee not admitted during life of grantor—Good.]—A custom in a manor, that the grantee of a customary estate (which will pass either by surrender or deed and admittance) must be admitted during the life of the grantor, is good in law.—*FENN d. RICHARDS v. MARIOTT* (1743), Willes, 430; 125 E. R. 1252.

See, generally, CUSTOM & USAGES.

B. By Will.

581. Included under bequest of "copyhold"—When intention apparent.]—*DOE d. COOK v. DANVERS*, No. 570, *ante*.

582. Devisable—Under 55 Geo. 3, c. 192.]—Lands held by copy of ct. roll according to the custom of the manor, but not according to the will of the lord, are sufficiently copyhold to pass by will under 55 Geo. 3, c. 192, without previous surrender to the uses thereof.

By will dated after 55 Geo. 3, c. 192, testator devised All the rest, residue & remainder of his estate whatsoever & wheresoever, & of what nature or kind soever the same may be.

Held: copyhold estate would pass by these words as by a general devise of real estate, though testator had made no surrender in his lifetime to the use of his will.—*DOE d. EDMUNDS v. LLEWELLIN* (1835), 2 Cr. M. & R. 503; 1 Gale, 193; 5 Tyr. 899; 5 L. J. Ex. 84; 150 E. R. 216.

Annotations:—*Consd. Doe d. Dand v. Thompson* (1845), 7 Q. B. 897. *Reid. Garbutt v. Trevor* (1803), 15 C. B. N. S. 550. *Mentd. Campbell v. Maund* (1836), 5 Ad. & El. 865.

583. Pass under residuary devise.]—*DOE d. EDMUNDS v. LLEWELLIN*, No. 582, *ante*.

584. Do not pass under devise of freeholds.]—*ROE d. CONOLLY v. VERNON* (1804), 5 East, 51; 1 Smith, K. B. 318; 102 E. R. 988.

Annotations:—*Reid. Doe d. Beach v. Jersey* (1818), 1 B. & Ald. 550; *Pullin v. Pullin* (1825), 3 Bing. 47; *Doe d. Campton v. Carpenter* (1850), 15 Jur. 719; *Portland v. Hill* (1866), L. R. 2 Eq. 765. *Mentd. Wilkinson v. Malin* (1832), 2 Cr. & J. 636; *Dean v. Gibson* (1867), 15 W. R. 809.

585. Pass under devise of freeholds.]—*Re STEEL, WAPPETT v. ROBINSON*, [1903] 1 Ch. 135; 72 L. J. Ch. 42; 87 L. T. 548; 51 W. R. 252; 47 Sol. Jo. 31.

586. Where not devisable—Surrenderee to uses of will—Holds in trust for devisees—Under general devise of real estates.]—*WILSON v. DENT* (1830), 3 Sim. 385; 57 E. R. 1042.

SUB-SECT. 4.—INCIDENTS OF TENURE.

Freebench.]—*See* No. 918, *post*.

Herlots.]—*See* No. 1236, *post*.

Right to mines & minerals.]—*See* Nos. 266, 572, *ante*.

SECT. 2.—TENURE IN ANCIENT DEMESNE.

587. What is ancient demesne—Land shown as terra regis—In Domesday Book.]—(1) Tenants in ancient demesne are free as to their persons, but not as to their estates.

(2) Ancient demesne is the land under the title *de terrâ Regis* in Domesday Book, & no other.

(3) By a recovery of the land at common law it becomes frank-fee for ever, but a recovery against the tenant is reversible by the lord by writ of deceit, & such a recovery makes it only frank-fee until it continues unreversed, but when it is

Sect. 2.—Tenure in ancient demesne. Sect. 3.]

reversed it becomes ancient demesne again.—*HUNT v. BURN* (1701), 1 Salk. 57; 91 E. R. 55.

588. Nature of tenure—Estate in tenant & heirs of his body—With reversion to lord.]—Lands in ancient demesne were held according to the custom, which was that each tenant should hold to him & the heirs of his body with reversion to the lord; but that every tenant might by any deed alien to any other person to hold to him & the heirs of his body with remainder to the lord, on first obtaining the lord's licence, which by custom was always granted on payment of one year's rent. T., a tenant in possession according to such customs, executed articles on his marriage in 1792 by which, after a life estate to himself, power was agreed to be given to the trustee to raise £2000 for younger children of the marriage, according to the appointment of himself or his wife. No conveyance was ever made according to these articles. In 1794 T. procured an enfranchisement from the lord of the manor to himself in fee. In 1828, on the marriage of F. the eldest son of T. the same lands were conveyed in fee to trustees in trust for T. for life, remainder to his wife for life, remainder upon the ordinary trusts of a marriage settlement in favour of F. & his intended wife. T. & his wife were both dead, without having ever executed the power reserved to them by the articles of 1792. F. had, previously to 1827, heard generally that certain informal articles had been executed previously to the marriage of his father, T., but nothing further; & the articles of 1792 seemed to have been forgotten. By the marriage settlement of 1828, F. also covenanted to settle future acquired property of his wife. In 1839 he received in right of his wife £2000, without the knowledge of the trustees; & in 1845, on the request of the trustees, who had then learned this fact, he executed a mtge. of all his interest in the lands in question for securing to them this sum. In 1849 F. became bkpt. Neither his wife nor the trustees had heard, until after 1854, of the articles of 1792. The younger children of the marriage of 1792 claimed to have their £2000 portions raised according to the articles:—*Held*: (1) the lands were not within the operation of stat. De Donis; (2) the enfranchisement of 1794 operated as a merger. *Semble*: the same result would have been arrived at even apart from the consideration of the fact of enfranchisement.—*CRESSWELL v. HAWKINS* (1857), 3 Jur. N. S. 407.

589. Ownership of freehold—In tenant.]—(1) The freehold of land held by the tenure of ancient demesne is in the tenant & not in the lord of the manor.

(2) A custom for the lord of a manor of ancient demesne to receive a fine arbitrary upon the purchase of lands within the manor is bad, whether limited to purchases by strangers, that is, persons not already tenants of the manor, or not, as being contrary to the stat. Quia Emptores & other statutes.

(3) *Semble*: where a manor has existed in the hands of the Crown, & the Crown has granted some of the lands of the manor to a subject by a grant which did not pass the manor, but the successors in title of the grantee have held manorial cts. & kept ct. rolls continuously, & show a long modern paper title to the manor, a grant of the manor itself from the Crown will be presumed.—*MERTTENS v. HILL*, [1901] 1 Ch. 842; 70 L. J. Ch. 489; 17 T. L. R. 289; *sub nom.* *MARTTENS v. HILL*, 84 L. T. 260; 65 J. P. 312; 49 W. R. 408.

590. Incidents of estate—Tenant not exempt

from serving office of high constable.]—*R. v. BETTSWORTH* (1679), 2 Show. 75; 89 E. R. 808. *Annotation*:—*Reid. R. v. Genge* (1774), 1 Cowp. 13.

591. — Exempt from manorial market toll.]—*SAVERY v. SMITH* (1686), 2 Lut. 1144; 125 E. R. 635.

592. — Tenant free as to person—Not as to estate.]—*HUNT v. BURN*, No. 587, *ante*.

593. — Tenant liable to pay county rates.]—*R. v. AYLESFORD* (1860), 2 E. & E. 538; 29 L. J. M. C. 83; 1 L. T. 328; 24 J. P. 534; 6 Jur. N. S. 297; 121 E. R. 202.

594. Alienation—By surrender & admittance—By custom.]—By custom freehold ancient demesne as well as copyhold may pass by surrender & copy, & shall descend to the youngest son or daughter.—*TROWEL v. CASTLE* (1661), 1 Keb. 21; 83 E. R. 787.

Annotation:—*Mentd. Blower v. Hollis* (1833), 1 Cr. & M. 393.

595. — By lord's licence—On payment of one year's rent.]—*CRESSWELL v. HAWKINS*, No. 588, *ante*.

596. — Stat De Donis does not apply to.]—*CRESSWELL v. HAWKINS*, No. 588, *ante*.

597. — Custom to exact arbitrary fine on alienation to stranger—Bad.]—*MERTTENS v. HILL*, No. 589, *ante*.

598. Descent—To youngest son or daughter—By custom.]—*TROWEL v. CASTLE*, No. 594, *ante*.

599. Enfranchisement—By recovery at common law.]—*HUNT v. BURN*, No. 587, *ante*.

600. — After marriage articles giving life estate to tenant—Operates as merger.]—*CRESSWELL v. HAWKINS*, No. 588, *ante*.

SECT. 3.—TENANT RIGHT.

601. Origin—Border service—New customs unfavourable to tenant restrained by injunction.]—Tenure by tenant right in Yorkshire was much favoured in respect of the tenants' good & necessary service upon the borders.

Pltfs. held land, parcel of the Crown manor of D. in Yorkshire, by tenant right, & defts. went about to raise new customs of tenant right & disturbed pltfs.' possession:—*Held*: an injunction would be awarded to quiet pltfs. in their possession.—*HARPER v. MIDLETON* (1583), Ch. Cas. in Ch. 180; 21 E. R. 104.

602. Devise—Without words of limitation—Devisee takes life estate only.]—*WILSON v. ROBINSON* (1673), 1 Freem. K. B. 112; 3 Keb. 180; 2 Lev. 91; 1 Mod. Rep. 100; 84 E. R. 663.

Annotations:—*Reid. Shaw v. Bull* (1701), 12 Mod. Rep. 592; *Barry v. Edgworth* (1729), Mos. 172; *Ibbetson v. Beckwith* (1735), Cas. temp. Talb. 157; *Southby v. Stonehouse* (1755), 2 Ves. Sen. 610; *Roe d. Child v. Wright* (1806), 7 East, 259. *Mentd. Oliffe v. Gibbons* (1714), 2 Ld. Raym. 1324.

603. Renewal—Of estate settled on marriage—Enures to uses of settlement.]—*PICKERING v. VOWLES* (1783), 1 Bro. C. C. 197; 28 E. R. 1080, L. C.

Annotations:—*Reid. Re Lulham, Brinton v. Lulham* (1884), 53 L. J. Ch. 928. *Mentd. Randall v. Russell* (1817), 3 Mer. 190; *Re Biss, Biss v. Biss*, [1903] 2 Ch. 40.

604. — Right of customary heir to—Only where previous tenant admitted—Possession insufficient.]—*DOE d. HAMILTON v. OLIFT*, No. 1316, *post*.

— *Fines on.*]—*See* No. 1107, *post*.

605. Incidents of tenure—Not within statutes of partition.]—The customary tenements in the north of England, which are parcels of the respective manors in which they are situate, & descendible

from ancestor to heir by the hereditary right called tenant right, & held of the lord according to the custom, are not within the stats. 31 Hen. 8, c. 1, & 32 Hen. 8, c. 32.—*BURRELL v. DODD* (1803), 3 Bos. & P. 378; 127 E. R. 207.

Annotations.—*Reid*. Doe d. Reay v. Huntington (1803), 4 East, 271; *Delacherois v. Delacherois* (1864), 4 New Rep. 501.

606. Enfranchisement—What amounts to—Confirmation of estate discharged from all rents, fines, services, etc.—Saving only 1d. yearly rent, suit of court & seigniorial rights.]—The lord of a customary manor, by his deed, made since stat. Quia Emptores, granted to his customary tenant, who then held by the payment of certain customary rents & other services, that in consideration of a 61 penny fine or 61 years rent, he the lord ratified & confirmed to the tenant & his heirs all his customary & tenant right estate, with the appurtenances, etc. & granted that the tenant & his heirs should be thereof freed, acquitted, exempted, & discharged from the payment of all rents, fines, heriots, etc. dues, customs, services & demands, at any time thereafter happening to become due in respect of the tenancy, except 1d. yearly rent, & also excepting & reserving suit of ct., with the service incident thereto; & saving & reserving all royalties, escheats, & forfeitures, & all other advantages & emoluments belonging to the seignior, so as not to prejudice the immunities thereby granted to the tenant; & also granted liberty to cut timber, & to sell or lease, etc. without licence:—*Held*: (1) such confirmation to the tenant of his customary & tenant right estate freed from all rents & services, except, etc. was tantamount to a release of those rents & services not specifically excepted; (2) by virtue thereof the customary tenement became frank-free, or held in free & common socage; & (3) the old customary estate, which

became thereupon devisable by Stat. of Wills, 1542 (c. 1).

Such customary estates, which are peculiar to

fall under the same general consideration as copyholds, though alienable by bargain & sale & admittance thereon, & not holden at the will of the lord.—*DOE d. REAY v. HUNTINGTON* (1803), 4 East, 271; 102 E. R. 834.

Annotations.—*As to* (1) *Reid*. Mertens v. Hill, [1901] 1 Ch. 842. *As to* (2) *Reid*. Chichester v. Hall (1851), 17 L. T. O. S. 121; *Delacherois v. Delacherois* (1864), 4 New Rep. 501; *Re Holliday* (1922), 127 L. T. 585. *Generally*. *Mentd.* Thompson v. Harding (1845), 1 O. B. 940; Busher v. Thompson (1846), 1 Lut. Reg. Cas. 551; Damerell v. Protheroe (1847), 10 Q. B. 20.

607. — Effect of—Feme sole admitted tenant—Conveyance to husband after marriage—Gives wife absolute fee simple descendible to her heirs.—Where a feme sole after marriage was admitted tenant of a manor in the north of England, of certain premises to her & her heirs, as of her own tenant right, according to the custom, & afterwards the lord executed a conveyance of the same premises to the husband in fee, & enfranchised the same from all seignory rights to which they were previously liable. *Semble*: this conveyance, after the death of the husband had the effect of giving the wife an absolute estate in fee simple in the premises, descendible only upon the heirs *ex parte materna*.—*DOE d. NEWBY v. JACKSON* (1823), 1 B. & C. 448; 2 Dow. & Ry. K. B. 514; 107 E. R. 166.

Annotations.—*Mentd.* Doe d. Milburn v. Edgar (1836), 2 Bing. N. C. 498; *Horsey Estate v. Steiger*, [1898] 2 Q. B. 259.

608. Alienation—By bargain & sale—Followed by surrender & admittance—Custom of particular

manor.]—In the manor of L., the custom of tenure is tenant right & the freehold of the customary tenements is in the lord. On alienation a deed of bargain & sale is executed by the parties. The alienor appears with this deed in ct.; & after proclamation, the steward says to him, "You surrender into the hands of the lord of this manor the premises, specifying them as on roll, to the use & behoof of the alienee, his heirs & assigns, according to the custom. Are you content to make this surrender?" The surrenderer says "Yes." After proclamation, the alienee is admitted tenant of the premises. When husband & wife surrender lands out of ct., they appear before the lord his steward or deputy out of ct., & execute the deed of bargain & sale, the wife is separately examined, & the surrenderer taken before the lord his steward or deputy with the exception that there is no proclamation. There is no instance of a married woman surrendering lands within the manor by attorney. Surrenders & also admittances by the custom of the manor may be made out of ct., & they may be made by or to the parties themselves or their attorneys.

M. & E. his wife, being seised in right of the wife of certain customary tenements within the manor, E., after separate examination, executed a deed of customary bargain & sale in the usual form, by which M. & E. bargained sold aliened surrendered & confirmed unto B. his heirs & assigns, the customary tenements in question; & by which also they severally & respectively appointed an attorney for them & in each or either of their names to surrender the customary tenements into the hands of the lord, according to the custom to the use of B., his heirs & assigns, for ever. At a special ct. held on the following day, the attorney for M. & E. made a formal surrender for them accordingly;

B. being thereupon admitted tenant in person,

alienation. At the time when this was done E. was dead:—*Held*: (1) by the custom of the manor, surrender & admittance, as well as bargain

customary tenements; & the estate in the customary tenements did not pass by the bargain & sale only; (2) the power of attorney to surrender was invalid in its inception; & if not so, was revoked by the death of E.; & therefore the surrender was inoperative.—*GRAHAM v. JACKSON* (1845), 6 Q. B. 811; 14 L. J. Q. B. 129; 4 L. T. O. S. 331; 9 Jur. 275; 115 E. R. 306.

609. — Heir cannot maintain ejectment before admittance.—By the custom of a manor, the customary tenements thereof were held of the lord for the joint lives of the customary tenant & the lord, at the will of the lord, according to the custom of the manor, at customary rents & services, & were descendible from ancestor to heir. Alienation *inter vivos* was made by customary deed of bargain & sale from alienor to alienee, & surrender & admittance thereon in the customary ct., the deed being licensed by the lord, & a memorandum of the licence indorsed on the deed. A fine was paid on the death of lord or tenant, & on alienation. The admittance of an heir, in form, stated that the heir took of the lord, upon the demise of the steward, the tenement, now in the hands of the lord, to be granted to the heir on the death of the ancestor, to hold for the joint lives, etc., as by the custom above stated:—*Held*: an heir could not, before being admitted, maintain ejectment against a stranger.—*DOE d. DAND v. THOMPSON* (1849), 13 Q. B. 670; 18 L. J. Q. B. 326; 13 L. T. O. S. 187; 13 Jur. 1023; 116 E. R. 1419.

SECT. 4.—COPYHOLDS.

SUB-SECT. 1.—APPLICATION OF STATUTES.

610. General rule—Within general words of statute—Unless lord prejudiced.]—Stat. 31 Hen. 8, c. 13, s. 7, avoids leases of lands whereof any estate for life, etc., was then in being, made by religious persons within a year before; a copyhold was granted by copy for life, & then the religious house made a lease of it to another for 80 years:—*Held*: the lease was void, the copyhold estate being an estate for life within the statute.

Copyholds are not within the general words of a statute which alters the service, tenure, custom or interest of the land, to the prejudice of the lord or tenant, but are included within the general words of a statute where no prejudice thereby ensues to the lord or tenant.

Stat. De Donis does not extend to copyholds, unless there is a special custom, nor does the statute of Westminster II., c. 18, which gives the *elegit*.—HEYDON'S CASE (1584), 3 Co. Rep. 7 a; Moore, K. B. 128; 76 E. R. 637.

Annotations:—*Reid*. Worcester's Case (1805), 6 Co. Rep. 37 a; Bicknell v. Tucker (1612), 2 Brownl. 153; Lee v. Brown (1617), Poph. 128; Rowden v. Maltster (1621), Cro. Car. 42; Harrington v. Smith (1658), 2 Sid. 41; Doe d. Wightwick v. Truby (1774), 2 Wm. Bl. 943; Doe d. Tunstill v. Bottriell (1833), 5 B. & Ad. 131; Nicolle v. Nicolle, [1922] 1 A. C. 284. *Mentd.* Long's Case (1604), 5 Co. Rep. 120 a; Fawkeners v. Bellingham (1627), Cro. Car. 80; James v. Tutney (1639), Cro. Car. 532; Beckman v. Maplesden (1662), O. Bridg. 60; Wolferstan v. Lincoln (1763), 2 Wils. 174; Warburton v. Loveland (1832), 6 Bl. N. S. 1; A.-G. v. Walker (1849), 3 Exch. 242; Miller v. Salomons (1852), 7 Exch. 475; Crofts v. Middleton (1856), 8 De G. M. & G. 192; Peck v. North Staffordshire Ry. (1863), 10 H. L. Cas. 473; R. v. Sillim, The Alexandra (1864), 3 New Rep. 299; Easton v. Richmond Highway Board (1871), L. R. 7 Q. B. 69; R. v. Richmond, Yorks JJ., Easton v. Richmond Highway Board (1872), 20 W. R. 203; R. v. Castro (1874), L. R. 9 Q. B. 350; River Wear Comrs. v. Adamson (1877), 2 App. Cas. 743; R. v. Holbrook (1878), 4 Q. B. D. 42; Harding v. Preece (1882), 9 Q. B. D. 281; Bradlaugh v. Clarke (1883), 8 App. Cas. 354; *Re* Leavesley, [1891] 2 Ch. 1; Pelton v. Harrison, [1891] 2 Q. B. 422; Bruce v. Ailesbury, [1892] A. C. 356; Eastman Photographic Materials Co. v. Comptroller-General of Patents, Designs, & Trademarks, [1898] A. C. 571; *Re* Mayfair Property Co., Bartlett v. Mayfair Property Co., [1898] 2 Ch. 28; A.-G. v. Metropolitan Electric Supply Co., [1905] 1 Ch. 24; Conway v. Wade, [1908] 2 K. B. 844; Sadler v. Whiteman, [1910] 1 K. B. 868; O'Grady v. Wilnot, [1916] 2 A. C. 231; Banbury v. Bank of Montreal, [1918] A. C. 626; Dobb v. Dobb (1918), 87 L. J. Ch. 321; A.-G. v. Brown, [1920] 1 K. B. 773.

611. ———.]—A copyhold was surrendered to the use of a last will & devised to A. in tail, who, after issue born, surrendered to his wife for life, & there was no custom to entail such estate:—*Held*: A. took a fee conditional; & the surrender to his wife was good, the condition being performed by the birth of issue. Copyholds cannot be entailed by virtue of the stat. De Donis only; custom must co-operate with the stat.

Copyholds are included within the general words of a stat., "lands, tenements, & hereditaments," when no prejudice thereby ensues to the lord, but are not within the general words of a stat. that alters the service, tenure, custom, or interest of the land; & therefore a jointure made of copyhold lands is no bar to dower within the Stat. of Uses.

A fine cannot be levied of copyhold land to bar the entail.

Neither an estate tail nor an estate after possibility, etc., can be created by custom.—ROWDEN v. MALTSTER (1626), Cro. Car. 42; 79 E. R. 641; *sub nom.* ROYDEN & MOULSTER'S CASE, Godb. 367; 2 Roll. Rep. 383.

Annotations:—*Dttd.* Glover v. Cope (1692), Skin. 305. *Reid.* Harrington v. Smith (1658), 2 Sid. 73; Carr d. Dagwell v. Singer (1750), 2 Ves. Sen. 603; Doe d. Wightwick v. Truby (1774), 2 Wm. Bl. 944; Holloway v. Berkeley

(1826), 9 Dow. & Ry. K. B. 83. *Mentd.* Doe d. Reed v. Harris (1838), 7 L. J. Q. B. 76.

612. ———.]—Not within general words—Of statute altering service tenure custom or interest in land.]—HEYDON'S CASE, No. 610, *ante*.

613. ———.]—ROWDEN v. MALTSTER, No. 611, *ante*.

614. Stat. De Donis—Not applicable—Except by special custom.]—HEYDON'S CASE, No. 610, *ante*.

615. ———.]—Copyhold land is not within the stat. De Donis, neither is the lessor such an assignee as the stat. means; for at the common law a copyhold estate is but an estate at will, & custom has only fixed his estate to endure; which custom does not trench to such collateral things as entries for conditions (*per cur*).—BRASIER v. BEALE (1612), Yelv. 222; 80 E. R. 145.

Annotation:—*Dttd.* Glover v. Cope (1691), 1 Salk. 185.

See, also, generally, Part IX., Sects. 1 & 2, *post*.

616. Stat. Westminster II. c. 18—Writ of elegit—Not applicable.]—HEYDON'S CASE, No. 610, *ante*.

See, generally, Sub-sect. 3, *post*.

617. Fraudulent Conveyances Acts, 1584-5 (c. 4), & 1571 (c. 5)—Not applicable.]—Copyholds are not within Fraudulent Conveyances Act, 1584-1585 (c. 4) & therefore if pltf. claims under a voluntary conveyance though deft. claim under a subsequent purchase for valuable consideration yet pltf. shall recover (BLENCOWE, J.).—ANON. (1699), Bull. N. P. 108.

Annotation:—*Reid.* Doe d. Tunstill v. Botterill (1833), 2 Nev. & M. K. B. 64.

618. ———.]—An assignment of personal property for a consideration clearly inadequate is fraudulent as against creditors under Fraudulent Conveyances Act, 1571 (c. 5). But copyholds not being naturally subject to the debts, a conveyance of them cannot be fraudulent against creditors.—MATHEWS v. FEAVER (1786), 1 Cox, Eq. Cas. 278; 29 E. R. 1165.

Annotations:—*Consd.* Copis v. Middleton (1817), 2 Madd. 410; Doe d. Tunstill v. Bottriell (1833), 5 B. & Ad. 131. *Reid.* Sims v. Thomas (1840), 12 Ad. & El. 536.

619. ———.]—*Qu.*: whether copyholds are within the Fraudulent Conveyances Act, 1584-5 (c. 4). There is great reason to say that the above stat. does extend to copyhold estates, but it is strange that such a point should be first agitated at this time. I should rather think it has been taken for granted that the stat. does extend to copyhold estates, because in being so construed it can work no prejudice to the lord & the object of the stat. is to suppress fraud (LORD MANSFIELD).—DOE d. WATSON v. ROUTLEDGE (1777), 2 Cowp. 705; 98 E. R. 1318.

Annotations:—*Consd.* Jones v. Boulter (1786), 1 Cox, Eq. Cas. 288; Doe d. Otley v. Manning (1807), 9 East, 59; Copis v. Middleton (1817), 2 Madd. 410. *Reid.* Doe d. Bothell v. Martyr (1805), 1 Bos. & P. N. R. 332; Doe d. Tunstill v. Bottriell (1833), 5 B. & Ad. 131; Clarke v. Wright (1861), 6 H. & N. 849. *Mentd.* Kinchant v. Kinchant (1784), 1 Bro. C. C. 369; Metcalfe v. Pulvertott (1813), 1 Ves. & B. 180; Doe d. Robinson v. Allsop (1821), 5 B. & Ald. 142; Gully v. Exeter (1828), 5 Bing. 171; Wright v. Dickenson (1861), 4 L. T. 21; Mullins v. Gilfoyle (1878), 39 L. T. 511.

620. ———.]—Copyholds are within the above stat. which avoids all conveyances of any lands, tenements or hereditaments made for the intent & of purpose to defraud & deceive persons that shall afterwards purchase the same.—DOE d. TUNSTILL v. BOTTRIELL (1833), 5 B. & Ad. 131; 2 Nev. & M. K. B. 64; 2 L. J. K. B. 158; 110 E. R. 740.

Annotations:—*Consd.* *Re* Foster & Lister (1877), 6 Ch. D. 87. *Reid.* Currie v. Nind (1836), 1 My. & Cr. 17.

621. ———.]—A post-nuptial settlement of a wife's estates, is voluntary under the above stat. as against subsequent purchasers for valuable

consideration, & copyholds are within the operation of the stat.

A copyhold was limited to B. for life, remainder as she should, by deed or will attested by three witnesses, appoint, with remainder over; B. married, & she & her husband afterwards, by deed duly executed, appointed to a mtge., subject thereto to herself & husband for their lives, with remainder in trust for their children, with remainder as she should by deed, attested by three witnesses, appoint, & in default to B.'s right heirs; afterwards, the husband & wife, with the concurrence of the mortgagee, by deed attested by two witnesses only, joined in conveying the estate in fee to a purchaser for valuable consideration:—*Held*: on a resale by such purchaser, he could make a good title, without showing there were no children of B.'s marriage.—*CURRIE v. NIND* (1836), 1 My. & Cr. 17; 5 L. J. Ch. 169; 40 E. R. 283.

Annotations:—*Consd.* Butterfield v. Heath (1852), 15 Beav. 408. *Distd.* Hewison v. Negus (1853), 16 Beav. 594. *Consd.* Scott v. Scott (1854), 23 L. T. O. S. 27; *Re Foster & Lister* (1877), 6 Ch. D. 87. *Mentd.* Clarke v. Wright (1861), 6 H. & N. 849.

622. ———.]—*DOE d. BAVERSTOCK v. ROLFE*, No. 883, *post*.

623. Poor Relief Act, 1819 (c. 12), s. 17—*Not applicable*.]—S. 17 of the above Act applies to freehold land held generally in trust for a parish, but freehold lands held upon special trusts for a parish, & copyhold lands, are not within the stat., & are not therefore vested in the churchwardens & overseers.—*Re PADDINGTON CHARITIES* (1837), 8 Sim. 629; 7 L. J. Ch. 44; 2 Jur. 344; 59 E. R. 249.

Annotations:—*Mentd.* Doe d. Edney v. Benham, Doe d. Edney v. Billett (1845), 7 Q. B. 976; *St. Nicholas, Deptford v. Sketchley* (1847), 8 Q. B. 394.

624. ———.]—By a memorandum of agreement, dated June 23, 1842, between A., as agent for & on behalf of the churchwardens of the parish of M., & B., it was agreed, provided a licence could be obtained from the lord of the manor, & upon B. putting the premises into repair, that the churchwardens should grant a lease to B. for twenty-one years from Midsummer Day next, under the clear yearly rent of £30; such lease to contain covenants for payment of rent & taxes, & to repair, insure, not to commit waste, etc., & all other usual & proper covenants, etc., & B. agreed to accept such lease, & execute a counterpart, etc., & that, until such lease & counterpart should be granted, the yearly rent should be payable & recoverable by distress or otherwise, in like manner as if such lease & counterpart had been executed:—*Held*: (1) this instrument was properly stamped as an agreement; (2) the tenancy thereby created, whether a tenancy from year to year, or a tenancy at will, was properly put an end to by a notice to quit & deliver up possession, given by persons acting as agents for C. & D. who were churchwardens at the time the agreement was made & B. let into possession; notwithstanding the notice purported also to have been given on behalf of the churchwardens & overseers in office when the notice was served, & did not state to whom the possession was to be delivered up; (3) s. 17 of the above Act does not apply to copyholds.

To whom was debt. to pay rent? To the persons who let him into possession, &, although in the agreement they are called the churchwardens of the parish of M., it was well known who they were. Those persons, having let debt. into possession, the right, inasmuch as they could not claim the premises as a corpn., never shifted from them, &, when they gave debt. notice to quit, he was bound to obey it. Having come into possession under

them it was not competent to him to dispute their title (*TINDAL, C.J.*).—*DOE d. BAILEY v. FOSTER* (1846), 3 O. B. 215; 15 L. J. O. P. 263; 7 L. T. O. S. 208; 136 E. R. 86.

625. Real Estate Charges Act, 1854 (c. 113)—*Applies—Mortgagor dying intestate after Act—Heir takes subject to mortgage*.]—The above Act for rendering mortgaged estates primarily liable for payment of the mtge. debt in exoneration of the personal & other estates of the deceased mtgor. includes copyholds.

A. purchased copyholds in 1852 to be surrendered to the use of him, his heirs & assigns. In the same year he mortgaged the copyholds, with a proviso that on repayment of the money the surrender, thereby covenanted to be made to the use of the mtgee., should enure to the use of A., his heirs & assigns. A. died intestate in 1858, & the mortgage money was paid off by his administrator:—*Held*: the infant customary heir was not entitled to have the mortgage debt paid out of the personal estate of the intestate in exoneration of the copyholds, & the case did not fall within the saving proviso at the end of the above Act.—*PIPER v. PIPER* (1860), 1 John. & H. 91; 29 L. J. Ch. 719; 2 L. T. 458; 6 Jur. N. S. 1026; 8 W. R. 541; 70 E. R. 675.

626. Land Transfer Act, 1897 (c. 65), s. 1 (4).]—*Re SOMERVILLE & TURNER'S CONTRACT*, No. 569, *ante*.

See, also, No. 122, *ante*.

SUB-SECT. 2.—NATURE OF TENANT'S ESTATE.

627. At common law—Estate at will—But fixed by custom.]—A copyholder died, leaving a son & a daughter by one *ventre*, & a son by another *ventre*; the premises being in lease for years by licence; the eldest son died before admittance:—*Held*: (1) the daughter should inherit, not the son; (2) though a copyholder had in judgment of law, but an estate at will, yet custom had so established his estate that it was descendible, & his heirs should inherit, & so his estate was not merely *ad voluntatem domini*, but *ad voluntatem domini secundum consuetudinem manerii*; (3) since custom had created such inheritance, the descent should be directed according to the rules of the common law, as in the case of uses; but it did not partake of the collateral qualities of descent of other inheritances; not being assets, nor subject to dower or curtesy, without a special custom, nor tolling entry by descent cast; (4) the heir before admittance might enter, & take the profits; (5) grants by copy by bishops bound their successors, & the King, when the temporalities were in his hands, & the grantee might have aid of the King; (6) the admittance of a particular tenant was the admittance of the remainderman but without prejudice to the lord's fine; (7) the lord might enter on his copyholder for non-performance of his services; (8) if the lord ousted the tenant without a cause the tenant might have trespass against him; (9) alienation by a copyholder was a disseisin of the lord & a forfeiture of his estate.—*BROWN'S CASE* (1581), 4 Co. Rep. 21 a; 76 E. R. 911; *sub nom.* ANON., Moore, K. B. 125.

Annotations:—*As to* (2) *Reid*. Swayne's Case (1608), 8 Co. Rep. 63 a; Rowden v. Maltster (1626), Cro. Car. 4^a. Wilkes v. Broadbent (1744), 1 Wils. 63. *As to* (3) *Reid*. Gravenor v. Todd (1593), 4 Co. Rep. 23 a; Foorde Hoskins (1615), 2 Bulst. 336; Doe d. Hamilton v. Clift (1840), 12 Ad. & El. 566. *As to* (4) *Reid*. Clarke v. Pennil father (1584), 4 Co. Rep. 23 b; Goodtitle d. Newman v. Newman (1773), 3 Wils. 516; Lewis v. Branthwaite L. J. O. S. K. B. 263; Right d. Taylor v. Banks

Sect. 4.—Copyholds: Sub-sects. 2, 3, 4 & 5. Part VIII. Sect. 1: Sub-sect. 1.]

(1832), 3 B. & Ad. 664; *King v. Turner* (1833), 1 My. & K. 456; *R. v. Dullingham* (1838), 8 Ad. & El. 858; *R. v. Pigott* (1838), 8 L. J. Q. B. 37; *Doe d. Hamilton v. Clift* (1840), 12 Ad. & El. 566. *Generally, Mentd. Dell v. Rigden* (1594), 4 Co. Rep. 23 a; *Fitch v. Stuckley* (1594), 4 Co. Rep. 23 a; *Shaw v. Thompson* (1595), 4 Co. Rep. 30 b; *Payne v. Barker* (1662), O. Bridg. 18; *Wade v. Baker & Cole* (1696), 1 Ld. Raym. 130; *Doe d. Whitbread v. Jenney* (1804), 5 East, 522; *Ely v. Caldecot* (1832), 8 Bing. 439; *Everingham v. Ivatt* (1872), L. R. 7 Q. B. 683; *Pickwell v. Spencer & Snow* (1872), 41 L. J. Ex. 73.

628. ————.]—ANON., No. 1783, *post*.

629. ————.]—BRASIER *v.* BEALE, No. 615, *ante*.

630. Evidence of—Statement by tenant—Life interest—Not confined to life of tenant.]—The determination of a copyhold may be shown without producing the copy of ct. roll. Thus a declaration by the party in possession that his interest was less than a fee, *e.g.* for his own life only, would be primary evidence that it ceased to exist at his death. *Secus* where he declared that he held for life interest, that statement being consistent with one or more life interests coming into existence at his death.—*DOE d. WELSH v. LANGFIELD* (1847), 16 M. & W. 497; 153 E. R. 1285.

Annotations:—Mentd. Doe d. Chidgey v. Harris (1847), 16 L. J. Ex. 190; *Mid. Ry. v. Bromley* (1856), 17 C. B. 372; *Iteod v. Lamb* (1860), 6 H. & N. 75; *Nash v. Ash* (1862), 8 Jur. N. S. 998.

Whether conferring settlement.]—See POOR LAW.

Extent of tenant's estate.]—See Part X., *post*.

Liability of tenant to services.]—See Part XI., *post*.

Descent of tenant's estate.]—See Part XII., *post*.

Transmission of tenant's estate—By sale.]—See Part XIII., *post*.

——— **By will.]—See Part XV., *post*.**

Mortgage of copyholds.]—See Part XIV., *post*.

Termination of tenant's estate—By extinguishment of tenure.]—See Part XIX., Sect. 1, sub-sect. 1, *post*.

By forfeiture.]—See Part XIX., Sect. 1, sub-sect. 2, *post*.

By escheat.]—See Part XIX., Sect. 1, sub-sect. 3, *post*.

By enfranchisement.]—See Part XX., *post*.

SUB-SECT. 3.—EXECUTION AGAINST COPYHOLD LANDS.

631. By sequestration—Will not revive as against heir.]—Though it is true sequestrations run upon copyhold; yet it is to be doubted whether it can be revived in the hands of the heir to such lands; for if it were the heir would not take up those lands & then the lord would be without a tenant (*per* OUR.).—*WHITEHEAD v. HARRISON* (1730), 1 Barn. K. B. 431; 2 Eq. Cas. Abr. 712; 94 E. R. 290.

632. ————.]—*COULSTON v. GARDINER* (1681), 3 Swan. 279; 36 E. R. 863; *sub nom. COLSTON v. GARDNER*, 2 Cas. in Ch. 43, L. C.

Annotations:—Mentd. Cook v. Cook (1739), 2 Com. 712; *Wharam v. Broughton* (1748), 1 Ves. Sen. 180.

633. ————.]—Order to let a copyhold house & land in possession of sequestrator on a contempt for not paying money into ct.—*DUNKLEY v. SCRIBNOR* (1815), 2 Madd. 443; 56 E. R. 398.

634. Not by extent.]—R. v. LISLE (LORD) (1624), cited in *Park*. 195; 145 E. R. 754.

Annotation:—Reid. R. v. Budd (1758), *Park*. 190.

635. ———— **Under elegit.]—**Copyhold lands cannot be extended under an elegit, but, if the inquisition comprehends both freehold & copyhold,

it may be good as to the former, & bad as to the latter.—*MORRIS v. JONES* (1823), 2 B. & C. 232; 3 Dow. & Ry. K. B. 603; 107 E. R. 370.

Annotations:—Mentd. Holland v. Pelham (1831), 9 L. J. O. S. Ex. 139; *Fairecloth v. Gurney* (1833), 9 Bing. 622; *Heath v. Brindley* (1834), 2 Ad. & El. 365; *Moody v. Hebbard* (1848), 7 Hare, 182.

636. Cannot be seized upon recognisance.]—ANON. (1702), 7 Mod. Rep. 38; 87 E. R. 1079.

SUB-SECT. 4.—WHETHER SUBJECT TO CHARGES CREATED BY LORD.

637. Charges & incumbrances by lord—Tenant not subject to.]—TAVERNER *v.* CROMWELL, No. 1853, *post*.

638. Rentcharge created by lord—Before grant to tenant—Tenant holds subject to rentcharge.]—W. seised of a manor, whereof the demesnes were usually let for three lives by copy, according to the custom of the manor, granted a rentcharge to C., *pro consilio impendendo*, for the term of his life, & afterwards conveyed the manor to D. in tail. The rent was behind, & C. & D. died. The manor descended to E., who granted a copyhold to H. The exors. of C. distrained for the rent:—*Held*: the copyholder should hold his copyhold charged.—*WESTMERLAND'S (EARL) CASE* (1576), 3 Leon. 59; 74 E. R. 539.

639. ———— **Tenant not liable to rentcharge.]—**SWAYNE'S CASE, No. 663, *post*.

640. ————.]—The lord of a copyhold manor where the copyholds were held for life granted a rentcharge out of the whole manor & then a copyhold escheated & the lord granted the holding again by copy:—*Held*: the grantee held free of the charge because he came in above the grant, that is by the custom.—*SAMMER v. FORCE* (1610), 2 Brownl. 208; 123 E. R. 900.

641. ———— **Tenant not liable for arrears due by lord.]—**H. was seised of the manor of K. in fee, & granted a rentcharge to C. for life, & afterwards made a feoffment thereof to D., who granted a copyhold to S. for life, according to the custom of the manor, being an ancient copyhold; D. died seised, the rent is behind, C. died, H. as bailiff of E., exor. of C., distrained for the arrears upon the possession of S.:—*Held*: the possession of S. was not chargeable to distress upon this matter, for the copyholder is not in by him who ought immediately to pay the rent but is also in by the custom.—*SANDS & HEMPSTON'S CASE* (1585), 2 Leon. 109; 74 E. R. 399.

642. Decree against lord—Does not bind copyholders in fee—Or freeholders for life—Unless parties.]—POORE *v.* CLARK (1742), 2 Atk. 515; 26 E. R. 710, L. C.

Annotation:—Mentd. York Corpn. v. Pilkington (1737), *West. temp. Hard.* 293.

643. Dower of lord's widow—Voluntary grant of copyhold by lord—Tenant's estate paramount.]—ANON. (1584), 4 Co. Rep. 24 a; 76 E. R. 926.

644. ———— **Enfranchisement subject to dower—Subsequent increase in value of enfranchised copyholds—Widow's dower not increased.]—**A lord's wife endowable of two manors, which consisted of copyholds, was endowed by indenture of the heirs of one manor, & by parol agreement was to have a third part of the rents & profits of the other. The rents were paid her for thirty years & more. The copyholders purchased the inheritance of their respective copyholds, & paid their rents in proportion during the ancient lives of the copyholders they purchased. The lives being dead upon which the copyholds depended pltf. sued for the third part of the improved value. Defts.

claimed they had no notice of the agreement &, being purchasers without notice, were not obliged thereby. Pltfs. insisted that they had notice & so the payment of the proportion of the rents proved, & it was publicly notified at the cts. of the manor & divers of the tenants had abatement in their purchase, though defts. denied they had any:—*Held*: pltfs. should not have a decree for the improved values.—*HOLLAND v. BLANDY* (1675), 1 Cas. in Ch. 246; 22 E. R. 783.

Liability to contribute to charges to which lord liable.]—*See* No. 2, *ante*.

SUB-SECT. 5.—OTHER CASES.

645. Copyholder's remedy against trespasser—Concurrent with lord's remedy.]—*ANON.*, No. 124, *ante*.

646. Copyholder may maintain action against lord—In respect of interests common to copy-

holders.]—Defts. were fined for making an obligation between them to contribute to expenses in suits commenced, or to be commenced, against any of them by the lord:—*Held*: in suits for custom common or copyhold whereof the obligees participated, there they might contribute, but not where they claimed several frank-tenements or copyholds of inheritance, in which they had not a joint & equal interest.—*MEREDITH v. HIS TENANTS* (1599), Noy, 99; 74 E. R. 1065.

647. Proof of title—Commencement must be shown—Admission of last heir sufficient.]—*PYSTER v. HEMLING* (1605), Cro. Jac. 103; 79 E. R. 89.

648. Whether lands copyhold—Tried at common law.]—*BLACKHALL v. THURSBY* (1628), Het. 2; 124 E. R. 294.

649. — Evidence other than court rolls admissible.]—*CHANCE v. DOD*, No. 449, *ante*.

650. Not liable to be seised on outlawry.]—*R. v. BUDD* (1758), Park. 190; 145 E. R. 753.

See, generally, CRIMINAL LAW & PROCEDURE.

Part VIII.—Creation of Tenant's Estate.

SECT. 1.—BY GRANT.

SUB-SECT. 1.—WHO MAY GRANT.

651. Lord of manor—Though manor demised—May make grants in reversion—By custom.]—If a man be seised of a manor whereof there are divers copyholders admittable for life or for years; & he leases the manor to another for term of life, the lessor may make a demise by copy in reversion to commence after the death of the first copyholders, & that is good enough. But the custom of some manors is to the contrary, & that is allowed.—*DAVIES v. FORTESCUE* (*circa* 1630), Het. 54; 124 E. R. 337.

652. — With limited interest—Tenant in tail—Though subject to condition not to alien.]—A. grants a manor to B. in tail, on condition that he or any of his issues shall not alien or do any act *quo minus* it may revert immediately on failure of issue. B. marries, that is no breach, or it would be repugnant to the estate granted. He grants a copyhold to C. & though perhaps an express condition not to grant a copyhold would restrain, yet a general condition like this shall not be taken to comprehend private customs, so this is no breach; & even if A. might enter for any forfeiture, C. might retain his estate, as such grant by the lord *pro tempore* is incidental to the custom. Attainder of treason is an indirect breach of a condition not to alien, but not of this condition, for the Crown only takes during the lives of the issues; & on failure of issue it shall revert immediately.—*ARUNDEL'S (EARL) CASE* (1575), 3 Dyer, 342 b; 73 E. R. 771; *sub nom.* *ANON.*, Jenk. 242.

Annotations:—*Reid*, *Anon.* (1584), 4 Co. Rep. 24 a; *Butler & Baker's Case* (1591), 3 Co. Rep. 25 a; *Chudleigh's Case* (1595), 1 Co. Rep. 113 b; *Gay v. Kay* (1599), Cro. Eliz. 661; *Mildmay's Case* (1606), 6 Co. Rep. 40 a; *Holland v. Fisher* (1662), O. Bridg. 181. *Mentd.* *Portington's Case* (1613), 10 Co. Rep. 35 b; *Phillips v. Bury* (1694), Carth. 319; *Shrewsbury v. Scott* (1859), 6 C. B. N. S. 1.

— — — — —.]—*See, also*, No. 825, *post*.

653. — — — — — Tenant *pur autre vie* after death of *cestui que vie*—Cannot make valid grant—May admit.]—If tenant *pur autre vie* of a manor grant by copy, after the death of *cestui que vie* it shall not bind the lessor, for he was a tenant at sufferance, & a writ of entry *ad terminum qui præterit* lies against him: but it is otherwise as to admittances by him.—*ROUS v. ARTERS* (1587),

4 Co. Rep. 24 a; 2 Leon. 45; *Moore*, K. B. 236; 76 E. R. 927; *sub nom.* *ROUSES CASE*, Owen, 27. *Annotations*:—*Mentd.* *Re L. & S. W. Ry. Co. Ex p. Henley* (1861), 31 L. J. Ch. 54; *Garbutt v. Trevor* (1864), 12 W. R. 471.

654. — — — — — May readmit tenant after forfeiture—So as to bind successor.]—*MUNIFAS v. BAKER*, No. 1039, *post*.

655. — — — — — Bishop—So as to bind successor—& Crown when temporalities in his hands.]—*BROWN'S CASE*, No. 627, *ante*.

656. — — — — — So as to bind successor.]—A lord having only a temporary estate in his manor may make grants of copyhold to endure after the determination of his own interest, but such grants must conform strictly to the custom of the manor.

A rector, being lord in right of his rectory, granted lands, which until that time had been held at the rent of 10s. & two hens, *habendum* to A., B. & C. for their lives successively & that of the survivor, at the will of the lord, according to the custom of the manor, at the above rent, reserving to the lord for the time being a garden, parcel of the said lands; & the succeeding rector afterwards, & while the said life estates were subsisting, made a grant of the garden to D., E. & F. for the like term of lives, at the will, etc., according to the custom, etc., at the yearly rent of 2s.; & no sufficient proof was given of any custom in the manor so to parcel copyholds and apportion rents:—*Held*: the latter grant was void.—*DOE d. RAYER v. STRICKLAND* (1842), 2 Q. B. 792; 2 Gal. & Dav. 278; 11 L. J. Q. B. 305; 114 E. R. 307.

enn (1875), 44 L. J. Q. B. 158.

Tenant for life.]—A tenant for life of a manor is entitled to use & enjoy his life estate according to the custom of the manor, & although he is seised of a limited interest only, yet as lord of the manor he may grant such estate as is authorised by the custom of the manor, notwithstanding that the interest so granted may continue longer than his own.

Where it is the custom of the manor for the lord to grant the copyhold lands of the manor on leases for lives, for the fines on renewal to be arbitrary, & for the tenants to have no right of renewal, a tenant for life unimpeachable for waste who is lord of the manor can grant valid leases for lives

Sect. 1.—By grant: Sub-sects. 1, 2 & 3, A. & B.]

to the tenants, & is entitled as against the remaindermen to the whole of the moneys received by him in respect of the fines on renewal paid to him by the tenants during the continuance of his life estate.—*Re MEDOWS, NORIE v. BENNETT*, [1898] 1 Ch. 300; 67 L. J. Ch. 145; 78 L. T. 13; 46 W. R. 297.

658. ——— Lessee for years.]—In an *ejectione firmæ* upon a special verdict:—*Held*: (1) when a copyholder bargained & sold his copyhold to the lord of the manor, who had the manor in lease for years, thereby the copyhold estate was extinguished; (2) if a copyholder came into ct., & said that he was weary of his copyhold, & requested the lord to take it, that was a surrender, for between the lord & the tenant a conveyance should not need to be according to the custom, for the copyholder had no other use of the custom, but only to convey the land to another; (3) a release by him which had right to a copyhold to one who was admitted copyholder extinguished the right of the copyhold by deed, & if a copyholder released to the lord that extinguished the copyhold, although it was contrary to the nature of a release to give a possession; (4) this copyhold was not extinct but the lord *pro tempore* (who was a lessee for years) might grant it by copy *de novo*.—*BLEMMEER HASSET v. HUMBERSTONE* (1621), Hut. 65; 123 E. R. 1104.

659. ——— De facto—May grant on surrender only—Voluntary grants not binding on lawful owners.]—A manor was devised to one, & the devisee entered & granted copies, & afterwards it was found that the devisee was void:—*Held*: copy made by such devisee upon surrenders were good, but contrary of copies made after the death of tenants upon voluntary grants.—*STOWLEY'S CASE* (1575), cited in 2 Leon. 46; 74 E. R. 346.

Annotation:—*Reid*. Rous & Artois Case (1587), 2 Leon. 45.

660. ——— ———.]—A man was seised of a manor in which were divers copyholders, & the custom was to make copy for three lives, & when the lease expired the lord could make other leases to other persons at his pleasure:—*Held*: if the lord was disseised, & one of the leases expired by the death of the lessee, & the disseisor made a new copy to others & afterwards the lord re-entered he would defeat the copy, but if during the disseisin a copyholder surrendered to the use of another & then a copy granted accordingly was good.—*ANON.* (1572), Ben. & D. 83; 123 E. R. 292.

661. ——— ———.]—If a disseisor or other who has a defeasible title in a manor grants a voluntary estate by copy, as if a copyhold estate be forfeited to him, or if a copyholder dies without heir & he grants those lands again by copy, those grants shall not bind him who hath right after he hath recontinued the manor; but such admittances which a disseisor makes to copyholders of the manor are good, for they are in a manner judicial acts & shall bind the disseisee. Admittance upon surrenders of copyholders in fee to the use of another, or, if an heir, in case of descent of a copyhold, were good being made by a disseisor of a manor or any other who hath it by tort, because these are acts of necessity & for the benefit of a stranger, to wit, of him who is to have the land by surrender, or of the heir; & also grants made by copy by the feoffee upon condition of a manor before the condition broken are good, because he was lawful *dominus pro tempore*.—*CHUDLEIGH'S CASE* (1594), 1 Co. Rep. 113 b; 76 E. R. 261;

sub nom. *DILLON v. FRAINE*, Poph. 70; 1 And. 309, Ex. Ch.

Annotations:—*Reid*. Kent v. Steward & Scott (1634), Cro. Car. 358; Gale v. Gale (1789), 2 Cox, Eq. Cas. 136. *Mentd.* Woodliff v. Drury (1595), Cro. Eliz. 439; Archer's Case (1597), 1 Co. Rep. 63 b; Smith v. Belay (1598), Cro. Eliz. 630; Corbet's Case (1599), 2 And. 134; Fitzwilliam's Case (1605), 6 Co. Rep. 32 a; Mildmay's Case (1606), 6 Co. Rep. 40 a; Seymour's Case (1612), 10 Co. Rep. 95 b; Portington's Case (1613), 10 Co. Rep. 35 a; Blamford v. Blamford (1615), 3 Bulst. 98; Bowles's Case (1615), 11 Co. Rep. 79 b; Haverhill v. Hare (1616), 3 Bulst. 250; Duncombe v. Wingfield (1617), Hob. 254; Elvis v. York (Archbp.) Taylor & Bishop (1619), Hob. 315; Buckley v. Simonds (1623), Win. 59; Secheverel v. Dale (1627), Poph. 193; Beck's Case (1630), Litt. 344; Napper v. Sanders (1631), Hut. 118; Spirt v. Bence (1634), Cro. Car. 368; Hore v. Dix (1661), 1 Sid. 25; Berry v. White (1662), O. Bridg. 82; Pinker v. Litcott (1665), O. Bridg. 373; Pybus v. Mitford (1674), 3 Keb. 338; Thompson v. Leach (1690), 2 Vent. 198; Davis v. Speed (1692), Carth. 262; Jones v. Morley (1697), 1 Ld. Raym. 287; Hopkins v. Hopkins (1738), 1 Atk. 581; Jones v. Meredith (1739), 2 Com. 661; Parkhurst v. Smith (1741), Willes, 327; Grills v. Mannell (1742), Willes, 378; Coryton v. Helyar (1745), 2 Cox, Eq. Cas. 340; Garth v. Cotton (1753), 3 Atk. 751; Lethieullier v. Tracy (1754), 3 Atk. 774; Burgess v. Wheate (1759), 1 Eden, 177; Egerton v. Brownlow (1853), 4 H. L. Cas. 1; Buchanan v. Harrison (1861), 31 L. J. Ch. 74; *Re Ashforth*, Sibley v. Ashforth, [1905] 1 Ch. 535; White v. Summers, [1908] 2 Ch. 256.

662. ——— Under grant upon condition—May bind grantor—Whether condition broken before or after grant of copyhold.]—ARUNDEL'S (EARL) CASE, No. 652, *ante*.

663. ——— Exility, baseness, or uncertainty of lord's estate—Does not avoid grant.]—Grants by copy shall not be avoided for infancy, coverture, nor in respect of the exility, baseness, or uncertainty of the interests or estates of the lords.

If the lord takes a wife, & grants the land by copy, & dies, his wife being endowed of the said land, shall not avoid the grant. The copyholder, who comes in by voluntary grant, shall not be subject to the charges, etc. of the lord before the grant.

If there be a grant of a rent out of land upon condition, a subsequent feoffment of the same land does not destroy the condition.—*SWAYNE'S CASE* (1608), 8 Co. Rep. 63 a; 77 E. R. 568; *sub nom.* *SWAINE v. BECKET*, Moore, K. B. 811; 72 E. R. 921.

Annotations:—*Reid*. Sammer v. Force (1610), 2 Brownl. 208; Secheverel v. Dale (1627), Poph. 193; Thorne v. Tyler (1641), March, 161. *Mentd.* Rowles v. Mason (1612), 2 Brownl. 88, 192; Liford's Case (1615), 11 Co. Rep. 46 b.

Tenant pur autre vie—After death of cestui que vie.]—See No. 653, *ante*.

664. ——— Cannot readmit tenant after forfeiture—So as to bind rightful lord.]—MUNIFAS v. BAKER, No. 1039, *post*.

Effect of confirmation of estate granted by lord de facto—On estate in remainder.]—See No. 884, *post*.

Rights of lord of customary manor.]—See No. 6, *ante*.

665. Tenant in dower—So as to bind heir.]—GAY v. KAY, No. 351, *ante*.

See, also, No. 310, *ante*.

666. Infant.]—REEVE v. MARTIN & COOPER (1601), Noy, 41; 74 E. R. 1011.

667. ———.]—SWAYNE'S CASE, No. 663, *ante*.

668. Guardian in socage—So as to bind heir.]—SHOPLAND v. RYOLER (1605), Cro. Jac. 98; 79 E. R. 85.

Annotation:—*Reid*. R. v. Sutton (1835), 3 Ad. & El. 597.

669. Feme covert.]—SWAYNE'S CASE, No. 663, *ante*.

670. Not committee of lunatic lord.]—BLEWIT'S CASE, No. 498, *ante*.

671. Steward of lunatic lord—Appointed before lunacy—Only with privity of committee.]—BLEWIT'S CASE, No. 498, *ante*.

SUB-SECT. 2.—TO WHOM GRANT MAY BE MADE.

672. Wife of tenant—*Durante viduitate*—Expectant on determination of husband's life estate—Good by custom.]—DOWN *v.* HOPKINS, No. 492, *ante*.

673. Daughter en ventre sa mere—Not for estate in possession—By purchase—May take in remainder.]—CHURCH *v.* WYAT, No. 723, *post*.

674. Not wife of lord—To take immediate effect.]—FIREBRASS *d.* SYMES *v.* PENNANT (1764), 2 Wils. 254; 95 E. R. 796.

Annotations :—*Mentd.* Phillips *v.* Barnet (1876), 1 Q. B. D. 436; R. *v.* London Corpn. (1886), 16 Q. B. D. 772; Wennhak *v.* Morgan (1888), 57 L. J. Q. B. 241.

675. Not lord of manor—Though only lessee.]—The lord of a manor cannot grant a copyhold to himself, & when the lord, being a lessee, & having assigned his lease to trustees, nevertheless granted to himself in his own name :—*Held* : he acted in his own character & not as agent for the trustees & the grant, not being on behalf of the trustees, was void.—CHRISTCHURCH (DEAN, ETC.) *v.* BUCKINGHAM (DUKE) (1864), 17 C. B. N. S. 391; 4 New Rep. 294; 33 L. J. C. P. 322; 10 L. T. 575; 10 Jur. N. S. 749; 12 W. R. 986; 144 E. R. 158. *Annotation* :—*Mentd.* Reece *v.* Strousberg (1885), 54 L. T. 133.

Corporation.]—See CORPORATIONS.

See, also, No. 623, *ante*.

SUB-SECT. 3.—WHAT MAY BE GRANTED.

A. Corporeal Tenements.

676. Copyhold tenements in hands of lord—By escheat or otherwise—Though in lord's hands for many years—Unless tenure destroyed.]—*Held* : (1) if copyholds came into the lord's hands by escheat or otherwise, & he made a lease for years or other estate by deed or without deed, or if he made a feoffment on condition & afterwards entered for breach of the condition, the copyhold could never after be granted by copy during such estate, for it was not devisable; (2) if the lord kept them in his hands ever so long, or granted them at will, heir or assignee might regrant them by copy; (3) if the interruption was tortious as if the lord was disseised, & the disseisor died seised, & afterwards the lord's estate recontinued, the lord might regrant them by copy. *Secus*, if the copyhold was extended in the lord's hands, or his wife was endowed; (4) if a copyholder accepted a lease for years of his copyhold, or of the manor, the copyhold was extinguished; but such lessee of the manor might grant the land again by copy as well as copyholds which afterwards escheated.—FRENCH'S CASE (1576), 4 Co. Rep. 31 a; 76 E. R. 600.

Annotation :—*Mentd.* Crouther *v.* Oldfield (1706), 1 Salk. 364.

Destruction of tenure.]—See Part XIX., *post*.

677. Copyhold tenements in hands of lord—By escheat or otherwise—Though in lord's hands for many years.]—HARRIS *v.* JAY, No. 486, *ante*.

678. — By forfeiture—Before seizure.]—MUNIFAS *v.* BAKER, No. 1039, *post*.

679. Lands not formerly copyhold—Cannot be granted by copy.]—K. brought trespass for breaking of his close against C. : & upon pleading they were at issue, if the lord of the manor aforesaid granted the said lands *per copiam rotulorum curiæ manerii secundum consuetudinem manerii*, & it was given in evidence, that within the said manor were divers customary lands, & that the lord now of late at his ct. of the said manor granted the land, etc., *per copiam rotulorum curiæ* where it was never

granted by copy before :—*Held* : the jury are bound to find *dominus non concessit*, for notwithstanding that *de facto dominus concessit per copiam rotulorum curiæ*, yet *non concessit secundum consuetudinem manerii* for the land was not customary, nor was it demisable, for the custom had not taken hold of it.—KEMPE *v.* CARTER (1587), 1 Leon. 55; 74 E. R. 51.

Annotations :—*Refd.* Revell *v.* Jodrell (1788), 2 Term Rep. 415; Doe *d.* Lowes *v.* Davidson (1813), 2 M. & S. 175.

680. — May be granted by copy—With consent of homage—By custom.]—A lord of a manor by custom made new grants of part of the manor to hold by copy, & a case was cited to support this :—*Held* : the grants there were made with consent of the homage. But the question was whether there existed a custom to make grants without the homage, & that must go to law, & then it would be considered how far a custom to make such grants without the homage was a good custom.—HUGHES *v.* GAMES (1726), Cas. temp. King, 62; 2 Eq. Cas. Abr. 228, pl. 12; 22 E. R. 194, L. C.

— Waste of the manor—By custom.]—See COMMONS & RIGHTS OF COMMON, Vol. XI., p. 44 No. 608.

Apart from custom.]—See COMMONS & RIGHTS OF COMMON, Vol. XI., p. 44, No. 613.

B. Incorporeal Rights.

681. Underwood—By custom.]—The lord of a manor granted by copy to A. & his heirs the right to cut underwood over at least four or five acres annually; the manor was leased, & the lessee cut certain underwood. The copyholder brought an action for trespass against the lessee, the lessee alleged that he had left sufficient for the copyholder to cut over four or five acres annually :

Held : (1) underwood could be granted by copy if the custom permitted; (2) the copyholder could bring an action of trespass, although the soil did not pass to him; (3) all the underwood passed to the copyholder & none remained to the lord; (4) a right to hold a market, rights of fishery, herbage & tithes could be granted by copyhold.—HOE *v.* TAYLOR (1594), Moore, K. B. 355; Cro. Eliz. 413; 4 Co. Rep. 30 b; Jenk. 274; 72 E. R. 625.

Annotations :—*As to* (2) *Refd.* Heydon & Smith's Case (1610), 13 Co. Rep. 67; Wilson *v.* Mackreth (1766), 3 Burr. 1824. *As to* (4) *Consd.* Musgrave *v.* Gave (1742), Willes, 319.

682. Herbage.]—HOE *v.* TAYLOR, No. 681, *ante*.

683. — *Prima tonsura*.]—One may hold the *prima tonsura* of land as copyhold, & another may have the soil & every other beneficial enjoyment of it as freehold. Ancient admissions of the copyholder & those under whom he claims the land, by the description of "*tres acras prati*," may be construed only to carry the *prima tonsura*, if in fact they have enjoyed no more under such admissions, while another has had the after-crop, & has cut the trees & fences, scoured the ditches, repaired the fences, & kept the drains; though the copyholder may have paid all the rates & taxes, which was in his own wrong.—STAMMERS *v.* DIXON (1806), 7 East, 200; 3 Smith, K. B. 261; 103 E. R. 77.

684. Right to fair or market—Appendant to manor.]—HOE *v.* TAYLOR, No. 681, *ante*.

685. — — —.]—If the custom will warrant it tithes may be granted by copy of ct. roll. So a fair or a market appendant may be granted by copy (WILLES, L.C.J.).—MUSGRAVE *v.* GAVE (1742), Willes, 319; 125 E. R. 1193.

686. Right of fishery.]—HOE *v.* TAYLOR, No. 681, *ante*.

687. Tithes.]—HOE *v.* TAYLOR, No. 681, *ante*.

Sect. 1.—By grant: Sub-sect. 3, B.; sub-sects. 4, 5 & 6. Sect. 2. Part IX. Sects. 1 & 2: Sub-sect. 1.]

688. —.]—BOURN'S CASE (prior to 1594), cited in Cro. Eliz. 413; 78 E. R. 655.

Annotation:—Reid. Hoe v. Taylor, (1594) Cro. Eliz. 413.

689. — By custom.]—MUSGRAVE v. GAVE, No. 685, *ante*.

690. — Not apart from custom.]—Tithes of a manor were granted to H., through whom deft. claimed, but as it did not appear that the tithes had been granted by copy from time whereof, etc.:—*Held*: there was not any title found for deft.—SANDS v. DRURY (1601), Cro. Eliz. 814; 78 E. R. 1041.

Annotations:—Reid. Musgrave v. Gave (1742), Willes, 319; Doe d. Roberts v. Whitaker (1834), 3 Nev. & M. K. B. 225.

SUB-SECT. 4.—VALIDITY OF GRANT.

691. May be made on surrender of former grantee in remainder—Though former grantee not shown to be admitted.]—DOE d. ROBERTS v. WHITAKER, No. 355, *ante*.

692. Several tenements may be granted by one copy—Though several rents not reserved out of specific tenements.]—DOE d. ROBERTS v. WHITAKER, No. 355, *ante*.

693. Two herlots may be reserved—Though only one reserved formerly.]—DOE d. ROBERTS v. WHITAKER, No. 355, *ante*.

See, generally, Part XI., Sect. 2, post.

694. Grant out of court—Must be presented at next court—Or subsequent accustomed court.]—DOE d. ROBERTS v. WHITAKER, No. 355, *ante*.

695. — Entry at void court—Entry at subsequent good court sufficient—If tenants do not object.]—DOE d. ROBERTS v. WHITAKER, No. 355, *ante*.

SUB-SECT. 5.—PLACE OF GRANT.

696. In court holden for another manor—Void.]—CLIFTON v. BASSET, No. 1911, *post*.

697. Out of manor—By lord only.]—MELWICH v. LUTER, No. 95, *ante*.

698. —.]—DOE d. LEACH v. WHITAKER, No. 355, *ante*.

See, also, No. 499, ante.

Time & place of holding courts.]—*See, generally, Part IV., Sect. 1, sub-sect. 5, & Sect. 3, sub-sect. 5.*

SUB-SECT. 6.—EFFECT OF GRANT.

699. Words of limitation—Sibi et suis—Creates estate of inheritance—By custom.]—HIDE v. WELSH (1582), Ch. Cas. in Ch. 165; 21 E. R. 96.

—.]—LEPINGWELL, No. 1610, *post*.

701. — Sibi et assignatis—Creates estate of inheritance—By custom.]—BUNTING v. LEPINGWELL, No. 1610, *post*.

702. Royal grant—For life generally—No recital

that lands copyhold—Not void.]—Henry VIII., seised of a manor in which are copyholds, grants a copyhold for life generally, & whether this be a destroying of the copyhold or not, was the question:—*Held*: the grants of the King never recited what was copyhold, & the grant was not void. But *qu.*: whether it destroy the copyhold or not, so as the King hath not election to grant the same after by copy.—FULHAM v. FULHAM (1642), March, 206; 82 E. R. 477.

703. Grantor cannot afterwards declare trusts—Though grantee his son—& profits taken by grantor by consent.]—The father being lord of the manor could not declare the trusts of copyholds granted to his son, though he took the profits always by their consent (LORD FINCH, L.K.).—DOWDSWEL v. DOWDSWEL (1675), 1 Cas. in Ch. 261; 22 E. R. 791.

704. Grant of parcel of waste—To tenant—By way of increase of tenement—Does not create copyhold.]—R. v. WILBY (INHABITANTS), No. 965, *post*.

705. — Adjoining turnpike road—Does not pass soil of road.]—Pltf., as lord of the manor, granted a piece of the waste adjoining the turnpike-road to P., to hold as part of the copyhold of the manor:—*Held*: assuming pltf. to have power so to grant, the right to the soil of the road did not thereby vest in P.—SALISBURY (MARQUIS) v. GREAT NORTHERN RY. CO. (1858), 5 C. B. N. S. 174; 28 L. J. C. P. 40; 32 L. T. O. S. 175; 23 J. P. 22; 5 Jur. N. S. 70; 7 W. R. 75; 141 E. R. 69.

Annotations:—Reid. Devonshire v. Pattinson (1887), 20 Q. B. D. 263. Mentd. Pinchin v. London & Blackwell Ry. (1854), 1 K. & J. 34; Jolly v. Wimbledon & Dorking Ry. (1860), 1 B. & S. 807; Herridge v. Ward (1861), 10 C. B. N. S. 400; Micklothwaite v. Newlay Bridge Co. (1866), 33 Ch. D. 133; R. v. Wycombe Ry. (1867), L. R. 2 Q. B. 310; Tildswell v. Whitworth (1867), L. R. 2 C. P. 326; Plumstead Board of Works v. British Land Co. (1874), 44 L. J. Q. B. 38; Il. v. Platts (1880), 28 W. R. 915; Landrock v. Met. Dist. Ry. (1886), 3 T. L. R. 162; Pryor v. Petre, [1894] 2 Ch. 11; Sowell v. Harrow & Uxbridge Ry. (1902), 19 T. L. R. 130.

See, generally, HIGHWAYS, STREETS & BRIDGES.

Whether right of common passes.]—*See* COMMONS & RIGHTS OF COMMON, Vol. XI., p. 28, Nos. 361, 362.

Grant by limited owner—Whether binding on successor.]—*See* Nos. 656, 657, 658, *ante*.

Grant by lord de facto—Whether binding on lord de jure.]—*See* Nos. 652, 659, 660, 661, *ante*.

SECT. 2.—OTHER CASES.

By encroachment on waste.]—*See* COMMONS & RIGHTS OF COMMON, Vol. XI., p. 56, No. 842.

By enclosure award.]—*See* COMMONS & RIGHTS OF COMMON, Vol. XI., p. 77, No. 989.

706. Cannot be created within legal memory.]—Copyhold must be pleaded to be such time out of mind & cannot be created in time of memory.—ROE d. NEWMAN v. NEWMAN (1760), 2 Wils. 125; 95 E. R. 722.

707. Not by operation of law—Must have been demisable—Since time of legal memory.]—REVELL v. JODRELL, No. 76, *ante*.

Part IX.—Particular Estates in Land of Copyhold and Customary Tenure.

SECT. 1.—FEE CONDITIONAL.

708. Statute De Donis does not apply—Unless by special custom.]—HEYDON'S CASE, No. 610, *ante*.

709. —.]—ROYDEN & MOULSTER'S CASE (1626), Godb. 367; 2 Roll. Rep. 383; 78 E. R. 216; *sub nom.* ROWDEN *v.* MALTSTER, Cro. Car. 42.

*Annotations:—*Consd. Harrington *v.* Smith (1658), 2 Sid. 73. *Refd.* Glover *v.* Cope (1692), Skin. 305; Doe d. Wightwick *v.* Truby (1774), 2 Wm. Bl. 944. *Mentd.* Carr d. Dagwell *v.* Singer (1750), 2 Ves. Sen. 603; Holloway *v.* Berkeley (1826), 9 Dow. & Ry. K. B. 83; Doe d. Reed *v.* Harris (1838), 7 L. J. Q. B. 76.

710. —.]—Held: copyholds were not within stat. De Donis for the weakness & meanness of their estates: for if they were within the statute the lord could not enter for felony, but the donor; & the services should be done to the donor, & not to the lord of the manor.—PITS & HOCKLEY'S CASE (1593), cited in Godb. 368; 78 E. R. 217.

*Annotation:—*Consd. Royden & Moulster's Case (1626), Godb. 367.

711. —.]—PILKINGTON *v.* BAGSHAW, No. 273, *ante*.

712. How created—By words of limitation—Apt to create estate tail—Where no custom to entail.]—An estate was limited to trustees to the use of A. & the heirs of her body. She married B. The lands were copyhold, & by the custom were not capable of being entailed & no recovery could be suffered of them. A. & B. by indenture of bargain & sale to lead the uses of a common recovery declared that the lands should be to the use of B. & his heirs & afterwards suffered a common recovery in the ct. of Common Pleas:—*Held:* the wife was a tenant in fee simple conditional & had power to dispose of it after the condition was performed, & that she might suffer the recovery.—PULLEN *v.* MIDDLETON (LORD) (1754), 9 Mod. Rep. 483; 88 E. R. 590.

713. —.]—Where testator devised his burgage-house, being burgage held of a manor where there is no custom of entailing, to his wife for life, or until marriage, & after her decease or marriage to C., his younger son, for & during the term of his natural life, & after the decease or marriage of his wife, & also after the decease of his son C. unto the heirs of the body of C., lawfully begotten or to be begotten, equally among them as should then be living, share & share alike, there being not any child of C. then born, & in case C. died without issue, lawfully begotten, or to be begotten, after his decease, remainder over:—*Held:* (1) C. took either an estate of inheritance in the nature of an estate tail, or an estate for life, with a contingent remainder to his children, depending on the events of there being a child born & living at the death of C.; (2) in either case, the child of C. was barred, by the freehold of the lord becoming united, by a deed of enfranchisement, in the owner of the customary estate, who derived title by conveyance from C. after his estate came into possession.—ROE d. CLEMENT *v.* BRIGGS (1812), 16 East, 406; 104 E. R. 1142.

*Annotations:—*As to (1) *Refd.* Doe d. Long *v.* Prigg (1828), 8 B. & C. 231. As to (2) *Consd.* Doe d. Newby *v.* Jackson (1823), 2 Dow. & Ry. K. B. 514. *Refd.* Busher *v.* Thompson (1846), 1 Lut. Reg. Cas. 551.

714. —.]—Testator

devised a copyhold estate to his wife for life, remainder to his son, & the heirs of his body, & there was no custom in the manor to entail copyholds; the son survived his mother, & had issue, & having become bkpt., died before admittance, & before any bargain & sale was executed by the comrs. of this estate:—*Held:* (1) he took a fee simple conditional at common law; (2) the comrs. might execute a valid conveyance of the estate after his death, pursuant to 1 Jac. 1, c. 15, s. 17.—DOE d. SPENCER *v.* CLARK (1822), 5 B. & Ald. 458; 1 Dow. & Ry. K. B. 44; 106 E. R. 1258.

715. —.]—Testator being seised in fee of copyholds which could not be entailed, devised the same to his son J. S. his heirs & assigns for ever, but if J. S. should die without leaving any child or children testator devised the same unto his five illegitimate children their heirs & assigns for ever to be equally divided between them:—*Held:* the lands being copyhold & not being capable of being entailed J. S. took a fee simple conditional on which no remainder could be limited.—DOE d. BLESARD *v.* SIMPSON (1842), 3 Man. & G. 929; 3 Scott, N. R. 774; 133 E. R. 1414; *affg.* S. C. *sub nom.* DOE d. SIMPSON *v.* SIMPSON (1838), 4 Bing. N. C. 333.

*Annotations:—*Consd. Harcastle *v.* Dennison (1861), 10 C. B. N. S. 606; Pemberton *v.* Barnes, [1899] 1 Ch. 544. *Refd.* Bamford *v.* Lord (1854), 14 C. B. 708. *Mentd.* Richards *v.* Davies (1862), 13 C. B. N. S. 69.

716. —.]—Testator devised certain copyholds to John J. for life, remainder to James J., & the heirs male of his body: & in case James J. should die without leaving issue male of his body lawfully begotten him surviving, then testator devised all his real estate from & after the decease of the said John J. or James J., which should last happen, unto George J., his heirs & assigns for ever:—*Held:* in the absence of a custom to entail within the manor, John J. took under the above devise an estate for life, & James J. a fee-simple conditional, & the devise over to George J. was a good executory devise.—HARDCASTLE *v.* DENNISON (1861), 10 C. B. N. S. 606; 4 L. T. 707; 142 E. R. 590.

717. —.]—PEMBERTON *v.* BARNES, No. 905, *post*.

718. —.]—Apt to create estate tail special—Where no custom to entail.]—J. R. surrendered copyhold lands to the use of M. A., whom he intended to marry, & the heirs of their two bodies:—*Held:* M. A. took an estate for life, with contingent remainders to the heirs of the bodies of her & her husband.—THROGMORTON d. ROBINSON *v.* WHARREY (1770), 3 Wils. 144; 95 E. R. 980; *sub nom.* FROGMORTON d. ROBINSON *v.* WHARREY, 2 Wm. Bl. 728; Wilm. 354.

*Annotation:—*Consd. Denn d. Trickett *v.* Gillot (1788), 2 Term Rep. 431.

719. How barred—In customary way.]—PILKINGTON *v.* BAGSHAW, No. 273, *ante*.

See, now, Fines & Recoveries Act, 1833 (c. 74), ss. 50, 53.

SECT. 2.—FEE TAIL.

SUB-SECT. 1.—IN GENERAL.

720. May be created—Apart from custom.]—*Held:* (1) a copyholder in fee, who by the custom

Sect. 2.—Fee tail: Sub-sects. 1 & 2, A. & B. (a).]

might surrender in fee, might make a surrender in tail, without any special custom so to do; (2) he who might prescribe to make a feoffment in fee, might make a lease for life, & it would be good, *quia omne majus continet in se minus*.—ANON. (1584), Godb. 20; 78 E. R. 13.

721. ——— In equity.]—(1) The admittance for a tenant for life of a copyhold is an admittance of the remainderman, for the fine is entire & no new fine is due for the remainderman: but not so in the case of a reversioner.

(2) Copyhold can be entailed by equity without a custom.

(3) Where by custom, copyholds may be entailed a recovery may be suffered in the lord's ct. to bar it.—DELL v. RIGDEN (1594), 4 Co. Rep. 23 a; 76 E. R. 920; *sub nom.* DELL v. HIGDEN, Cro. Eliz. 372; Moore, K. B. 358.

Annotations:—*Refd.* Carr d. Dagwell v. Singer (1750), 2 Ves. Sen. 603. *Mentd.* Barnes v. Corke (1691), 3 Lev. 308; Ely v. Caldecot (1832), 1 L. J. C. P. 131.

722. ———.]—ADAMS v. HINCLOE (1709), 11 Mod. Rep. 199; 88 E. R. 988.

723. ——— By special custom.]—(1) A gift to A. & his heirs with remainder over if he dies without issue of his body, gives A. an estate tail.

(2) A daughter *en ventre sa mere* cannot take an estate in possession in a copyhold by purchase but can take an estate in remainder.

(3) Copyhold can be entailed by special custom.

(4) Surrender may bar the issue in tail by special custom.—CHURCH v. WYAT (1595), Moore, K. B. 637; 72 E. R. 808.

Annotations:—*As to* (2) *Refd.* Nurse v. Yerworth (1674), 3 Swan. 608. *As to* (4) *Refd.* Carr d. Dagwell v. Singer (1750), 2 Ves. Sen. 603.

724. ———.]—By custom, a copyhold may be surrendered to the use of one for life with remainder in tail.—STANTON v. BARNES (1597), Cro. Eliz. 373; 78 E. R. 620.

Annotation:—*Refd.* Smartle v. Penhallow (1703), 2 Ld. Raym. 994.

725. ———.]—(1) Copyholds may be entailed by stat. De Donis co-operating with the custom. (2) The entail of copyholds cannot be barred by surrender unless by special custom.—LEE v. BROWN (1617), Poph. 128; 79 E. R. 1231.

726. ——— Under custom enabling lord to grant in fee.]—GRAVENOR v. TODD, No. 769, *post*.

727. ——— At common law.]—(1) Copyholds may not be entailed by stat. De Donis but by the common law.

(2) Surrenders, or plaints in nature of fines & recoveries may bar these estate tails, as well in the ct. baron, as at the common law, if the custom have been such.—ANON. (1602), Cary, 22; 21 E. R. 12.

728. Cannot be created.]—COPYHOLDERS' CASE (1626), Benl. 187; 73 E. R. 1048.

729. ——— Apart from custom.]—HILL v. MORSE (1585), Moore, K. B. 188; 72 E. R. 523.

730. ———.]—ERISH v. RIVES, No. 1572, *post*.

731. ———.]—There cannot be an estate tail of copyhold land, unless there be a special custom within the manor to warrant it.—HASTING v. GREYS (prior to 1599), cited in Cro. Eliz. 717; 78 E. R. 951.

Annotation:—*Refd.* Erish v. Rives (1599), Cro. Eliz. 717.

732. ———.]—ROWDEN v. MALTSTER, No. 611, *ante*.

See, also, Nos. 714, 715, *ante*.

733. ——— Subject to a condition not to make grants according to custom.]—A condition in a gift in tail of a manor not to make any grant of any lands by copy according to the custom, is not

good.—MILDMAY'S CASE (1605), 6 Co. Rep. 40 a; 77 E. R. 311.

Annotations:—*Refd.* Bradley v. Peixoto (1797), 3 Ves. 324; Holmes v. Godson (1856), 25 L. J. Ch. 317; *Re* Rosher, Rosher v. Rosher (1884), 26 Ch. D. 801; *Re* Dugdale, Dugdale v. Dugdale (1888), 38 Ch. D. 176. *Mentd.* Soday's Case (1611), 9 Co. Rep. 127 b; Rowles v. Mason (1612), 2 Brownl. 192; Portington's Case (1613), 10 Co. Rep. 35 b; Stukeley v. Butler (1615), Hob. 168; King v. Rumball (1617), Cro. Jac. 448; Foy v. Hynde (1624), Cro. Jac. 697; Gardner v. Shelden (1671), 2 Keb. 781; Howard v. Norfolk (1681), 3 Cas. in Ch. 14; Bath & Mountague's Case (1693), 3 Cas. in Ch. 55; Brewster v. Kitchin (1697), Comb. 424; Ratcliffe's Case (1720), 1 Stra. 267; Thornby v. Fleetwood (1720), 1 Stra. 318; Goodtitle v. Pettoe (1732), 2 Barn. K. B. 142; Gulliver v. Vaux (1746), 8 De G. M. & G. 167; Tyndale v. Warre (1821), Jac. 212.

734. Proof of custom—Recital of admission as tenant in tail—Coupled with proof of surrender & subsequent enjoyment—Sufficient.]—The presumption is that a surrender will bar an estate tail in copyholds until a contrary custom is shown.

Copyholds had been sold subject to a condition that all statements & recitals in any of the muniments of title should be considered satisfactory evidence of the facts stated or recited; & in case any purchaser should not point out some valid objection thereto, the same should be considered as accepted. The purchaser objected that the first surrender on the abstract was by A. & his wife J., which said J., it was therein stated, had lately been admitted there tenant in tail according to the custom of the manor, & that there was nothing to show how the estate tail had been barred. Afterwards, the purchaser required evidence that the custom of the manor warranted estates tail. The first surrender was dated in 1801 & was conditional only. In 1815 the same parties made an absolute surrender in fee, under which the possession had been enjoyed ever since:—*Held*: (1) the recital was conclusive evidence, under the conditions of sale, of the fact that J. had been admitted tenant in tail; (2) but not that this was according to the custom of the manor, for this was not a single fact, but a deduction from a series of facts; (3) this recital, coupled with the conditional surrender of 1801, the absolute surrender of 1815, & the subsequent possession consistently with that title, was sufficient evidence that the custom of the manor did warrant estates tail.—GOOLD v. WHITE (1854), Kay, 683; 2 Eq. Rep. 1100; 24 L. T. O. S. 43; 69 E. R. 291.

Annotation:—*As to* (1) & (2) *Refd.* Poppleton v. Buchanan (1858), 4 C. B. N. S. 20.

735. Creation of equitable estate tail—Devise to trustees—To pay rents to one for life—& to his children & so on for ever—Gift over for want of children.]—TRASH v. WOOD, No. 1317, *post*.

SUB-SECT. 2.—BARRING THE ENTAIL.**A. Who may Bar.**

736. Committee of lunatic.]—A committee of the person & estate of a lunatic may levy a fine, or suffer a recovery of copyhold lands, of which the lunatic is tenant in tail, with immediate reversion to himself in fee, under 1 Will. 4, c. 65, s. 28, for effecting a sale for the purposes of the Act.—*Re* BRAND (1832), 1 My. & K. 150; 2 L. J. Ch. 12; 39 E. R. 638, L. C.

Annotation:—*Refd.* *Re* Bryan (1845), 5 L. T. O. S. 261.

737. Concurrence of tenant in freebench—Necessary.]—S. & J. being joint tenants of copyhold lands for life in remainder expectant upon the determination of a previous life estate in M., with several inheritances in tail, with cross-remainders

in tail, S. & her husband, without the concurrence of M., surrendered their estate & interest to the intent that the lord should regrant the same to such person or persons as the husband should by will appoint: S. died in the lifetime of her husband & of J.; the husband afterwards died, having by his will appointed the surrendered share to his exors.:—*Held*: (1) the *quasi* estate tail of S. was not barred, & whether the life estate of M. was under the same instrument as that under which S. & J. derived their title, or whether M.'s tenancy was under her paramount title of free-bench, still her concurrence was necessary in order effectually to bar the estate tail in remainder; (2) there was, under the circumstances, no severance of the joint tenancy. *Qu.*: whether the surrender by a joint-tenant to the use of his will would *per se* effect a severance of the tenancy.—EDWARDS v. CHAMPION (1853), 3 De G. M. & G. 202; 1 Eq. Rep. 419; 23 L. J. Ch. 123; 21 L. T. O. S. 293; 1 W. R. 497; 43 E. R. 80, L. C.

Annotation:—Generally, *Refd.* Smith v. Adams (1854), 18 Beav. 499.

Assignee in bankruptcy.—See BANKRUPTCY & INSOLVENCY, Vol. V., p. 689, No. 6093.

See, generally, REAL PROPERTY & CHATTELS REAL.

B. How Barred.

(a) Legal Estates.

738. By recovery—At common law.—ANON., No. 727, *ante*.

739. — In the lord's court.—Where by custom a copyhold may be entailed, it may also be barred by a common recovery suffered in the lord's ct.—CLUN v. PEASE & TURNER (1594), Cro. Eliz. 391; 78 E. R. 637.

Annotation:—*Consd.* Carr v. Singer (1750), 2 Ves. Sen. 603.

740. — — — — ——DELL v. HIGDEN, No. 721, *ante*.

741. — — — — ——ANON., No. 727, *ante*.

742. — — — — ——(1) A surrender by a tenant in tail of copyhold is not discontinuance.

(2) A surrender by a tenant for life to the use of another in fee is not forfeiture.

(3) A recovery may be had in the lord's ct. which will bar the entail.—OLDOOT v. LEVELL (1603), Moore, K. B. 753; 72 E. R. 883.

— **Or surrender—Concurrent custom.**—See Nos. 236, 237, 238, 239, *ante*.

743. By surrender—By special custom.—CHURCH v. WYAT, No. 723, *ante*.

744. — — — — ——ANON., No. 727, *ante*.

745. — — — — ——HILL v. UPCHURCH (1611), 2 Brownl. 121; 123 E. R. 850.

746. — — — — ——LEE v. BROWN, No. 725, *ante*.

747. — Where no special custom.—Where there was no special method in a manor for barring entails of copyholds, a general or common surrender was sufficient; & where a copyholder being equitable tenant in tail, did all he could to make a surrender, but was prevented, & made his will giving his estate to his wife for life, remainder to her children by a former husband, this was sufficient to bar the entail of the equitable estate. *Qu.*: whether the widow of a *cestui que trust* is entitled to free-bench as if the husband had had the legal estate.—OTWAY v. HUDSON (1706), 2 Vern. 583; 23 E. R. 981.

Annotations:—*Refd.* Banks v. Sutton (1732), 2 P. Wms. 700; Chaplin v. Chaplin (1733), 3 P. Wms. 229; Godwin v. Winsmore (1742), 2 Atk. 525; Pullen v. Middleton (1753), 9 Mod. Rep. 483.

748. — — — — ——By marriage articles made on the marriage of an orphan of the city of L., the husband in consideration of the payment of her orphanage portion covenanted to surrender copy-

holds to uses, after life estates to himself & his wife, to the male heirs of their bodies in tail, remainder to his own right heirs. He died leaving one son & one daughter before any surrender was made. The son surrendered the copyholds by way of mtge. security. He died without issue:—

Held: the surrender barred the entail, there being no particular custom requiring a recovery.—WHITE v. THORNBOROUGH (1715), Gilb. Ch. 107; Prec. Ch. 425; 2 Vern. 702; 25 E. R. 75, L. C.

Annotations:—*Refd.* Price v. Powell (1729), 1 Barn. K. B. 201; Carr d. Dagwell v. Singer (1750), 2 Ves. Sen. 603; Moore v. Moore (1755), 2 Ves. Sen. 596; Doe d. Wightwick v. Truby (1774), 2 Wm. Bl. 944.

749. — — — — ——CARR d. DAGWELL v. SINGER (1750), 2 Ves. Sen. 603; 28 E. R. 385.

Annotations:—*Consd.* Moore v. Moore (1755), Amb. 279. *Refd.* Doe d. Wightwick v. Truby (1774), 2 Wm. Bl. 944; Doe d. Dauncey v. Dauncey (1817), 7 Taunt. 674; Goold v. White (1854), Kay, 683.

750. — — — — ——MOORE v. MOORE (1755), 2 Ves. Sen. 596; Amb. 279; Dick. 66; 28 E. R. 380, L. C.

Annotations:—*Consd.* Goold v. White (1854), Kay, 683. *Refd.* Doe d. Wightwick v. Truby (1774), 2 Wm. Bl. 944.

751. — — — — ——GOOLD v. WHITE, No. 734, *ante*.

— **Or recovery—Concurrent custom.**—See Nos. 236, 237, 238, 239, *ante*.

752. By fine.—A tenant in fee of copyhold lands by custom entailed them on himself & the issue of his body & by custom that was to be barred by seizure of the lord for forfeiture & not otherwise. The tenant in tail accepted a feoffment of this copyhold from the lord that had the inheritance, & made a feoffment of the land: then he levied a fine with proclamation & suffered a common recovery:—*Held*: the entail was barred.—TAYLOR v. SHAW (1665), Cart. 22; 124 E. R. 801. *Annotation*:—*Mentd.* Whitfield v. Fausset (1750), 1 Ves. Sen. 387.

753. By forfeiture & regrant—Custom of manor of Wakefield.—PILKINGTON v. BAGSHAW, No. 273, *ante*.

754. — — — — ——A custom in the manor of W. to bar an entail & remainders by surrender of the copyhold to a purchaser & his heirs, the purchaser committing a forfeiture on which the lord seized & made three proclamations & regranted without joining the tenant in tail:—*Held*: to be good.—PILKINGTON (LESSEE OF) v. STANHOP (1666), 1 Sid. 314; 82 E. R. 1128; *sub nom.* SAUNDERSON v. STANHOP, 2 Keb. 127.

755. — — — — ——A custom in the manor of W. to bar an entail of a copyhold by forfeiture & regrant is good; in such case the lord cannot admit any other than the person for whose benefit the forfeiture was intended; & if he do, a purchaser may avoid all mesne acts, when he is admitted, as well as upon a surrender.—GRANTHAM v. COPLEY (1672), 2 Saund. 422; 85 E. R. 1236.

756. Surrender by tenants in common agreeing on partition—Of moieties agreed to be allotted to each—Bars entail as to moiety only.—Where two tenants in common in tail of a copyhold estate where the entail was barred by surrender entered into an agreement for a partition & made cross surrenders of the parts allotted to each other:—*Held*: (1) they only barred a moiety of their respective estates; (2) the agreement to divide could not operate as a partition.—OAKLEY v. SMITH (1759), Amb. 368; 1 Eden, 261; 27 E. R. 245.

757. By disentailing deed—Though uses declared by deed void.—DOE d. BAVERSTOCK v. ROLFE, No. 883, *post*.

Effect of enfranchisement.—See Part XX., Sect. 2, sub-sect. 5, *post*.

Sect. 2.—Fee tail: Sub-sect. 2, B. (a) & (b) & C.; sub-sect. 3. Sect. 3: Sub-sect. 1.]

Whether attempted disentail—Operates as severance of joint estate.]—See No. 737, ante.

See, generally, REAL PROPERTY & CHATTELS REAL.

(b) Equitable Estates.

See Fines & Recoveries Act, 1833, s. 53.

758. What operates as bar—Intention to acquire fee—Presumed from acceptance of surrender & admittance.]—I. G. was tenant in tail male in possession of the equitable interest in copyholds; he died, & his son entered; the trustees surrendered to the use of the son in fee, who was admitted accordingly & died:—Held: the acceptance of the surrender & the admittance under it was evidence of an intention to acquire a fee, & therefore a bar to the entail in equity.—GRAYME v. GRAYME (1763), 1 Watkins's Copyholds, 237, L. C.

Annotation:—Consd. Cresswell v. Hawkins (1857) 3 Jur. N. S. 407.

See, also, No. 767, post.

759. — Not devise alone—Of tenant in tail.]—ROE d. EBERALL v. LOWE, No. 1762, post.

760. Customary freeholds—Fines & Recoveries Act, 1833 (c. 74), s. 53—Does not apply to.]—Sect. 53, of the above Act only applies to equitable estates of tenants in tail of lands held by copy of ct. roll, the ct., therefore, refused a mandamus to the lord of a manor, commanding him to enter on the ct. rolls an indenture touching certain customary freehold hereditaments, although it appeared that the steward of the manor was accustomed to give admittances signed by him to the grantee of such hereditaments, but did not enrol the deed, by which they were granted.

The section referred to is clearly inapplicable, and I have not been able to discover that any other provision has been made by the statute for estates of this tenure (COLERIDGE, J.).

I do not see how the words of sect. 1 defining the meaning of the word "land," show that the property here comes within the meaning of the Act (COLERIDGE, J.).—R. v. INGLETON (LORDS OF THE MANOR) (1840), 8 Dowl. 693; 4 Jur. 700.

761. Disentailing deed—Must be entered on court rolls—Within six months.]—HONYWOOD v. FORSTER (No. 1) (1861), 30 Beav. 1; 30 L. J. Ch. 930; 7 Jur. N. S. 1264; 54 E. R. 788; sub nom. HONEYWOOD v. FORSTER, 4 L. T. 785; 9 W. R. 855. Annotations:—Apprvd. Gibbons v. Snape (1863), 9 L. T. 132; Green v. Paterson (1886), 32 Ch. D. 95.

762. — — — — —.]—GIBBONS v. SNAPE (1863), 1 De G. J. & Sm. 621; 2 New Rep. 563; 33 L. J. Ch. 103; 9 L. T. 132; 9 Jur. N. S. 1096; 11 W. R. 1087; 46 E. R. 246, L. J.

Annotation:—Folld. Green v. Paterson (1886), 32 Ch. D. 95.

763. — — — — —.]—A married woman, who was entitled to an equitable estate in tail in copyholds, in Feb. 1870 executed a deed which was acknowledged but not entered upon the ct. rolls within six months after execution, declaring that such copyholds should be held in trust for such persons as she & her husband should jointly appoint, & in default for herself in fee. In March, 1870 she & her husband, purporting to exercise this joint power, by deed appointed the entailed copyholds, & covenanted to surrender those & other copyholds to which she was entitled in fee, to trustees upon trust to sell, invest the proceeds, & hold the fund for her separate use for life, then for her husband for life, & then for her children other than her eldest son. The married woman had several children, & after her death & that of her husband the trustee of the settlement peti-

tioned that all the copyholds which had not been sold or surrendered might vest in him for all the estate therein of the eldest son & customary heir, who was an infant, & a vesting order was made according to the petition:—Held: (1) the deed of Feb. 1870, not being a disposition within the Fines & Recoveries Act, 1833 (c. 74), was inoperative to bar the estate tail in the copyholds; (2) a disentailing assurance by an equitable tenant in tail of copyholds, not entered upon the ct. rolls within six months after execution, was void; (3) the settlement of March, 1870 was not a disposition by the married woman within the Act, & could not be treated either as an assignment of her equitable interest in the copyholds or a valid declaration of trust, or anything more than a covenant to surrender; (4) although there was valuable consideration between the husband & wife, the post-nuptial settlement was voluntary as regarded the children of the marriage, who were strangers to the contract, & the ct. would not interfere in their favour.—GREEN v. PATERSON (1886), 32 Ch. D. 95; 56 L. J. Ch. 181; 54 L. T. 738; 34 W. R. 724, C. A.

Annotations:—As to (1) Consd. Carter v. Carter, [1896] 1 Ch. 62. Generally, Mentd. Harris v. Tubb (1889), 42 Ch. D. 79; Stephens v. Green, Green v. Knight (1895), 43 W. R. 465.

764. — — — — — What amounts to entry—Not production to steward & endorsement of memorandum.]—Where an equitable tenant in tail of copyholds executed a disentailing deed, & neglected to enter it on the ct. rolls, but on the last day within the time limited produced it to the steward of the manor, who, upon being told that it could not be left in his charge, as it was required for other purposes, indorsed it with a memorandum to that effect:—Held: the requirements of Fines & Recoveries Act, 1833 (c. 74) had not been complied with, & the deed was invalid.—BOYD v. PAWLE (1866), 14 L. T. 753; 14 W. R. 1009.

765. — — — — — What operates as—Not declaration of trust.]—GREEN v. PATERSON, No. 763, ante.

766. — — — — — Not mere covenant to surrender.]—GREEN v. PATERSON, No. 763, ante.

—See, generally, REAL PROPERTY & CHATTELS REAL.

C. Proof of Bar.

767. Admittance of heirs as tenants in fee simple—Raises presumption that entail barred.]—Where plffs. sought to contest an alleged entail of copyhold, & to establish it, several ancient entails & formedons brought thereon were proved, but on the other hand there were also proved several seizures & one recovery with a view to cutting off such entails, & many admittances as heirs in fee as in the case of fee simple land:—Held: the presumption was that the entail had been in some way cut off.—WADSWORTH'S CASE (1633), Clay. 26.

See, generally, REAL PROPERTY & CHATTELS REAL.

SUB-SECT. 3.—OTHER CASES.

768. Equitable estate tail—Does not merge—By accession of legal fee.]—MEREST v. JAMES (1821), 6 Madd. 118; 1 Brod. & Bing. 484; 4 Moore C. P. 327; 56 E. R. 1037.

Annotations:—Refd. Measure v. Gee (1822), 5 B. & Ald. 910; Cole v. Goble (1853), 13 O. B. 445. Mentd. Slater v. Dangerfield (1847), 16 L. J. Ex. 139; Roddy v. Fitzgerald (1858), 6 H. L. Cas. 823.

See, generally, EQUITY.

SECT. 3.—ESTATES FOR LIFE.

SUB-SECT. 1.—ESTATES FOR LIFE OF TENANT ONLY.

769. When authorised by custom—Custom authorising grant in fee—Authorises grant for life.]

—(1) Descent of a copyhold shall not take away an entry.

(2) A custom enabling the lord to grant in fee, warrants a grant to a man and the heirs of his body, or for life, or years.—*GRAVENOR v. TODD* (1593), 4 Co. Rep. 23 a; 76 E. R. 922; *sub nom. GRAVENOR v. BROOK*, Poph. 33; *sub nom. GRAVENOR v. RAKE*, Cro. Eliz. 307.

Annotations:—Generally, Reidd. Stanton v. Barnes (1595), Cro. Eliz. 373; *Collins v. Canoke* (1605), Cro. Jac. 105.

770. How created—Surrender to use of another—Without words of limitation.]—BUNTING v. LEPINGWELL, No. 1610, *post*.

771. — Devise for life—Though remainders declared void by custom.]—A copyhold, which by custom was devisable for 3 lives, was devised to A. for life, with remainders to such wife as he should marry & the eldest son of their bodies:—Held: the remainders were void, but the life estate good.—WEBSTER v. ALLEN (1602), Moore, K. B. 677; 72 E. R. 833.

772. Powers of tenant—May grant lease—For three years—Under licence to grant for three years

If he so long live.]—If a copyholder for life obtain licence to make a lease for three years, if he live so long, & he grants a lease for three years absolutely, yet the lease is good; & the lessee may maintain ejectment; but a copyholder in fee must pursue a licence strictly.—HADDON v. ARROWSMITH (1596), Cro. Eliz. 461; 78 E. R. 699; *sub nom. HALL v. ARROWSMITH*, Poph. 105.

Annotations:—Reidd. Doe d. Robinson v. Bonsfield (1844), 6 Q. B. 492. *Mentd. Lock's Case* (1675), Freem. K. B. 523.

773. — May nominate successor—By custom.]—Where a copyholder pleaded that the custom of the manor was that every copyholder for life might appoint in the presence of two others that such a man might have his copyhold after his death, without any surrender to his use, & that the two tenants should assess for his fine what sum they pleased, so it was not less than had used to be paid where the lord assessed a reasonable fine:—Held: the custom was good.—BAILS' CASE (1608), 4 Leon. 237; 74 E. R. 844.

Annotations:—Reidd. Parkin v. Radcliffe (1798), 1 Bos. & P. 282. *Mentd. Cole v. Sewell* (1848), 2 H. L. Cas. 186.

774. — — —.]—Where a custom was pleaded that a copyholder for life might nominate one or two that should have the copyhold lands after his death for a fine, to be assessed by the homage, if they could agree with the lord:—Held: the custom was good.—CRAB v. BALES (1605), Noy, 3; 74 E. R. 975.

775. — — — Tenant for life may dispose of equitable inheritance—By giving successive equitable interests.]—By the custom of the manors of Y., P. & S. the tenant of a copyhold tenement held only for life with power to nominate one or more successors, but so that if there were more than one, they held concurrently for their lives or the life of the survivor, who had power to nominate a successor to himself. A copyhold tenant of these manors by his will devised all his copyholds to three trustees to the use of his grandson A., for life with remainder to the use of the trustees to preserve contingent remainders, with remainder to the use of the children of A., & their heirs as tenant in common with remainder to the use of plffs. A. was admitted tenant for his life & nominated deft. as his successor who was admitted. On a bill filed by plffs. to carry into effect the

trusts of the will:—*Held*: (1) the trustees took the legal estate in the copyholds & ought to have been admitted instead of A.; (2) all the beneficial limitations in the will were equitable interests; (3) although by the custom of the manor the tenements were only held for life with power of nominating a successor testator had power to dispose of the equitable inheritance by giving successive equitable interests.—*ALLEN v. BEWSEY* (1877), 7 Ch. D. 453; 37 L. T. 688, C. A.

776. — — — When tenement under value of £100.]—A custom that a copyholder for life of a tenement under the value of £100 may nominate his successor is good.—ROWLES v. MASON (1612), 2 Brownl. 192; 123 E. R. 892.

777. — — — & except any part of the lands to another—Custom of the manor of Yetminster Prima.]—DEVENISH v. BAINES, No. 979, *post*.

Right to cut timber.]—See AGRICULTURE, Vol. II., pp. 67, 68, No. 432–440.

778. Effect of surrender—To use of another—Estate destroyed.]—A. was seised of a copyhold in right of his wife B. in his demesne as of fee: he surrendered the copyhold by himself without B. to the use of a stranger in fee who was admitted by the lord accordingly. A. & B. died & the heir of B. without any admittance entered upon the stranger & made a lease for a year to plff. upon whom deft. in right of the stranger to whom the surrender was made re-entered:—*Held*: plff. entitled to recover & the surrender of A. was not as a discontinuance against B.

Notwithstanding that he was not admitted, yet he might enter & take the profits & make a lease according to the custom or bring an action of trespass against him who disturbs him but if the lord require his fine or his services, & the heir refuse to do them, this may be a forfeiture of his copyhold; but until lawful seisin made by the lord because it belongeth to him the heir may intermeddle with the possession, albeit he be not admitted by the lord where it is an estate of inheritance by the custom.

There is this diversity between a surrender of an estate for life, & a surrender of an estate in fee to the use of a stranger, to wit, that by the one the estate drowned in the lord by the surrender, & by the other it is not drowned in the lord, but is transferred to him to whom it was made, upon which he is admitted to it; otherwise, in the last case it returns to him who surrendered, & then upon admittance he is in the *per* by him who surrendered, & not by the lord, or by the surrender made by tenant for life, he to whose use it is made ought to take it of the lord, & he is there in by him, & not by him who surrendered (*per* CUR.).—*BULLOCK v. DIBLER* (1594), Poph. 38; 4 Co. Rep. 23 a; Moore, K. B. 596; 79 E. R. 1157.

Annotations:—Reidd. Downs v. Hopkins (1594), Cro. Eliz. 323; *Collins v. Canoke* (1605), Cro. Jac. 105; *Ely v. Caldecote* (1832), 1 Moo. & S. 633; *Doe d. Hamilton v. Clift* (1840), 12 Ad. & El. 566.

779. — — —.]—If a copyholder for life surrender to the lord generally, who grants it for the life of another & after admission the grantee dies, the surrenderor cannot be admitted again to the estate, but the lord shall have it.—KING v. LORDE (1630), Cro. Car. 204; W. Jo. 229; 79 E. R. 780.

Annotations:—Reidd. Keen v. Kirby (1675), 1 Mod. Rep. 199; *More v. Pitt* (1677), Freem. K. B. 245; *Doe d. Dand v. Thompson* (1849), 13 Q. B. 670.

780. — — — Estate not destroyed.]—BULLOCK v. DIBLER, No. 778, *ante*.

781. — — —.]—OLDCOT v. LEVELL, No. 742, *ante*.

782. — — —.]—A copyhold was

Sect. 3.—Estates for life: Sub-sects. 1, 2 & 3.]

granted in reversion after two lives, *habend' post mortem, sursumrestitutionem*, etc., of the tenants for life; the tenants for life sold their estate to A. & surrendered to the lord, to the end that he might admit A. the vendee; the copyholder in reversion entered & brought an ejectment & recovered at law:—*Held*: A. was entitled to relief, because the surrender being only to admit A. the purchaser, it was against conscience that the reversioner should enter.—ANON. (1691), Freem. Ch. 118; 22 E. R. 1097.

SUB-SECT. 2.—ESTATES FOR LIFE OF TENANT AND SUCCESSIVE LIVES.

783. How created—By grant to several—By custom.]—A lease for life or for a term of years to three at common law to hold in succession shall yet create a joint tenancy; although it may be otherwise in copyhold where a custom of successive tenure exists.—ANON. (1538), Bro. N. C. 116; 73 E. R. 897.

Custom for tenant to nominate successor.]—No. 776, *ante*.

784. Capable of alienation—Specific performance of contract decreed.]—GREENWOOD v. HARE, No. 1404, *post*.

785. First taker may bar remainder—By custom.]—W., grandfather of pltf., took a copyhold estate in reversion for three lives: & the copy was to E., J. S. & D. successively. E. was made the purchaser. By the custom of the manor, the first taker might bar the remainder. E. & J. S. died. D. was admitted:—*Held*: (1) pltf. entitled as heir & exor. of E.; (2) all the estates in remainder were in trust for her, & she had power by the custom to dispose of them.—CLARK v. DANVERS (1679), 1 Cas. in Ch. 310; 22 E. R. 815, L. C.

786. ——— Custom must be strictly followed—Fine levied by first taker & lord jointly does not operate as surrender.]—A custom in copyhold that where a copyhold is granted to A. B. & C. successively the party first named, & who is the first to take, may surrender the land into the lord's hands & so destroy & determine the whole estate is to be strictly followed, & if the first to take joins with the lord in a covenant to levy a fine, & a fine is levied, it is not a good surrender within the custom.—ZINZON v. TALMASH (1680), 2 Show. 130; Poll. 561; T. Jo. 142; T. Raym. 402; 89 E. R. 838; *affg.* S. C. *sub nom.* TALMARSH v. ZINZAY (1679), 1 Freem. K. B. 263.

Annotations:—*Consd.* Phillips v. Ball (1859), 6 C. B. N. S. 811. *Refd.* Smartle v. Penhallow (1703), 2 Ld. Raym. 994.

787. ——— Proof of custom—Evidence from court rolls of four instances in 250 years sufficient.]—PHILLIPS v. BALL, No. 232, *ante*.

788. ——— Where no custom for first taker to bar—No proof that whole fine paid by first taker—Successive takers take beneficially.]—A copyhold was granted to three successively, but no custom was proved that the first taker had the power of disposing of the whole, nor that the first taker paid the purchase-money:—*Held*: the copyhold should not go to exor. of first taker, but in succession.—RUNDLE v. RUNDLE (1692), 2 Vern. 264; 23 E. R. 771.

Annotations:—*Consd.* Withers v. Withers (1752), Amb. 151. *Distd.* Zouch v. Forse (1806), 7 East, 186. *Refd.* Dyer v. Dyer (1788), 2 Cox, Eq. Cas. 92.

789. Who entitled—When first taker pays whole fine—On death of first taker—To first taker's estate.]—A copyhold estate was granted for the lives of

A. B. & C., A. alone paying the fine. A. died intestate:—*Held*: his administratrix should have the estate during the lives of B. and C.—HOWE v. HOWE (1686), 1 Vern. 415; 23 E. R. 556, L. C.

Annotations:—*Consd.* Withers v. Withers (1752), Amb. 151. *Distd.* Zouch v. Forse (1806), 7 East, 186. *Refd.* Rundle v. Rundle (1692), 2 Vern. 264.

790. ——— Subsequent taker takes as trustee only.]—If a copyholder purchase a copyhold for three lives, & put in his own life & two others, *habend' successive secundum consuetudinem manerii*, if the first taker paid the money, the other two were but in the nature of trustees for him, and he might dispose of the estate in equity, although it be in a manor where there is no custom for the first taker to dispose, unless it should appear that the other two lives were put in upon some consideration, or in pursuance of some agreement, etc.—ANON. (1692), Freem. Ch. 123; 22 E. R. 1100.

Annotation:—*Refd.* Dyer v. Dyer (1788), 2 Cox, Eq. Cas. 92.

791. ——— ———.]—Where in a grant of a copyhold for three lives, *viz.* to the husband & wife & a third person, & the fine was mentioned to be paid by the husband & wife:—*Held*: the third person was only a trustee for the husband & wife, & the survivor of them.—BENGER v. DREW (1721), 1 P. Wms. 781; 24 E. R. 613, L. C.

Annotations:—*Consd.* Smith v. Baker (1737), West. temp. Hard. 98. *Refd.* Dyer v. Dyer (1788), 2 Cox, Eq. Cas. 92. *Mentd.* Sheffield v. Mulgrave (1794), 5 Term Rep. 571.

792. ——— ———.]—A. bought a copyhold estate for his own, & two lives, in the manor of M., where the custom was, that whoever purchased in it, the estate should go in succession, & by his will devised all his estate, real & personal, to his wife:—*Held*: (1) though the legal interest of A. was not according to the custom of the manor, yet A. had an equitable interest from being the sole purchaser, & there was to be construed a trust for him, he having advanced the money.

(2) Where a copyhold is devised to the wife, the ct. will supply the want of a surrender.

(3) The rule that the ct. will not supply a surrender against an heir, must be applied solely to an heir in blood, & not to *hæres factus*.—SMITH v. BAKER (1737), 1 Atk. 385; West temp. Hard. 98; 26 E. R. 246, L. C.

Annotations:—*As to* (1) *Refd.* Lewis v. Lane (1834), 2 My. & K. 449. *As to* (3) *Refd.* Chapman v. Gibson (1791), 3 Bro. C. C. 229. *Generally Refd.* Dyer v. Dyer (1788), 2 Cox, Eq. Cas. 92; Jeans v. Cooke (1857), 27 L. J. Ch. 202.

793. ——— ———.]—In a manor, the custom was to grant for three lives successive. A. being the last life in an old copy, obtained a fresh grant to B. & C., A. paying the whole fine:—*Held*: B. & C. were trustees for A.—WITHERS v. WITHERS (1752), Amb. 151; 27 E. R. 99.

Annotation:—*Distd.* Zouch v. Forse (1806), 7 East, 186.

794. ——— Custom to the contrary bad.]—(1) The right of the equitable owner of a copyhold estate to dispose of his equitable interest by will cannot be controlled by the custom of a manor.

(2) A custom inconsistent with the doctrine of resulting trusts, as, that a person named by the purchaser of a copyhold estate, as the second life according to the custom, shall take beneficially, is unreasonable.—LEWIS v. LANE (1834), 2 My. & K. 449; 39 E. R. 1015.

Annotation:—*As to* (2) *Consd.* Jeans v. Cooke (1857), 24 Beav.

Validity of custom generally, see Part III., Sect. 2, *ante*.

Unless circumstances raise presumption of advancement.]—See Nos. 795, 796, 797, *post*.

795. When advancement presumed—Issue as subsequent takers.]—Copyhold was granted to A.

& B. his wife, & C. his younger son, to take in succession for their lives & the life of the survivor. The purchase-money was paid by A.:—*Held*: C. was not a trustee of his life interest for A. but took it beneficially as an advancement from his father.—*DYER v. DYER* (1788), 2 Cox, Eq. Cas. 92; 30 E. R. 42.

Annotations:—*Consd.* *Lewis v. Lane* (1834), 2 My. & K. 449. *Distd.* *Keats v. Hower* (1864), 11 L. T. 290. *Refd.* *Finch v. Finch* (1808), 15 Ves. 43; *Murless v. Franklin* (1818), 1 Swan. 13; *Skeats v. Skeats* (1842), 2 Y. & C. Ch. Cas. 9; *Jeans v. Cooke* (1857), 27 L. J. Ch. 202; *Tucker v. Burrow* (1865), 2 Hem. & M. 515; *Re Policy No. 6402 of Scottish Equitable Life Assco. Soc.*, [1902] 1 Ch. 282; *The Venture*, [1908] P. 218; *Hatley v. Liverpool Victoria Legal Friendly Soc.* (1918), 88 L. J. K. B. 237. *Mentd.* *Wray v. Steele* (1814), 2 Ves. & B. 388; *Crabb v. Crabb* (1834), 1 My. & K. 511; *Sharpe v. Sharpe* (1841), 10 L. J. Ex. Eq. 2; *Gopckrist Gosain v. Gungapersaud Gosain* (1854), 6 Moo. Ind. App. 53; *Dumper v. Dumper* (1862), 3 Giff. 583; *Sayre v. Hughes* (1868), L. R. 5 Eq. 376; *Crow v. Pettingill* (1869), 38 L. J. Ch. 186; *Re Whitehouse, Whitehouse v. Edwards* (1887), 37 Ch. D. 683; *Mercier v. Mercier*, [1903] 2 Ch. 98.

796. ———.]—(1) On a purchase by a father, of copyholds for the lives of himself & his two sons, the sons take beneficially.

(2) A lease by the father by way of mtge. under licence of the lord will divest that interest.—*SWIFT d. FARR v. DAVIS* (1799), 8 East, 354, n.; 103 E. R. 378.

Annotations:—*As to* (2) *Consd.* *Murless v. Franklin* (1818), 1 Swan. 13. *Refd.* *Phillips v. Ball* (1859), 6 C. B. N. S. 811.

797. ———.]—A. being seised of a copyhold estate for the joint lives of himself & J. & the survivor, surrendered it to the lord, & took a new grant for the joint lives of himself, & J. & W., the surrenderor's son, & the survivor:—*Held*: under the circumstances of the case, this was intended to be an advancement for W.—*SKEATS v. SKEATS* (1842), 2 Y. & C. Ch. Cas. 9; 12 L. J. Ch. 22; 6 Jur. 942; 63 E. R. 4.

798. ——— *Nephew as subsequent taker.*]—*LANFIELDE d. BANTON v. HODGES*, No. 800, *post*.

799. ——— *Illegitimate son of daughter as subsequent taker—Presumption does not arise.*]—Where by the custom of a manor copyholds were held for lives *successive*, the legal tenancy being in the *cestui que vie*, the beneficial owner of such copyholds inserted the name of the illegitimate son of his daughter as *cestui que vie* thereof:—*Held*: not of itself sufficient to raise a presumption that such copyholds were intended to be given to such grandchild by way of advancement.—*TUCKER v. BURROW* (1865), 2 Hem. & M. 515; 6 New Rep. 139; 34 L. J. Ch. 478; 12 L. T. 485; 11 Jur. N. S. 525; 13 W. R. 771; 71 E. R. 563.

Annotation:—*Mentd.* *Re Hamlet, Stephen v. Cunningham* (1888), 38 Ch. D. 183.

See, also, Nos. 814, 815, *post*.

800. *Rebuttal of presumption—Parol evidence admissible.*]—By the custom of a manor, copyholds were held upon lives. A person who was tenant of certain copyhold lands in the manor, according to the custom, put in the name of the lessor of pltf., who was his nephew, with his own:—*Held*: parol evidence was admissible to rebut the equitable presumption of advancement.—*LANFIELDE d. BANTON v. HODGES* (1773), Lofft, 230; 98 E. R. 625.

Annotation:—*Mentd.* *Soar v. Foster* (1858), 6 W. R. 265.

801. ——— *Contemporaneous surrender to use of will.*]—A tenant in possession of copyholds, grantable for lives, procured, at his own expense, a grant of it to his son in remainder, & at the same time surrendered it to the use of his will:—*Held*: the son was not entitled to the estate so granted to him by way of advancement, but was a trustee for his father.—*PRANKERD v. PRANKERD* (1820), 1 Sim. & St. 1; 57 E. R. 1.

Annotation:—*Mentd.* *Beecher v. Major* (1865), 2 Drew. & Sm.

802. ——— *Subsequent takers specified as trustees in grant.*]—*KEATS v. HEWER*, No. 900, *post*.

SUB-SECT. 3.—ESTATES PUR AUTRE VIE.

803. *Grant to one for life of three others—Good to bind successor—Though contrary to custom.*]—Where a dean & chapter were seised of copyhold lands demisable for three lives, rendering a certain rent at four feasts, with reservation of an heriot, & made a lease to A. for the lives of B. C. & D. at the ancient rent:—*Held*: this was a good lease to bind the successor, although no heriot was reserved, & the rent was made payable at two feasts, & the land usually demisable by copy.—*BAUGH v. HAYNES* (1605), Cro. Jac. 76; 79 E. R. 64. *Annotations*:—*Refd.* *Doe d. Douglas v. Lock* (1835), 2 Ad. & El. 705. *Mentd.* *Greenaway v. Hart* (1854), 23 L. T. O. S. 174.

804. *When authorised by custom—Custom to grant to two or three for life & life of survivor—Authorises grant to one for life of three & survivor.*]—Under a custom to grant copyholds to two or three for their lives & the life of the survivor, to hold separately in succession, & *non aliter*, the lord may grant to one & his assigns to hold for the lives of three persons & the life of the survivor, notwithstanding he may be entitled by the custom of the manor to a heriot on the death of every such person successively dying seised.

If the *cestuis que vie* die during the life of [the tenant] the lord will have no heriot indeed, nor ought he to have any by the custom (*POWELL, J.*).—*SMARTLE v. PENHALLOW* (1703), 2 Ld. Raym. 994; Holt, K. B. 163; 6 Mod. Rep. 63; 1 Salk. 188; 3 Salk. 181; 92 E. R. 162.

Annotations:—*Generally, Mentd.* *Doe d. Nepean v. Goddard* (1823), 1 B. & C. 522; *Bearpark v. Hutchinson* (1830), 4 Moo. & P. 848; *R. v. Venn* (1875), 44 L. J. Q. B. 158.

How created—By assignment of estate for tenant's own life.]—*See* Nos. 742, 778, 782, *ante*.
—By grant.]—*See* Nos. 808, 812, *post*.

805. *Devolution on death of grantee—Forms part of estate of grantee—Where no occupant & estate not disposed of by will.*]—(1) If there be an estate to B. during the life of A. & grantee dies in life of *cestui que vie*, & a stranger enters as general occupant, he shall be admitted, & pay the fine.

(2) If an estate *pur autre vie* of copyhold be granted to one & his heirs & the heir enters as special occupant, where by custom the copyhold might be extended he shall be admitted on the extent, paying the fine.

(3) An estate *pur autre vie* shall go to the exors. or administrators, where there is no devise or occupant thereof.—*ANON.* (1773), Lofft, 237; 98 E. R. 629.

806. ——— *Special occupant entitled to admittance—Heir.*]—*ANON.*, No. 805, *ante*.

807. ———.]—Copyhold estates are liable to special occupancy.—*DOE d. LEMPRIERE v. MARTIN* (1777), 2 Wm. Bl. 1148; 96 E. R. 676.

Annotations:—*Refd.* *Zouch d. Forse v. Forse* (1806), 7 East, 186; *Phillips v. Ball* (1859), 6 C. B. N. S. 811. *Mentd.* *Philpots v. James* (1784), 3 Doug. K. B. 425; *Evans v. Angell* (1858), 26 Beav. 202; *Cuthbert v. Robinson* (1882), 51 L. J. Ch. 238.

808. ——— *By custom or when named in grant.*]—There can be no general occupancy of copyholds, nor a special occupancy, except by custom, or by the designation of a special occupant in the lord's grant.

Where a copyhold estate was granted to A. for her own life & the life of B., with a grant of the reversion to C. for other lives, & A. devised the estate to B., who kept possession:—*Held*: C.'s right of possession attached on the death of A.—

Sect. 3.—Estates for life: Sub-sects. 3 & 4. Sect. 4: Sub-sects. 1 & 2, A. (a) & (b).]

DOE d. FOSTER v. SCOTT (1825), 4 B. & C. 706; 7 Dow. & Ry. K. B. 190; 4 L. J. O. S. K. B. 39; 107 E. R. 1223.

809. — General occupant entitled to admittance.]—ANON., No. 805, *ante*.

810. — No general occupancy.]—There can be no general occupancy of a copyhold, because the freehold is always in the lord.—ZOUCH v. FORSE (1806), 7 East, 186; 3 Smith, K. B. 191; 103 E. R. 71.

*Annotation:—*Reid. Phillips v. Ball (1859), 6 C. B. N. S. 811.

811. — —.]—DOE d. FOSTER v. SCOTT, No. 808, *ante*.

As to special & general occupancy, *see, generally*, REAL PROPERTY & CHATTELS REAL.

812. — Cestui que vie—By custom.]—Where there was a custom in a manor that when a copyhold tenement was granted by copy of ct. roll to any person to hold the same to such person for the lives of two or more other persons, & the life of the longest liver of such other persons successively, & the grantee died during the life or lives of any one or more of such other persons, without having devised the said tenement, such other person or persons should be entitled, by virtue of such grant, to take the tenement successively, as they were respectively named in the grant, during his or their life or lives respectively; but if the grantee devised the tenement, the devisee should take it during the life or lives of the *cestuis que vie*:—*Held*: this was a good custom.—DOE d. NEPEAN v. GODDARD (1823), 1 B. & C. 522; 2 Dow. & Ry. K. B. 773; 1 L. J. O. S. K. B. 179; 107 E. R. 193.

*Annotations:—*Consd. Jeans v. Cooke (1857), 24 Beav. 513. *Reid.* Phillips v. Ball (1859), 6 C. B. N. S. 811; R. v. Venn (1875), 44 L. J. Q. B. 158.

813. — — Not by devise of personal estate.]—Where a father & two sons, A. & B. were successive lives in a copyhold, where, by the custom the person first named might dispose of the whole interest; & upon the marriage of A. it was agreed that the father should have power to appoint during the life of A. & the widowhood of his intended wife; the father having afterwards obtained a new grant for the lives of C. a third son, & A. & B., by a will made after the death of C., in which no mention was made of the copyhold, gave the residue of his personal estate to B.:—*Held*: B. was not thereby entitled to the copyhold.—RUMBOLL v. RUMBOLL (1761), 2 Eden, 15; 28 E. R. 800.

*Annotations:—*Reid. Dyer v. Dyer (1788), 2 Cox, Eq. Cas. 92; Wilson v. Mount (1796), 3 Ves. 191.

814. — — Where doctrine of advancement applies—Cestuis que vie children of grantee.]—Where a father having purchased in the names of his sons a copyhold estate, afterwards demised the estate by license obtained subsequently to the purchase:—*Held*: (1) the sons should take the estate successively, as an advancement; (2) to repel the presumption of advancement, evidence of the father's intention must be contemporaneous with the purchase.—MURLESS v. FRANKLIN (1818), 1 Swan. 13; 36 E. R. 278, L. C.

*Annotations:—*As to (1) Consd. Skeats v. Skeats (1842), 12 L. J. Ch. 22. As to (2) Follid. Stock v. M'Avoy (1872), 42 L. J. Ch. 230. *Reid.* Scawin v. Scawin (1841), 1 Y. & C. Ch. Cas. 65. *Generally, Mentd.* Sharpe v. Sharpe (1841), 10 L. J. Ex. Eq. 2; Gopeekrist Gosain v. Gungapersaud Gosain (1854), 6 Moo. Ind. App. 53.

815. — — —.]—A father purchased a copyhold, & was admitted thereto to hold during the lives of his three children, A., B. & C. successively. B., after the death of the father & A., got admitted, whereupon the pltf., who claimed

under the father's will, instituted a suit to have B. declared a trustee for him. As an excuse for not proceeding at law, pltf. alleged a custom of the manor, by which the *cestui que vie* was entitled to be admitted; this was disputed:—*Held*: (1) even assuming the custom, still, by the form of the grant, the father had made an advancement to his sons, who were therefore entitled beneficially, & not as trustees for their father; (2) the evidence to rebut the presumption of an advancement, in the case of a purchase by a father in the name of a child, ought to be distinct & contemporaneous.—JEANS v. COOKE (1857), 24 Beav. 513; 27 L. J. Ch. 202; 30 L. T. O. S. 253; 4 Jur. N. S. 57; 6 W. R. 175; 53 E. R. 456.

See, also, Nos. 795, 796, 797, 799, 800, *ante*, No. 900, *post*, & *generally*, REAL PROPERTY & CHATTELS REAL.

816. — Devisee—By custom.]—DOE d. NEPEAN v. GODDARD, No. 812, *ante*.

See, now, Wills Act, 1837 (c. 26), s. 6.

817. Effect of surrender by grantee—Surrenderee comes in under the lord.]—KERBY'S (ALIAS KIRK'S) CASE, No. 98, *ante*.

818. — Prior interest created by grantee not avoided.]—Although a surrender of a life estate to the owner of the fee is, as between the parties, an extinguishment of the estate surrendered, yet it may have continuance to uphold a prior interest derived under it.

C. having a lease for three lives of a manor, where, by the custom, the copyholds were demisable by copy, made a lease for years by indenture of a copyhold tenement to deft.'s father, & afterwards the estate of C. was surrendered to the lord of the fee, who made a lease of the manor to the lessor of pltf.:—*Held*: inasmuch as the lease to deft.'s father, though not warranted by the custom, and though it suspended the copyhold tenure, was nevertheless good to pass an interest to him, the lessor of pltf. should not avoid the same during the continuance of one of the three lives in the lease to C., notwithstanding the surrender of that estate.—DOE d. BEADON v. PYKE (1816), 5 M. & S. 146; 105 E. R. 1005.

*Annotations:—*Mentd. London & Westminster Loan & Discount Co. v. Drake (1859), 6 C. B. N. S. 798; Piggott v. Stratton (1859), 1 De G. F. & J. 33; Smalley v. Hardinge (1881), 44 L. T. 503; Wheaton v. Maple, [1893] 3 Ch. 48; Wilkes v. Spooner, [1911] 2 K. B. 473.

Right of renewal.]—*See* Sub-sect. 4, *post*.

Reversionary estate pur autre vie.]—*See* Nos. 899, 900, *post*.

SUB-SECT. 4.—RENEWAL.

819. No right—Apart from custom.]—GRAFTON (DUKE) v. HORTON (1726), 2 Bro. Parl. Cas. 284; 1 E. R. 946, H. L.

*Annotations:—*Consd. Wharton v. King (1796), 3 Anst. 659; Walker v. Abingdon (1841), 10 L. J. Ch. 289.

820. — — On fine certain.]—Pltf., as lord of the manor claimed possession of copyholds held by deft.'s father under a copy of three lives, which lives were all dropped. Deft. insisted, that by the custom of the manor the heir was entitled to have a new copy for three lives, & so on for ever, paying to the lord a reasonable fine:—*Held*: there did not appear any evidence to support this custom, & such a custom would be void.

There might be a custom in a manor for the heir of such a copyholder to have a new copy, paying a fine certain, but not upon payment of a reasonable fine; originally all copyholds were only estates at will but in favour of copyhold estates the law by length of time & by

established their tenures & not put them under the will of the lord so long as they keep the custom of the manor, & therefore in the case of copyholders of inheritance, if the custom has not settled any certain fine, the law interposes & prevents the lord from taking more than two years' value; but this is applicable only to copyholds of inheritance, & copyholds grantable for lives only, if the fine is not certain, are like leases of freehold lands for lives & renewable only upon the best terms the party can make (LORD HARDWICKE, C.).—*ABERGAVENNY (LORD) v. THOMAS* (1739), 3 Anst. 668, n.; *West temp. Hard.* 649; 145 E. R. 1001, L. C.

Annotations :—*Consd.* *Wharton v. King* (1796), 3 Anst. 659. *Refd.* *Walker v. Abingdon* (1841), 10 L. J. Ch. 289.

821. ————.]—*WHARTON v. KING* (1796), 3 Anst. 659; 145 E. R. 998.

Annotations :—*Consd.* *Walker v. Abingdon* (1841), 10 L. J. Ch. 289. *Mentd.* *Fraser v. Mason* (1883), 31 W. R. 550.

822. ————.]—*WALKER v. ABINGDON (LORD)* (1841), 10 L. J. Ch. 289; 5 Jur. 714, L. C.

Fines generally, see Part XI., Sect. 1, *post*.

823. Who may renew—Committee of lunatic.]—The committee of the estate of a lunatic may take a renewal of a customary or copyhold estate held on lives.—*Re WOOD (A LUNATIC)* (1845), 4 L. T. O. S. 490.

Expenses of renewal—By whom borne.]—See Part XI., Sect. 1, sub-sect. 5, A., *post*.

SECT. 4.—ESTATES FOR YEARS.

SUB-SECT. 1.—CREATED BY LORD.

824. When authorised by custom—Custom authorising grant in fee—Authorises grant for years.]—*GRAVENOR v. TODD*, No. 769, *ante*.

825. ———— Custom authorising grant for life—Authorises grant for years.]—*NORRIS'S (LORD) CASE* (1602), Noy, 106; 74 E. R. 1071.

826. Effect of grant to several—May create successive interests—By custom.]—*ANON.*, No. 783, *ante*.

827. Effect of surrender to use of another—Surrender good—Use void.]—*PORTMAN v. WILLIS* (1595), Moore, K. B. 352; *Cro. Eliz.* 386; 72 E. R. 623.

828. Devolution on death of tenant—Term vests in executor.]—*BATH (EARL) v. ABNEY*, No. 1052, *post*.

829. Right of renewal—From seven years to seven years—Conventionary tenants of assessionable manors of Duchy of Cornwall—By special custom.]—*ROWE v. BRENTON*, No. 266, *ante*.

SUB-SECT. 2.—CREATED BY COPYHOLDERS.

A. Validity.

(a) In General.

830. Apart from custom—& without licence—Void.]—*KENSY v. RICHARDSON* (1599), *Cro. Eliz.* 728; 78 E. R. 962.

831. ———— Lease for three years—Void.]—*CRAMPORN v. FRESHWATER* (1610), 1 Brownl. 133; 123 E. R. 712.

832. ———— Lease for a year—Void.]—*TURNER v. HODGES*, No. 841, *post*.

——— Operating as forfeiture.]—See Part XIX., Sect. 1, sub-sect. 2, B. (b), *post*.

833. To try title—Good.]—A copyholder may make a lease for years to try a title of land.—*HOMES v. BINGLEY* (1653), *Sty.* 380; 82 E. R. 795.

Lease under licence.]—See Part XIX., Sect. 1, sub-sect. 2, D., *post*.

834. Lease by infant—Voidable—Not void.]—A lease made by an infant copyholder is not void but voidable, & acceptance of rent after full age bars the avoidance of it.—*ASHFEILD v. ASHFEILD* (1627), *W. Jo.* 157; *Lat.* 199; *Godb.* 364; 82 E. R. 84.

Annotations :—*Expld.* *Baylis v. Dineley* (1815), 3 M. & S. 477. *Consd.* *Williams v. Taperell* (1892), 8 T. L. R. 241. *Refd.* *King v. Dilliston* (1690), 1 Show. 83.

835. ———— Acceptance of rent by lessor when of age—Bars avoidance.]—*ASHFEILD v. ASHFEILD*, No. 834, *ante*.

(b) As between what Parties.

836. Lease not warranted by custom—Good against all others—Except lord.]—*DOWNINGHAM'S CASE*, No. 1826, *post*.

837. ————.]—*STREAT v. VIRBALL* (1621), cited in *Cro. Car.* 304; 79 E. R. 865.

Annotation :—*Refd.* *Blunden v. Baugh* (1633), *Cro. Car*

838. ————.]—A tenant of copyhold demised to A. from year to year, & pending such demise, made a lease of the reversion for twelve years to B., contrary to the custom of the manor, by which no tenant might demise without licence for more than three years. In ejectment by B. against the yearly tenant whose term had expired it was:—*Held*: (1) deft. could not allege the invalidity of the twelve years' lease, as though made contrary to custom it was good against all but the lord; (2) as between the parties to the lease & the lord the demise against custom was only a ground of forfeiture which the lord might waive.—*DOE d. ROBINSON v. BOUSFIELD* (1844), 6 Q. B. 492; 1 *Car. & Kir.* 558; 14 L. J. Q. B. 42; 4 L. T. O. S. 110; 8 Jur. 1121; 115 E. R. 184.

839. ———— & without licence—Good against all—Except lord.]—If a copyholder leases for years, without licence of the lord, or custom authorising such lease, the lessee has nevertheless a title against every one but the lord & may bring ejectment.—*DOE d. TRESIDDER v. TRESIDDER* (1841), 1 Q. B. 416; 1 *Gal. & Dav.* 70; 10 L. J. Q. B. 160; 5 Jur. 931; 113 E. R. 1192.

840. ———— Void against lord purchasing copyhold—Though purchasing with notice of lease.]—A copyholder demised his copyhold to S. for one year, & at the end thereof, from year to year, for 13 years more, if the lord would grant licence, but so as not to create a forfeiture, & covenanted that the lessee should quietly enjoy during the above term. After the expiration of the first year, the copyhold was purchased by the lord, & surrendered to a trustee for him, who immediately gave notice to quit to S., no licence to let having been obtained:—*Held*: (1) the trustee might maintain an ejectment; (2) no action would lie on the covenant for quiet enjoyment, though the contents of the lease were known to the lord before he completed his purchase.—*LUFFKIN v. NUNN* (1805), 1 Bos. & P. N. R. 163; 127 E. R. 422; *sub nom.* *DOE d. NUNN v. LUFFKIN*, 4 East, 221; 1 Smith, K. B. 90; *sub nom.* *LUFFKIN v. NUNN*, 11 Ves. 170.

Lease under licence—Subsequent forfeiture by lessor.]—See No. 1916, *post*.

See, further, Part XIX., Sect. 1, sub-sect. 2, *post*.

841. Custom avoiding lease for year—As against heir of copyholder dying during term—Lease without licence—Reasonable.]—Where there was a custom in a manor that if a copyholder granted a lease for a year without the lord's licence & died within the term the lease should be void as against

Sect. 4.—Estates for years: Sub-sect. 2, A. (b), B. & C.
Sect. 5: Sub-sects. 1, 2 & 3. Sect. 6: Sub-sect. 1.]

the heir of the copyholder:—*Held*: (1) the custom was reasonable; (2) a copyholder cannot grant such a lease by common law, but only by custom.—**TURNER v. HODGES** (1628), *Hut.* 101; *Litt.* 233; *Het.* 126; 123 E. R. 1130.

Annotations:—*Generally*, *Reid*. **Clarke v. Arden** (1855), 3 C. L. R. 781. *Mentd.* **Wilkes v. Broadbent** (1744), 1 *Wils.* 63; **Taylor v. Horde** (1757), 1 *Burr.* 60.

B. Remedies of Lessee.

842. Right to maintain ejectment—Lessee may maintain—On lease for one year.]—MELWICH v. LUTER, No. 95, *ante*.

843. ——— On lease by unadmitted heir of copyholder—Without presentment that lessee is heir.]—RUMNEY & EVES CASE, No. 1619, *post*.

844. ———.]—COLE v. WALL & BURNELL (1591), *Cro. Eliz.* 224; 78 E. R. 480.

845. ——— Lessee may not maintain.]—STEPHENS v. ELLIOT (1596), *Cro. Eliz.* 484; 78 E. R. 735.

846. ——— Lessee may maintain—On lease warranted by custom.]—SPARKS' CASE (1599), *Cro. Eliz.* 676; *Moore*, K. B. 569; 78 E. R. 913.

Annotation:—*Reid*. **Blunden v. Baugh** (1633), *Cro. Car.* 302.

847. ——— On lease not warranted by custom—Or by licence.]—PETER'S CASE (1623), *Jenk.* 320; 145 E. R. 232.

Annotation:—*Reid*. **Ashfield & Ashfield's Case** (1626), *Godb.* 364.

848. ———.]—DOE d. TRESIDDER v. TRESIDDER, No. 839, *ante*.

849. Declaration in ejectment—Must show special custom.]—WELLS v. PARTRIDGE (1596), *Cro. Eliz.* 469; 78 E. R. 707.

Annotation:—*Mentd.* **City of London v. Vanacker** (1698), 1 *Ld. Raym.* 496.

See, generally, LANDLORD & TENANT.

C. Other Cases.

850. Rent reserved by lease—May be granted to stranger.]—A., a copyholder by licence of the lord, leased his copyhold to S. for years, & afterwards granted the rent to another, & the lessee paid the rent to the grantee:—*Held*: the grant was good, but was only a rent seck.—AUSTIN & SMITH'S CASE (1588), 1 *Leon.* 315; 74 E. R. 287.

851. ——— Granted to stranger—Becomes rent seck.]—AUSTIN & SMITH'S CASE, No. 850, *ante*.

852. Lease by parol by remainderman—Surrender of estate by tenant for life—To use of remainderman—Lease commences immediately.]—DOVE v. WILLIOT (1589), *Cro. Eliz.* 160; 78 E. R. 418.

Annotation:—*Mentd.* **Neale v. Mackenzie** (1836), 1 *M. & W.* 747.

853. Covenant to repair by lessee—Benefit runs with reversion.]—If a copyholder in fee make a lease for years, warranted by the custom, in which the lessee covenants to repair during the term, a surrenderee of the assignee of the reversion may maintain an action on the covenant for non-repair against the original lessee, although he had assigned the term before the reversion was surrendered to the plaintiff.—GLOVER v. COPE (1691), 4 *Mod. Rep.* 80; *Carth.* 205; *Comb.* 185; *Holt*, K. B. 159; 3 *Lev.* 326; 1 *Salk.* 185; 1 *Show.* 284; *Skin.* 305; 87 E. R. 274.

Annotations:—*Consd.* **Whitton v. Peacock** (1834), 3 *My. & K.* 325. *Distd.* **Greenaway v. Hart** (1854), 14 C. B. 340. *Mentd.* **Doe d. Wightwick v. Truby** (1774), 2 *Wm. Bl.*

854. ——— In agreement for lease contingent on lord's licence—Occupation by lessee during 21 years—No lease granted or licence obtained—Lessee liable on covenant to repair.]—By an agree-

ment in writing *pltf.* agreed with *deft.*, as soon as he should have obtained from the lord of the manor a sufficient licence for the purpose, to lease copyhold premises to *deft.* for 21 years, & *deft.* covenanted to pay rent & taxes & to keep the premises in repair. *Deft.* occupied the premises for the term, but no lease was ever granted or licence obtained:—*Held*: *deft.* was liable on the covenant to repair.—**PISTOR v. CATER** (1842), 9 *M. & W.* 315; 12 *L. J. Ex.* 129; 152 E. R. 134. *Annotation*:—*Reid*. **Martin v. Smith** (1874), 30 *L. T.* 268.

855. Agreement for lease exceeding customary period—Covenant by copyholder to execute lease for customary period & to renew—Trustee under devise by copyholder not bound to covenant to renew.]—A copyholder agreed to demise a tenement within the manor for sixty-three years on a building lease, & as the custom did not allow a lease for more than twenty-one years, the copyholder agreed to execute a lease for twenty-one years, with a covenant, for himself, his heirs & assigns, to renew the lease for a further term of twenty-one years at the expiration of the first, & for a further term of twenty-one years at the expiration of the second term. The copyholder died before the lease was executed, having devised the premises to a trustee:—*Held*: the trustee, having no beneficial interest in the estate, was not bound in the lease for twenty-one years to enter into any covenant for the renewal of the lease at the expiration of that term.—WORLEY v. FRAMPTON** (1846), 5 *Hare*, 560; 16 *L. J. Ch.* 102; 8 *L. T. O. S.* 292; 10 *Jur.* 1092; 67 E. R. 1033.**

856. Receipt of rent—Prima facie evidence of title to reversion.]—In an action by the reversioners of a copyhold estate, for an injury to their reversion, *pltf.*s. proved the payment to them of rent by the tenant; *deft.* proved the surrender to & admittance of third parties to the estate:—*Held*: (1) the payment of rent was sufficient *prima facie* evidence of the reversion being in *pltf.*s.; (2) the surrender did not cast the onus of proof upon *pltf.*s. to show a reconveyance of the estate to them.—DAINTRY v. BROCKLEHURST** (1848), 3 *Exch.* 207; 18 *L. J. Ex.* 57; 12 *L. T. O. S.* 293; 154 E. R. 818; *subsequent proceedings* (1849), 3 *Exch.* 691.**

857. Agreement for lease—Lessor to put premises in repair—Enforced—Where no evidence that lease would work forfeiture—Or that licence could not be obtained.]—Where there was an agreement to grant a lease of copyhold premises for twenty-one years, & to put the same in repair, there being no evidence that to grant such lease would work a forfeiture, or that a licence of the lord could not be obtained:—*Held*: the agreement must be specifically performed.

Though the *ct.* will not ordinarily decree specific performance of an agreement to repair, it is the habit of the *ct.* to decree specific performance of agreements involving the execution of leases, or other instruments containing covenants to repair.—**PAXTON v. NEWTON** (1854), 2 *Sm. & G.* 437; 65 E. R. 470.

See,

SECT. 5.—ESTATES IN CO-OWNERSHIP.

SUB-SECT. 1.—PARTITION GENERALLY.

See, now, Copyhold Act, 1894 (c. 46), s. 87.

858. Equity has no jurisdiction to decree.]—HORNCastle v. CHARLESWORTH (1840), 11 *Sim.* 315; 10 *L. J. Ch.* 35; 4 *Jur.* 1179; 59 E. R. 895.

Annotation:—*Reid*. **Bolton v. Ward** (1845), 4 *Hare*, 530.

859. — Copyholds held with freeholds—Copyholds allotted in entirety.]—DILLON *v.* COPPIN (1833), 6 Beav. 217, n. ; 3 L. J. Ch. 201 ; 49 E. R. 809 ; *subsequent proceedings* (1839), 4 My. & Cr. 647, L. C.

See, also, No. 865, post.

860. — Apart from Copyhold Act, 1841 (c. 35), s. 85.]—JOPE *v.* MORSHEAD (1843), 6 Beav. 213 ; 12 L. J. Ch. 190 ; 49 E. R. 807.

*Annotations:—*Reid. Bolton *v.* Ward (1845), 4 Hare, 530 ; Davies *v.* Davies (1850), 3 De G. & Sm. 698.

See, also, No. 863, post.

861. Commission unnecessary.] —BOWLES *v.* RUMP (1861), 9 W. R. 370.

See, also, No. 865, post.

See, generally, PARTITION.

SUB-SECT. 2.—TENANCY IN COMMON.

See, generally, REAL PROPERTY & CHATTELS REAL.

862. Creation—By surrender of joint tenants—To others—Licence of lord unnecessary.]—Although copyholders holding in joint tenancy, cannot compel the lord to make partition between them they may, by surrenders to other persons, turn their joint tenancy into a tenancy in common without consent of the lord :—*Semble* : the lord would be compelled to accept such surrenders.—*Ex p.* LEE, LEE *v.* SOUTHWOOD (1827), 5 L. J. O. S. K. B. 290.

863. Partition—Equity has no jurisdiction to decree.]—SCOTT *v.* FAWCET (1757), Dick. 299 ; 21 E. R. 284.

See, now, Copyhold Act, 1894 (c. 46), s. 87 & Sub-sect. 1, ante.

864. — What operates as—Not agreement to divide—Between tenants in common in tail.]—OAKLEY *v.* SMITH, No. 756, *ante*.

865. — Commission unnecessary—Copyholds held with freeholds.]—Freehold & copyhold estates were devised as to one undivided third part to two grandsons of testator as heirs in common & as to the remainder upon other trusts. After testator's death, one of the heirs in common assigned his share by way of mtge. After the latter's death, his devisee became entitled to a portion of the remainder of the estates. In a suit for partition against the mtgees. & the other parties entitled to the estates :—*Held* : the estates ought to be divided & partitioned, proposals for a partition to be laid before the judge for his approval, but a commission was unnecessary in view of the less expensive & more improved modern practice of the ct.—CLARKE *v.* CLAYTON (1860), 2 Giff. 333 ; 3 L. T. 176 ; 6 Jur. N. S. 1238 ; 66 E. R. 139.

*Annotation:—*Folld. Bowles *v.* Rump (1861), 9 W. R. 370.

See, also, Nos. 859, 861, ante.

866. Coparcener—May bring ejectment—In respect of his share on demise.]—ROE *d.* RAPER *v.* LONSDALE (1810), 12 East, 39 ; 104 E. R. 16.

*Annotation:—*Reid. Doe *d.* Campbell *v.* Hamilton (1849), 19 Q. B. 277.

estates in freebench.]—*See* No. 933,

Fines payable on admission of tenants in common. No. 1078, *post*.

SUB-SECT. 3.—JOINT TENANCY.

See, generally, REAL PROPERTY & CHATTELS REAL.

Conversion into tenancy in common.]—*See* No. 862, *ante*.

867. Severance—By surrender by one joint tenant—Though not presented before death of tenant.]—PORTER *v.* PORTER (1605), Cro. Jac. 100 ; 79 E. R. 86.

*Annotation:—*Consd. Payne *v.* Barker (1662), O. Bridg. 18.

868. — By release of one joint tenant to another—Without surrender & admittance.]—WASE *v.* PRETTY (1621), Win. 3 ; 124 E. R. 3.

*Annotations:—*Reid. Howard *v.* Gwynn (1901), 65 J. P. 327. *Mentd.* Harrison *v.* Belsey (1680), T. Raym. 413.

869. — Not by common law conveyance of one joint tenant.]—A. devised his freehold & copyholds lands after a surrender to B., C. & D. & their assigns, until E. & F. attain their several respective ages of twenty-one years, in trust that they should receive the rents & profits for the maintenance of E. & F. until they should attain their ages of twenty-one ; & then devised both freehold & copyhold to E. & F. for life without impeachment of waste ; & from & after their deceases for the use & behoof of their heirs as tenants in common & not as joint tenants. A. died, & E. attained the age of twenty-one, & by lease & release conveyed to R. & her heirs the moiety of his lands, farms, tenements, etc. :—*Held* : (1) E. & F. were joint tenants for life with several inheritances in common, for an estate in jointure could not sink into a fee of a different nature ; (2) the common law conveyance did not sever the jointure of the copyhold as it would have done if the same had been made by a joint tenant of a trust only, because no surrender could in such case be made.—ROGERS *v.* DOWNS (1742), 9 Mod. Rep. 292 ; 88 E. R. 460 ; *sub nom.* TRODD *v.* DOWNS, 2 Atk. 304 ; 26 E. R. 586.

870. — By dormant surrender.] —GALE *v.* GALE, No. 889, *post*.

871. — Agreement to divide—Enforceable in equity—Before Copyhold Act, 1841 (c. 35).]—A. & B., joint tenants of certain copyhold lands of inheritance, by an agreement in writing made before the Copyhold Act, 1841 (c. 35), agreed to a specific division of the lands between them, & each party during their joint lives had the exclusive possession and enjoyment of the share allotted to him by agreement. B. afterwards died intestate. On bill, by his heirs against A. :—*Held* : the ct. could decree specific performance of the agreement, even although it had no jurisdiction before the stat. to decree a partition of copyhold lands.—BOLTON *v.* WARD (1845), 4 Hare, 530 ; 14 L. J. Ch. 361 ; 5 L. T. O. S. 284 ; 9 Jur. 591 ; 67 E. R. 758.

See, also, Nos. 858–860, ante, & see, now, Copyhold Act, 1894 (c. 46), s. 87.

872. — Surrender by wife to use of husband's will—Inoperative.]—EDWARDS *v.* CHAMPION, No. 737, *ante*.

Fines payable on admission of joint tenants.]—*See* Part XI., Sect. 1, sub-sect. 2, B. (a), *post*.

Admissions of joint tenants.]—*See* Part XVIII., Sect. 2, sub-sect. 2, B., *post*.

SECT. 6.—ESTATES IN

1.—VESTED

873. Nature of estate—Remainderman takes as purchaser.]—A copyholder in fee simple surrendered to the lord to the use of his wife & afterwards to the use of their right heirs. The lord granted by copy to the wife for her life remainder to the right heirs of the husband according to the surrender :—*Held* : the heirs took as purchasers & it was a remainder, because by the surrender the entire estate of the fee simple passed to the lord.—ANON. (1572), Ben. & D. 98 ; 123 E. R. 304.

Sect. 6.—Estates in remainder: Sub-sects. 1 & 2.
Sect. 7.]

874. Creation of estate—Remainder in tail—May be created after life estate.]—STANTON v. BARNES, No. 724, ante.

875. — May be limited to a child en ventre sa mere.]—SIMPSON'S CASE, No. 1594, post.

876. — May be limited on contingent fee.]—A remainder may be limited on a fee in a surrender of a copyhold. A surrender *in futuro* is good.—BENTLEY v. DELAMOR (1679), 1 Freem. K. B. 267; 89 E. R. 192.

877. Time at which attaches—Attaches on death of tenant for life—Remainder divestible on contingency.]—A surrender of a copyhold was made to the use of the surrenderor for life & after to the use of J. his youngest son & the heirs of his body if he attain the age of 18 years, & if he die before he attain that age without issue male then to his right heirs:—*Held*: this was a remainder which attached immediately upon the death of the tenant for life.—STOCKER v. EDWARDS (1684), 2 Show. 398; 89 E. R. 1005.

Annotation:—*Refd.* Doe d. Tremewen v. Pormewan (1840), 3 Per. & Dav. 303.

878. — Though prior life interests still subsisting.]—A. devised copyhold lands to his son S. & his wife & H. & his wife, or the survivor of them, for their lives; & after the decease of all of them to the male heir at law of him, testator, his heirs & assigns for ever; he then bequeathed legacies to three other sons & afterwards died leaving five sons & one daughter, three by his first wife & three by the second:—*Held*: the fee vested at testator's death in the person who was then his male heir-at-law, & did not remain contingent until the determination of the life estates.—DOE d. PILKINGTON v. SPRATT (1833), 5 B. & Ad. 731; 2 Nev. & M. K. B. 524; 3 L. J. K. B. 53; 110 E. R. 960.

Annotation:—*Mentd.* Re Frith, Hindson v. Wood (1901), 85 L. T. 455.

879. — Entry by remainderman not essential.]—DOE d. PARKER v. THOMAS, No. 1320, post.

880. Remainderman may surrender—In life-time of tenant for life—If no custom to contrary.]—If tenant for life be of a copyhold, the remainder over in fee to another, he in the remainder may surrender his estate if there be no custom to the contrary; for the estate of the tenant for life & him in the remainder are but one estate, & the admittance of the particular tenant is the admittance also of him in the remainder.—BUTLER & LIGHTFOOT'S CASE (1590), 3 Leon. 239; 4 Leon. 9; 74 E. R. 658.

881. — To tenant for life for his life—With remainders over.]—WADE v. BACHE (1668), 1 Sid. 360; 1 Saund. 149; 82 E. R. 1156.

Annotations:—*Refd.* Fisher v. Wigg (1699), 1 Ld. Raym. 622; Smith d. Dormer v. Parkhouse (1741), 7 Mod. Rep. 366.

882. Effect of wrongful surrender by tenant for life—& creation of new remainders—Remainderman's estate not barred—Time runs from surrender as against tenant for life only.]—A., a copyholder for life, remainder to B., surrendered his own & B.'s estate, over which he had no control, & by which he let in B.'s remainder, & took a new copy for the lives of himself, C., & B., successively, & on A.'s death, after 20 years had run against B., B. entered on the possession then vacant:—*Held*: as against C., who had no possession & no title, B. might defend his legal title, coupled with possession, in ejectment, however 20 years adverse possession by A. might have barred B.'s possessory

right, as against him, or might have disabled B. if he had continued out of possession from recovering in ejectment.—DOE d. BURROUGH v. READE (1807), 8 East, 353; 103 E. R. 378.

Annotations:—*Refd.* Phillips v. Ball (1859), 6 C. B. N. S. 811. *Mentd.* Doe d. Carter v. Barnard (1849), 13 Q. B. 945.

883. Recovery suffered by tenant for life & remainderman—To uses void as against purchaser—Recovery not avoided—Vests fee in surrenderors by way of resulting use.]—A., tenant for life of a copyhold, & B. his daughter, who had five children living, being tenant in tail in remainder, joined in recovery in 1778, & in alleged pursuance of his marriage articles A. surrendered to the use of himself for life, remainder to the use of B. for life, remainder to the right heirs of the survivor: A. & B. within two or three weeks of the surrender conveyed the fee to a *bona fide* purchaser. The contingent remainder terminated in favour of B. in 1802, & in 1835 she died. B.'s son thereupon brought ejectment against the purchaser, who had been in possession since 1778, on the ground that a contingent remainder having been created, it could not pass by the surrender of 1778:—*Held*: (1) as no contract with A. appeared on the face of the transaction, & the settlement was not made with a view to the interests of B.'s children, the ct. would not infer that a contract actually existed that A. should join in the recovery, on the consideration of having a contingent remainder in the fee limited to himself, & therefore the uses were void under the Voluntary Conveyances Act, 1584-5 (c. 4) against a *bona fide* purchaser; (2) as the surrender passed B.'s life estate, the claim to the fee did not accrue till her death, in 1835; (3) an heir on whom a contingent remainder in a copyhold has devolved may bring ejectment before admittance; (4) the recovery itself was not void, but operated to give the tenant for life & tenant in remainder the fee by way of resulting use.—DOE d. BAVERSTOCK v. ROLFE (1838), 8 Ad. & El. 650; 3 Nev. & P. K. B. 648; 1 Will. Woll. & H. 466; 7 L. J. Q. B. 251; 112 E. R. 985.

Annotations:—*Generally, Mentd.* Davenport v. Blshopp (1843), 2 Y. & C. Ch. Cas. 451; Tarleton v. Liddell (1851), 17 Q. B. 390; Ford v. Stuart (1852), 15 Beav. 493; Scott v. Scott (1854), 23 L. T. O. S. 27.

884. Estates wrongfully granted by widow—Confirmation of life estate by heir—Amounts to confirmation of remainder.]—On the death of the tenant for life of a manor, the manor devolved upon his son as tenant in tail. The widow of the tenant for life entered & granted copyholds to tenants, including a grant to A. for life, remainder to B. The son brought ejectment against the widow, but confirmed the estates granted to tenants, including a confirmation to A.:—*Held*: this was a confirmation of the remainder to B., who, on A.'s death, was entitled to be admitted.—LIPPIAT v. NEVILLE (1635), Nels. 32; 21 E. R. 782.

SUB-SECT. 2.—CONTINGENT ESTATES.

885. Must be supported by particular estate—Lord's estate insufficient.]—A copyhold estate was surrendered to the use of A.'s wife, & one D. for life with remainder to the right heirs of the body of A. & his wife, & the wife & D. were admitted in fee. D. surrendered his moiety to the use of A., whereby he severed his joint tenancy with A.'s wife. A. purported to alienate the whole to P., so that P. held one moiety during the life of A.'s wife, the other during that of D. On the death of A.'s wife P.'s interest in her moiety determined. But the heirs of the body of A. & his wife could not

enter since A. could have no heir during his life :—*Held* : the limitation was bad.—LANE v. PANNELL (1617), 1 Roll. Rep. 438 ; 81 E. R. 591.

Annotations :—*Refd.* Pybus v. Mitford (1674), Freem. K. B. 369 ; Penhay v. Hurrell (1699), 2 Freem. Ch. 235 ; Frogmorton d. Robinson v. Wharrey (1770), Wilm. 354 ; Hicks v. Sallitt (1854), 3 De G. M. & G. 782. *Mentd.* Habbergham v. Vincent (1793), 4 Bro. C. C. 353.

886. — Lord's estate sufficient.]—A tenant for life of a copyhold, with a contingent remainder to his first son in tail, took a conveyance of the reversion in fee of the copyhold, before the birth of the son :—*Held* : the contingent remainder was not destroyed, the freehold being in the lord.—MILDMAY v. HUNGERFORD (1691), 2 Vern. 243 ; 23 E. R. 757.

887. — — —.]—A. by will gave certain interests in his copyhold estates, & in default of the persons to whom given, gave the same to trustees to such uses as he should declare by deed, & by deed poll he declared further uses :—*Held* : the devise was supported by the freehold in the lord & passed the ultimate use of the copyhold.—HABERGHAM v. VINCENT (1793), 4 Bro. C. C. 353 ; 5 Term Rep. 92 ; 2 Ves. 204 ; 29 E. R. 931.

Annotations :—*Refd.* Briggs v. Penny (1849), 3 De G. & Sm. 525 ; Hicks v. Sallitt (1853), 23 L. J. Ch. 571. *Mentd.* Buckeridge v. Ingram (1795), 2 Ves. 625 ; Rose v. Cunyng-hame (1806), 12 Ves. 29 ; Swift v. Nash (1837), 1 Jur. 557 ; Stubbs v. Sargon (1838), 3 My. & Cr. 507 ; Ferraris v. Hertford (1843), 3 Curt. 468 ; Morrice v. Morrice (1843), 2 Notes of Cases, 199 ; Straubenzee v. Monck (1862), 8 Jur. N. S. 1159 ; Sing v. Leslie (1864), 4 New Rep. 17 ; Foundling Hospital v. Crane, [1911] 2 K. B. 367 ; Warwick v. Warwick (1918), 34 T. L. R. 475.

888. — — —.]—Testator devised copyholds held *pur autre vie* to W. for life, with divers contingent remainders over, with an ultimate remainder to the right heirs of testator. There being no limitation to support contingent remainders, W., who was also heir-at-law of testator, executed a release by which he granted & released the copyholds to B. to the intent that they should be discharged from the limitations declared by testator, & re-settled the estates :—*Held* : the contingent remainders were supported by the estate in the lord of the manor, & were not destroyed.—PICKERSGILL v. GREY (1862), 30 Beav. 352 ; 31 L. J. Ch. 394 ; 5 L. T. 706 ; 8 Jur. N. S. 632 ; 10 W. R. 207 ; 54 E. R. 925.

889. — Estate of dormant surrenderee sufficient.]—A dormant surrender of a copyhold, that is a surrender to A. on condition to perform the will of the surrenderor, will vest an estate in the dormant surrenderee sufficient to support the contingent remainders of the surrenderor's will without the interposition of trustees for the purpose.

A dormant surrender operates as a severance of a joint tenancy, though it is revocable during the lifetime of the surrenderor.—GALE v. GALE (1789), 2 Cox, Eq. Cas. 136 ; 30 E. R. 63.

Annotation :—*Consd.* Edwards v. Champion (1847), 11 Jur. 274.

890. Estate of contingent remainderman—Cannot surrender.]—DOE d. BLACKSELL v. TOMKINS, No. 1569, *post*.

891. — Has descendible interest.]—RIDER v. WOOD, No. 1341, *post*.

892. — On estate vesting—May bring ejectment—Before admittance.]—DOE d. BAVERSTOCK v. ROLFE, No. 883, *ante*.

894. May be granted by lord—Though manor leased—Unless custom to the contrary.]—DAVIES v. FORTESCUE, No. 651, *ante*.

895. When estate attaches—On death of life tenant—Admittance not necessary.]—Where the lord of a manor, by copy of court roll, granted A. the reversion of certain premises then in his tenure, to hold to B. for his life, immediately after the death of A. :—*Held* : B. might, on the death of A., maintain an ejectment, although he had never been admitted, he having acquired a perfect legal title by the grant, without admittance.—ROE d. COSH v. LOVELESS (1819), 2 B. & Ald. 453 ; 106 E. R. 431.

Annotation :—*Refd.* Doe d. Leach v. Whitaker (1833), 5 B. & Ad. 409.

896. Proof of title—By grant.]—In pleading title to the reversion of a copyhold, it is sufficient to show a grant of the reversion.—LODGE v. FRYE (1604), Cro. Jac. 52 ; 79 E. R. 44.

897. — Receipt of rent *prima facie* evidence—Onus of proof not shifted to reversioner—By defendant proving surrender to third parties.]—DAINTRY v. BROCKLEHURST, No. 856, *ante*.

898. Estate of reversioner—Reversion granted for lives—Surrender by husband of life tenant to first taker—Gives ultimate taker no right of entry during life of tenant.]—A woman copyholder for life married & the reversion of the copyhold was granted to A., B. & C. successively according to the custom. The husband surrendered to A. who was admitted & died. B. also died. C. asked to be admitted :—*Held* : C. had no right to entry as the wife might claim after her husband's death.—ROSWELL'S CASE (1567), 3 Dyer, 264 a ; 73 E. R. 585.

Annotation :—*Refd.* King v. Lorde (1630), Cro. Car. 204.

899. — — — In grantee—Not *cestuis que vie*.]—A grant had been made by copy of ct. roll of a reversionary estate to A. for the lives of B. & C. during the life of either of them longest living successively, according to the custom. In consideration of the fine paid by A. the lord had suffered the first in succession of the *cestuis que vie* to enter as tenant on the death of A. :—*Held* : (1) A. would take the legal estate in reversion & not the *cestuis que vie*, there being no custom to enable them to take ; (2) the widow of B. could not claim freebench according to the custom, B. not having died seised of the legal estate.—RIGHT d. WELLS (DEAN & CHAPTER) v. BAWDEN (1803), 3 East, 260 ; 102 E. R. 597.

Annotations :—*As to* (1) *Distd.* Doe d. Nepean v. Goddard (1823), 1 B. & C. 522. *Consd.* Jeans v. Cooke (1857), 24 Beav. 513. *Generally, Mentd.* Roe d. Brune v. Prideaux (1808), 10 East, 158 ; Smith v. Widdlake (1877), 26 W. R. 52.

900. — — — To sons of purchaser in succession—In trust for purchaser—No presumption of advancement.]—W. H., being tenant for life of copyhold houses & lands, was, according to the custom, entitled, upon certain payments to the lord, to obtain a grant in reversion. These he made, & the copyholds were granted "to hold the same unto C. H. & D. H., the two sons of the said W. H., in trust for the said W. H. as sole purchaser thereof, for the term of their lives, severally & successively, according to the custom of the said manor, in reversion of the life of the said W. H." W. H. afterwards devised these copyholds to pltf., whom he appointed also his exor., upon various trusts, the ultimate trust being in favour of his son D. H. Soon after the death of W. H. the other son, C. H. procured admission as tenant of the copyholds for his life :—*Held* : the sons were constituted mere trustees for their father.—KEATS v. HEWER (1864), 11

SECT. 7.—ESTATES IN REVERSION.

893. May be granted for lives—By custom.]—GRELEEVES v. POPE (1612), Toth. 51 ; 21 E. R. 120
See, also, Nos. 898, 899, 900, *post*.

Sect. 7.—Estates in reversion. Sects. 8 & 9: Sub-sect. 1.]

L. T. 290; 10 Jur. N. S. 1040; 13 W. R. 34, L. JJ.

, also, No. 893, ante.

901. — Grant taken in name of third party—Third party may by custom take beneficially—Unless trust mentioned on manor rolls.]—Where the custom of a manor was that if a tenant for life of a copyhold obtains a grant in reversion, in the name of a third person, such person is entitled beneficially, unless a trust is mentioned on the rolls of the manor:—*Held*: (1) the custom was reasonable; (2) the persons named in the reversionary grants of the copyholds were not trustees, but beneficially entitled.—*EDWARDS v. FIDEL* (1818), 3 Madd. 237; 56 E. R. 496.

Annotations:—*As to* (1) *Refd.* *Lewis v. Lane* (1834), 2 My. & K. 449. *As to* (2) *Refd.* *Jeans v. Cooke* (1857), 24 Beav. 513.

902. — May be validly assigned—Though prior estate void.]—The rector & lord of the manor of B. by one grant demised for three lives, at one aggregate holding, & at one undivided rent, three ancient tenements originally held of the manor under distinct grants & at distinct rents. He afterwards disposed of the reversion in fee under the provisions of Land Tax Redemption Act, 1802 (c. 116):—*Held*: that, though the grant for lives might be void unless sanctioned by a special custom in the manor, yet the purchaser of the reversion had a good title, the sale being approved of by the land tax comrs.—*DOE d. STRICKLAND v. WOODWARD* (1847), 1 Exch. 273; 17 L. J. Ex. 1; 154 E. R. 115.

903. — May be avoided—On death of lord before reversion falls into possession—By special custom.]—The manor of M. was appendant to a rectory, & by the custom the tenements might be granted for lives in possession & in reversion; one of the customs was that if one had taken a reversion, & the lord died that granted the same, & the reversion being out of possession, the next lord might lawfully set again:—*Held*: (1) the meaning of the custom was, that where a reversion happened not to have come into possession at the time of the death of the lord granting it, the succeeding lord might treat the reversion as a nullity & lease again; (2) such custom was not unreasonable.—*R. v. VENN* (1875), L. R. 10 Q. B. 310; 44 L. J. Q. B. 158; 23 W. R. 909.

904. When estate attaches—On death of tenant for life.]—*DOE d. FOSTER v. SCOTT*, No. 808, ante.

905. Possibility of reverter on determination of conditional fee—Descendible—Devisable under Wills Act, 1837 (c. 26), s. 3.]—A settlor appointed copyhold lands, held of a manor in which there was no custom to entail, to his son in tail, thus creating a conditional fee at common law, with a possibility of reverter to the settlor in case the son had no issue to inherit the lands, or on failure of such issue, if neither he nor his issue had alienated them, which possibility of reverter took effect after the settlor's death, on the death of the son without having had issue.

Held: the possibility of reverter was descendible, & devisable as a right of entry for condition broken within the meaning of Wills Act, 1837 (c. 26), s. 3.—*PEMBERTON v. BARNES*, [1899] 1 Ch. 544; 68 L. J. Ch. 192; 80 L. T. 181; 47 W. R. 444.

See, generally, WILLS.

SECT. 8.—ESTATE BY CURTESY.

See, generally, REAL PROPERTY & CHATTELS REAL.

906. Exists by custom only.]—RIVET'S CASE (1582), 4 Co. Rep. 22 b; 76 E. R. 919.

Refd. *Shaw v. Thompson* (1595), 4 Co. Rep. 30 b; *Doe d. Hamilton v. Clift* (1840), 12 Ad. & El. 566. *Mentd.* *Buchanan v. Harrison* (1861), 31 L. J. Ch. 74.

907. —.]—PAULTER v. CORNHILL (1594), Cro. Eliz. 361; 78 E. R. 609.

908. When husband entitled—Wife's admittance not necessary.]—H. took a wife upon whom a copyhold descended which was part of a manor in which there was a custom that if a woman seised of a copyhold had a husband & they had issue, & the wife died, the husband should have the land for life as tenant. H. entered before admittance claiming in right of his wife; before admittance the wife died. *Seemle*: H. was entitled by the custom.—*EWER d. HEYDON v. ASTWIKE* (1589), 1 And. 192; 123 E. R. 425; *sub nom.* *EVER v. ASTON*, Moore, K. B. 271.

Annotations:—*Consd.* *Doe d. Hamilton v. Clift* (1840), 12 Ad. & El. 566. *Mentd.* *Eastcourt v. Weeks* (1697), 1 Salk. 186.

909. —.]—A copyhold having descended to a wife as heir at law, who died before admittance, having first borne a child to her husband, which died an infant:—*Held*: (1) the husband was entitled to hold for his life, in the nature of a tenant by the curtesy of England, according to the custom of the manor; though the only evidence of such custom on the rolls was three instances of husbands admitted as tenants by the curtesy, according to the custom, whose respective wives had been admitted during their lives; the title of a wife claiming as heir by descent being complete without admittance by the general law of copyhold, & the title of a tenant by the curtesy being also by operation of law; (2) having good title to the possession as tenant by the curtesy, his possession of the copyhold after his wife's death would be referred to that & not to any adverse title.—*DOE d. MILNER v. BRIGHTWEN* (1809), 10 East, 583; 103 E. R. 897.

Annotations:—*As to* (1) *Consd.* *Doe d. Hamilton v. Clift* (1840), 12 Ad. & El. 566. *As to* (2) *Refd.* *Clarence v. Marshall* (1834), 2 Cr. & M. 495; *Thomas v. Thomas* (1855), 2 K. & J. 79.

910. — Wife only entitled to terminable use—Unless custom to the contrary.]—A. surrendered copyhold to the intent that the lord should grant it to him for life, with remainder to his wife till his son's full age, with remainder over; & died before execution:—*Held*: the wife marrying again & dying before the son's age, her husband & not her administrator should have the rest of the term, unless a special custom be to the contrary.—*HAUCHET'S CASE* (1566), 2 Dyer, 251 a; 73 E. R. 554. *Annotations*:—*Refd.* *Anon.* (1584), 4 Co. Rep. 24 a. *Mentd.* *Re Bellamy, Elder v. Pearson* (1883), 25 Ch. D. 620.

911. — Not where tenement vests in wife after marriage.]—In an action of trespass de ft. alleged a custom of the manor that if any man married any customary tenant of the manor & had issue, & survived his wife, he should be tenant by the curtesy, & pleaded that he had married one A., to whom during the coverture a customary tenement descended:—*Held*: the husband was not tenant by the curtesy, for the wife was not a customary tenant at the time of the marriage.—*SAVAGE'S CASE* (1587), 2 Leon. 109; 74 E. R. 399. *Annotations*:—*Distd.* *Clements v. Scudamore* (1703), 1 P. Wms. 63. *Consd.* *Doe d. Norfolk v. Sanders* (1783), 3 Doug. K. B. 303. *Refd.* *Mallinson v. Siddie* (1870), 39 L. J. Ch. 426.

SECT. 9.—DOWER OR FREEBENCH.

SUB-SECT. 1.—IN GENERAL.

912. Special custom necessary.]—(1) A wife is not dowable without a special custom.

(2) The wife of a copyholder entitled to dower may recover the value in damages in the ct. baron although they exceed forty shillings.

(3) But debt will not lie in the King's Bench on such judgment, the remedy being in the manor court or in Chancery.—*SHAW v. THOMPSON* (1595), 4 Co. Rep. 30 b; Cro. Eliz. 426; 76 E. R. 957.

Annotation :—*As to* (2) *Refd.* *Farley v. Bonham* (1861), 2 John. & H. 177.

913. Who entitled—Widow de facto—Though marriage within prohibited degrees.—A copyholder for life in a manor where there was a custom that a wife should hold *durante viduitate* married within the prohibited degrees & had issue. The husband died & the wife prayed to be admitted to the copyhold, the lord refused, the wife entered, & the lord ousted her, she re-entered, & leased for a year. There was evidence of what the ct. admitted was a good custom that an exor. or administrator should have a year in the land of a copyholder against a wife claiming *durante viduitate*. In an action for ejectment :—*Held* : the wife was entitled.—*RENNINGTON v. COLE* (1618), Noy, 29; 74 E. R. 999.

Annotation :—*Refd.* *Hinton v. Hinton* (1755), 2 Ves. Sen. 631.

914. — Widow of tenant dying seised—Though custom for tenant to nominate successor—Where no such nomination made.—*DEVENISH v. BAINES*, No. 979, *post*.

915. — Widow of tenant in tail—Though no special custom—Custom extending only to tenant in fee.—*DOE d. NORFOLK (DUKE) v. SANDERS* (1783), 3 Doug. K. B. 303; 99 E. R. 666.

916. Out of what estates—Not trust estates.—A copyhold was granted to A. in trust for B., A. died leaving a widow, who by the custom of the manor was entitled to her widow's estate :—*Held* : she should not have her widow's estate any more than the wife of a trustee should have dower.—*BEVANT v. POPE* (1681), Freem. Ch. 71; 22 E. R. 1066.

917. — — — — ——(1) A widow shall not have freebench of trust estate in a copyhold.

(2) The entry of the widow as guardian to the son does not prevent his having such a seisin as to convey title to his customary heir.—*FORDER v. WADE* (1794), 4 Bro. C. C. 520; 29 E. R. 1020, T. C.

Annotations :—*As to* (1) *Refd.* *Smith v. Adams* De G. M. & G. 712. *Generally*, *Mentd.* *Hicks v. Sallitt* (1854), 3 De G. M. & G. 782.

918. — — — Customary freeholds.—The father of pltf.'s husband bought customary freehold lands, which were conveyed to him & D. & the heirs of the father, who died, after devising the lands to his son in tail, who died,—D. surviving. Pltf. laid the custom for the whole, as her freebench :—*Held* : this was a demand of customary dower out of the trust of a freehold estate, & was bad.—*GODWIN v. WINSMORE* (1742), 2 Atk. 525; 26 E. R. 716, L. C.

Annotations :—*Refd.* *Smith v. Adams* (1854), 5 De G. M. & G. 712. *Mentd.* *Burgess v. Wheate* (1759), 1 Eden, 177.

919. — Not land to which husband becomes entitled by copy—If granted again by him by copy.—Pltf.'s father, being seised in tail male of manors & lands, & in possession of great part thereof, intermarried with deft., pltf.'s mother, & died intestate. Pltf., as eldest son & heir in tail brought a bill to set aside the assignment of dower for partiality, upon a suggestion that part of the estate was copyhold & not liable thereto :—*Held* : If the husband became entitled to the copyhold estates by copy of court roll, & granted them out again by copy of ct. roll, his wife was not entitled to dower; (2) if he became entitled otherwise

than by copy of ct. roll, & did not grant them out again by copy of ct. roll, she was entitled to dower out of those estates.—*SNEYD v. SNEYD* (1738), 1 Atk. 442; 26 E. R. 282.

920. — Land to which husband becomes entitled otherwise than by copy—Not granted again by him by copy.—*SNEYD v. SNEYD*, No. 919, *ante*.

921. — Estates devised by tenant—If devise invalid by custom of manor.—Where there was a custom in a manor for a tenant to surrender to a trustee who acknowledged that he held as trustee of the will, & a devise was made to R. in accordance with the custom :—*Held* : (1) the legal & equitable estates having merged in R. could not be devised by him according to the custom of the manor; (2) his widow was entitled to freebench.—*NICHOLSON v. NICHOLSON* (1830), Tambl. 319; 48 E. R. 127.

922. — Not estate in remainder.—(1) The admittance to copyholds has reference back to the surrender, so that, where copyholds were surrendered to A., who died before admittance, the admittance of A.'s heir had reference back to the of the surrender, & supplied in A. such a seisin as to entitle his widow to freebench.

(2) A widow is not entitled to freebench out of a moiety of copyholds, to which her husband was seised in remainder subject to an existing life-estate.—*SMITH v. ADAMS* (1854), 5 De G. M. & G. 712; 2 Eq. Rep. 1001; 24 L. J. Ch. 258; 23 L. T. O. S. 325; 18 Jur. 968; 2 W. R. 698; 43 E. R. 1047, L. J.J.

Annotation :—*As to* (2) *Consd.* *Farley v. Bonham* (1861), 2 John. & H. 177.

— **Estate for years.**—*See* No. 956, *post*.

923. — All lands held during coverture—Custom of manor of Cheltenham.—1 Car. 1, c. 1, which settled the customs of the manor of C. enacted, that the wives of the copyholders which shall join in any grant or surrender with their husbands, of any of the customary messuages or lands, being first examined in ct. according to the custom there, shall be barred afterwards to claim any right, title, or estate whatsoever, of or in those lands so surrendered as aforesaid :—*Held* : pltf., widow of a copyholder, was entitled to dower out of customary lands, of which her husband was tenant during the coverture, but of which he did not die tenant; such lands having been aliened during the coverture by the husband alone, without the wife having been examined in ct., or having joined in the surrender thereof.—*RIDDELL v. JENNER* (1833), 10 Bing. 29; 3 Moo. & S. 673; 2 L. J. C. P. 248; 131 E. R. 815.

Annotation :—*Consd.* *Doe d. Riddell v. Gwinnell* (1841), 1 Q. B. 682.

924. — — — — ——By 1 Car. 1, c. 1, a private Act which settled the customs of the manor of C., it was enacted that the widow of a copyholder is entitled to dower out of all the customary lands of which her husband was seised during the coverture, unless having been separately examined she joined with her husband in any grant thereof :—*Held* : (1) the wife's right included dower out of customary lands of which the husband had been seised during the coverture but of which he was not seised at his death; (2) it was no objection to the wife's title that the death of the husband had not been presented for several years after his death it not appearing there had been unreasonable delay.—*DOE d. RIDDELL v. GWINNELL* (1841), 1 Q. B. 682; 1 Gal. & Dav. 180; 10 L. J. Q. B. 212; 6 Jur. 235; 113 E. R. 1292.

Annotation :—*Generally*, *Mentd.* *Williams v. Thomas*, [1909] 1 Ch. 713.

925. Husband must die seised.—*RIGHT d.*

Sect. 9.—Dower or freebench: Sub-sects. 1, 2 & 3.]

WELLS (DEAN & CHAPTER) v. BAWDEN, No. 899, *ante*.

926. Husband need not have been admitted—Heir cannot defeat estate.]—The heir of the surrenderee who dies before admittance cannot avoid the freebench or customary dower of the widow because he died before admittance.—**VAUGHAN d. ATKINS v. ATKINS** (1771), 5 Burr. 2764; 98 E. R. 451

*Annotations:—***Consd.** Doe d. Hamilton v. Clift (1840), 12 Ad. & El. 566; Smith v. Adams (1854), 18 Beav. 499. **Refd.** Doe d. Bennington v. Hall (1812), 16 East, 208. Doe d. Winder v. Lawes (1837), 2 Nev. & P. K. B. 195. Smith v. Adams (1854), 23 L. T. O. S. 325; Rider v. Wood (1855), 3 Eq. Rep. 1064. **Mentd.** Re Hudson, Cassels v. Hudson, [1908] 1 Ch. 655.

927. — If heir subsequently admitted.]—**SMITH v. ADAMS**, No. 922, *ante*.

Right to admittance as guardians of infant tenant.]—See No. 965, *post*.

928. Recovery—In court baron—Though exceeding forty shillings.]—**SHAW v. THOMPSON**, No. 912, *ante*.

929. — Judgment of manor court—Enforceable in manor court or Chancery only.]—**SHAW v. THOMPSON**, No. 912, *ante*.

SUB-SECT. 2.—NATURE AND EXTENT.

930. Estate durante viduitate—Lord entitled to emblements—On re-marriage—Unless lands leased.]—If a *feme* copyholder, *durante viduitate*, sows the land, & before severance re-marries, the lord of the manor shall have the crop; but not if it is in the hands of her lessee.—**OLAND v. BURDWICK** (1596), Cro. Eliz. 460*; Gouldsb. 189; Moore, K. B. 394; 78 E. R. 714; *sub nom.* OLAND'S CASE, 5 Co. Rep. 116 a.

*Annotations:—***Consd.** Davis v. Eyton (1830), 4 Moo. & P. 820. **Refd.** Wicks v. Jordan (1614), 2 Bulst. 213. **Mentd.** Dunsdale v. Isles (1673), 3 Keb. 166; R. v. Baden (1694), Show. Parl. Cas. 72; Marsden v. Sambell (1880), 43 L. T. 120.

931. — — —.]—If a widow who is to enjoy copyholds, *durante viduitate*, sows the land & afterwards takes a husband, she shall lose the corn, & the lord shall have it (*per CUR.*).—**WICKS v. JORDAN** (1614), 2 Bulst. 213; 80 E. R. 1076.

932. — May be postponed for a year—By custom.]—**RENNINGTON v. COLE**, No. 913, *ante*.

933. — May be concurrent—If first estate not exhaustive.]—Where by custom a copyholder's wife was to have a moiety as survivor & if any lease were made, she was to have a moiety of the rent, after the wife was seised of a moiety the heir of the husband died:—**Held**: the wife of the heir took a moiety of his moiety.—**BAKER v. BERISFORD** (1662), 1 Keb. 356; 2 Sid. 9; 83 E. R. 992.

*Annotations:—***Consd.** Kitchin (or Knight) v. Bunkley (1663), 1 Keb. 572. **Mentd.** Vaughan v. Browne (1738), Andr. 328; Curtis v. Vernon (1790), 3 Term Rep. 587.

934. Estate for life—In all husband's land—By custom—Custom must be strictly proved.]—A custom that a wife shall have all her husband's copyhold lands in fee as her freebench for life in preference to his children, is good, but it must be found precisely as it is pleaded.—**BORASTON v. HAY** (1595), Cro. Eliz. 415; 78 E. R. 657.

935. Estate dum casta—Incontinence of widow—Subsequent admittance of widow's tenant binding on lord—Though without notice of widow's incontinence.]—Where there was a copyhold custom that a woman should have a freebench, *quamdiu se bene gesserit*, & live chastely, & she was incontinent, of which the lord had not notice, & the lord admitted her tenant:—**Held**: it should bind the

lord, although he had not notice of the incontinency.—**WHEELER'S CASE** (1605), 4 Leon. 240; 74 E. R. 846.

936. — Proof of custom—By evidence of other admittance for condition broken.]—**DOE d. ASKEW v. ASKEW**, No. 270, *ante*.

937. Dower in one third—Confers no right to bring ejectment—Until assigned in lord's court—Except by custom.]—The widow of a copyholder entitled to dower cannot bring ejectment for a third part until dower be assigned in the manor ct., unless there is a custom to have a third part.—**CHAPMAN v. SHARPE** (1682), 2 Show. 184; 89 E. R. 879.

938. Not subject to husband's debts.]—**SPYER v. HYATT** (1855), 20 Beav. 621; 25 L. T. O. S. 20; 1 Jur. N. S. 315; 3 W. R. 294; 52 E. R. 743.

*Annotation:—***Apprvd.** Jones v. Jones (1858), 4 K. & J. 361.

SUB-SECT. 3.—LOSS OF RIGHT.

See, generally, REAL PROPERTY & CHATTELS REAL.

939. Attainder of husband—Defeats widow's estate—Apart from special custom.]—Where the husband of a tenant of a copyhold for life, in a manor in which the custom was that the wife shall have her widow's estate, was attainted of felony, & executed:—**Held**: the wife was not entitled without a special custom.—**ALLEN v. BRACH** (1622), Win. 27; 124 E. R. 23.

940. Forfeiture by husband—Defeats widow's estate.]—**EASTCOURT v. WEEKS**, No. 1829, *post*.

941. Lease by husband—Defeats widow's estate—Apart from custom.]—If a copyholder make a lease for years, his widow except there be a custom to the contrary is thereby defeated of her freebench during the term.—**FARELEY'S CASE** (1604), Cro. Jac. 36; 79 E. R. 30.

942. — — —.]—(1) A husband cannot defeat his wife's claim to freebench by a devise, as the devise cannot take effect until his death, when the freebench will attach.

(2) Should a husband grant a lease for years by special custom his widow shall have her freebench notwithstanding such lease she receiving the rent thereof.—**HILL v. HILL** (1611), Co. Ent. 123; 2 Watkins's Copyholds, 63.

*Annotation:—***Generally, Mentd.** Sacheverel v. Frogate (1671), 1 Vent. 148, 161.

943. — — —.]—**EASTCOURT v. WEEKS**, No. 1829, *post*.

944. — — —.]—A lease for years by a copyholder with the licence of the lord, where the widow by custom would be entitled to her freebench if the copyholder had died seised, defeats the widow of her freebench.—**SALISBURY d. COOKE v. HURD** (1776), 2 Cowp. 481; 98 E. R. 1198.

See, also, No. 933, ante.

945. Sale by husband—Copyholder for life—For his estate & estate of widow—Widow not bound.]—A copyholder for life, where by the custom of the manor there was a widow's estate, agreed to sell the land during his life & the widowhood of any wife he might leave:—**Held**: this agreement did not bind the widow.—**MUSGRAVE v. DASHWOOD** (1688), 2 Vern. 45; 1 Eq. Cas. Abr. 120, pl. 11; 23 E. R. 639; *subsequent proceedings*, 2 Vern. 63.

*Annotation:—***Dbtd.** Hinton v. Hinton (1755), Amb. 277.

946. — To son for value—Death of tenant before surrender—Widow's estate defeated.]—A copyholder contracted for valuable consideration to sell to his son, & died before actual surrender:—**Held**: the son entitled to compel the widow to

surrender freebench.—*HINTON v. HINTON* (1755), 2 Ves. Sen. 631; Amb. 277; 28 E. R. 402, L. C.

Annotations:—*Folld. Brown v. Raindle* (1796), 3 Ves. 256. *Mentd. Meeking v. Meeking*, [1917] 1 Ch. 77.

See, also, Nos. 923, 924, *ante*.

947. Sale by husband's assignees in bankruptcy—Defeats widow's estate—Though husband dies before admittance of purchaser.]—In the sale of copyhold lands by comrs. of bkpts.:—*Held*: (1) the estate was in the bargainee before admittance, & the owner was no copyholder after the bargain & sale inrolled; (2) the bkpt. dying between the sale & the admittance, his wife lost the advantage of a custom, that the wives of copyholders dying tenants of the manor should be endowed.—*PARKER v. BLEEKE* (1640), Cro. Car. 568; 79 E. R. 1088.

Annotation:—*Generally*, *Reid. Smith v. Adams* (1854), 5 De G. M. & G. 712.

948. Surrender by husband—Admittance of surrenderee after death of husband—Widow's estate defeated—Though wife enter before admittance of surrenderee.]—A copyholder of a manor within which was the custom of freebench surrendered his estate, & died, his wife entered & afterwards the surrender was presented & the surrenderee admitted:—*Held*: (1) the admittance related to the surrender & the surrenderee's title began from thence; (2) the admittance of the surrenderee defeated the wife's estate.—*BENSON v. SCOT* (1693), Skin. 406; Carth. 275; Comb. 233; Holt, K. B. 160; 1 Salk. 185; 3 Lev. 385; 4 Mod. Rep. 251; 12 Mod. Rep. 49; 90 E. R. 180.

Annotations:—*As to* (1) *Folld. Roo d. Noden v. Griffiths* (1766), 4 Burr. 1952. *Consd. Smith v. Adams* (1854), 18 Beav. 499. *Reid. Hinton v. Hinton* (1755), 2 Ves. Sen. 631; *Doe d. Toffield v. Toffield* (1809), 11 East, 246; *Doe v. Hall* (1812), 16 East, 208. *Generally*, *Mentd. Burgaine v. Spurling* (1631), Cro. Car. 273.

949. — Defeats widow's estate.]—*EASTCOURT v. WEEKS*, No. 1829, *post*.

950. Devise by husband—In lieu of dower—Defeats widow's estate.]—*LACY v. ANDERSON*, No. 1540, *post*.

951. — Widow's estate not defeated.]—*HILL v. HILL*, No. 942, *ante*.

— Invalid by custom of manor.]—*See* No. 921,

952. — Upon trust for sale—Annuity granted to widow pending sale—Widow put to election.]—Testator possessed of copyhold estates subject to freebench devised his estates to trustees, upon trusts to pay his widow an annuity for her life; & subject thereto to hold on certain trusts, one of which was to sell the estate on the happening of certain events:—*Held*: the widow was bound to elect between the annuity & her freebench.—*GRAYSON v. DEAKIN* (1849), 3 De G. & Sm. 298; 18 L. J. Ch. 114; 12 L. T. O. S. 445; 13 Jur. 145; 64 E. R. 487.

Annotation:—*Mentd. Warburton v. Warburton* (1854), 2 Eq. Rep. 414.

See, also, No. 955, *post*.

953. — — Annuity granted to widow out of proceeds — Widow's estate defeated.]—Testator gave all his estate to trustees upon trust to sell & invest the proceeds & out of the income to pay an annuity to his widow, & subject thereto upon certain trusts. Testator, who had married after the Dower Act came into operation, died entitled to copyholds which had not been surrendered to the uses of his will:—*Held*: the widow was deprived of any right to freebench by virtue of Wills Act, 1837 (c. 12), s. 3.—*LACEY v. HILL*, *LENEY v. HILL* (1875), L. R. 19 Eq. 346; 44 L. J. Ch. 215; 32 L. T. 48; 23 W. R. 285.

Annotations:—*Reid. Re Thomas, Thomas v. Howell* (1886),

34 Ch. D. 166. *Mentd. Wolmershausen v. Gullick* (1893), 9 T. L. R. 437.

954. — — Special custom that dower barred only by voluntary surrender—Widow's estate not defeated.]—Copyhold land, purchased by the husband, was surrendered to the use of him & his assigns for life, &, after his decease, to the use of such person, for such estate, & upon such trust as he by surrender or by will should surrender or devise & in default of such surrender or devise, & so far as the same, if incomplete, should not extend, to the use of the husband, his heirs & assigns for ever. The husband was admitted in fee, & by will devised the land to a trustee on trust for sale. By the custom of the manor the title of the wife could only be destroyed by her voluntary surrender:—*Held*: she was entitled to her customary dower.—*POWDRELL v. JONES* (1854), 2 Sm. & G. 407; 3 Eq. Rep. 63; 24 L. J. Ch. 123; 24 L. T. O. S. 88; 18 Jur. 1111; 3 W. R. 32; 65 E. R. 457.

Annotation:—*Mentd. Farley v. Bonham* (1861), 2 John. & H. 177.

955. — Subject to annuity to widow—Specified to be in satisfaction of dower—Widow put to election.]—Testator gave annuities to his widow charged on land part of which was copyhold. He declared that such annuities were in satisfaction of all dower & thirds at the common law or otherwise which she would or might have been entitled to in default of his will:—*Held*: the widow was put to her election between the annuities & her freebench out of the copyhold.—*NOTTLEY v. PALMER* (1854), 2 Drew. 93; 61 E. R. 654; *sub nom. NOTLEY v. PALMER*, 2 W. R. 208.

See, also, No. 952, *ante*.

956. Alteration of copyholder's estate—Copyholder taking lease for years—Defeats widow's estate.]—A custom that the wife of a copyholder for life should have an estate during her widowhood was defeated where the copyholder took a lease for years & so determined the life estate.—*DUGWORTH v. RADFORD* (1640), W. Jo. 462; 82 E. R. 243.

957. Act of husband for valuable consideration—Defeats widow's estate.]—Where a copyholder has power to bar the widow's free-bench by surrender, any act by him for valuable consideration will bar her estate.—*BROWN v. RAINBLE* (1796), 3 Ves. 256; 30 E. R. 998.

Annotations:—*Reid. Wood v. Lambirth* (1841), 1 Ph. 8; *Re Hewett, Hewett v. Hallett*, [1894] 1 Ch. 362.

958. Not defeated by destruction of manor.]—*WALDOE v. BERTLET*, No. 1983, *post*.

959. Not lost by delay—In presenting death of husband.]—*DOE d. RIDDELL v. GWINNELL*, No. 924, *ante*.

960. Surrender by wife—To purchaser from husband's assignees in bankruptcy—Bars widow's right.]—A surrender was made by the wife of a copyholder with his consent, to the use of a purchaser from the assignees of the husband, who had become bankrupt. At the time of such surrender, the purchase not having been completed, the purchaser had not any legal estate in the premises:—*Held*: the wife's right of freebench, if any such existed by special custom, was barred.—*WOOD v. LAMBIRTH* (1841), 1 Ph. 8; 5 Jur. 741; 41 E. R. 534, L. C.

961. Provision for jointure—Defeats widow's estate.]—S. was seised of copyholds held of a manor in which a custom of freebench existed. In consideration of marriage he covenanted to settle part so as to provide for jointure for the wife in lieu of her customary estate. S. died without performing the articles:—*Held*: the

of the lands to any other person, yet the nominee continues tenant to the lord for the whole, but the person to whom any part is excepted shall enjoy that part during his life; & if any tenant dies seised, leaving a wife, & makes no nomination, the wife shall have the tenement during her life, else it goes to the lord.

S. being a copyholder of the manor, & intending to leave the greatest part of his copyhold to *pltf.*, & the rest to his wife, was advising with some of the copyholders whether to nominate *pltf.* his successor, with exception of such part to his wife as he intended for her; but the wife being present, pretended it might be prejudicial to her, as to the part intended her, & if he would nominate her his successor, she would take care *pltf.* should have such part of the land as was intended him; thereupon *S.* nominated her successor, & died. She refused to let *pltf.* enjoy the lands intended him:—*Held*: (1) by the custom of the manor an estate might be created by parol without writing; (2) a trust of such parol estate might likewise be raised without writing.—*DEVENISH v. BAINES* (1689), *Prec. Ch.* 3; 2 *Eq. Cas. Abr.* 43, *pl.* 4; 24 *E. R.* 2.

980. — Surrender to stranger—Stranger trustee for heir-at-law.—A copyholder surrendered to one *H.* & his heirs, & declared to him by parol, that his wife should have the copyhold, if she survived him. He afterwards made a will, in which he took no notice of the copyhold; & both he & his wife died:—*Held*: *H.* being a stranger he was but a trustee for the heir-at-law.—*CHEW v. CHEW* (1691), *Nels.* 190; 21 *E. R.* 823.

981. Heir-at-law of testator—Taking admittance on trustee under will renouncing—Takes subject to trusts of will.—(1) *P.* being entitled to two copyholds, surrendered one to the use of his will, & bequeathed both copyholds to his trustees & exors., in trust for his grandson. The trustees & exors. renounced probate, & were not admitted. The son of *P.* was afterwards admitted to the copyholds, & he surrendered, for a valuable consideration, to one *H.*, who surrendered to the father of *deft.*, by whom the copyholds were bequeathed to *defts.*:—*Held*: as to the copyhold which *P.* surrendered to the use of his will, that *pltf.*, his grandson, was entitled, though thirteen years had elapsed from the time he became adult, & *deft.* was a trustee for & must surrender to him, & an account was directed of timber cut, & of the rents & profits for the last six years.

(2) A purchaser is affected with notice of the contents of the *ct. rolls* as far back as a search is necessary for the security of the title (*SIR JOHN LEACH, V. C.*).—*PEARCE v. NEWLYN* (1818), 3 *Madd.* 186; 56 *E. R.* 479.

982. — Covenant to surrender to uses of marriage settlement—Followed by marriage—Trustee of settlement entitled to vesting order without surrender or admittance—Though customary heir admitted on death of settlor.—By a marriage settlement, the husband & wife covenanted with the trustee to surrender certain copyholds, to which the wife was entitled, to the uses of the settlement. The marriage was solemnised, but the wife died without having surrendered the copyholds. Upon her death the copyholds became vested in the youngest child of the marriage, as her customary heir. A petition was presented by the eldest child, who was of age, & the other children of the marriage, infants, by their father & next friend, & the trustee of the settlement, asking for an order vesting, without any surrender or admittance, the copyholds in the trustee of the settlement, upon the trusts of the settlement, for

all the estate of the customary heir:—*Held*: the case being one of an executed contract, the court had power to make the order asked for.—*Re BRADLEY'S SETTLED ESTATE* (1885), 54 *L. T.* 43; 34 *W. R.* 148.

SUB-SECT. 2.—NATURE OF TRUSTEE'S ESTATE.

983. Trustee under trust to transfer to beneficiary on majority—Takes estate determinable on named event—Actual transfer unnecessary.—A person possessed of copyhold property, after surrendering it to the use of his will, made a will, in which he gave all his lands to trustees for the use of his son to be transferred to him as soon as he should attain 21 years of age, & one of the trustees was admitted. After the death of that trustee & after the infant became of age, & died, his heir brought an action of ejectment:—*Held*: the trustees took only an estate determinable on the son attaining the age of 21 years, & no actual transfer was necessary to pass the estate to the heir-at-law of the first proprietor.—*DOE d. PLAYER v. NICHOLLS* (1823), 1 *B. & C.* 336; 2 *Dow. & Ry.* K. B. 480; 1 *L. J. O. S. K. B.* 124; 107 *E. R.* 125. *Annotations*:—*Mentd.* *Doe d. Shelley v. Edlin* (1836), 4 *Ad. & El.* 582; *Doe d. Cadogan v. Ewart* (1838), 7 *Ad. & El.* 636; *Doe d. Davies v. Davies* (1841), 10 *L. J. Q. B.* 169; *Blagrove v. Blagrove* (1849), 4 *Exch.* 550; *Ward v. Bunbury* (1854), 18 *Beav.* 190.

See, also, No. 986, *post*.

984. Trustee under trust for sale at death of tenant for life—Death of remainderman before tenant for life—Resulting trust for heirs of testator or remainderman.—Testator gave a copyhold estate to trustees for his wife, until the leases to which it was subject expired, & directed that then it should be sold, & the proceeds be invested for the benefit of his children; but if his wife should die before the leases expired, that it should be sold, & the proceeds disposed of as before. The wife survived the children, but died before the leases expired:—*Held*: the surviving trustee, who claimed the estate for his own benefit, must surrender it to the administrator of the children, but without prejudice to the rights of the customary heirs of either the testator or the children, if any such heirs were in existence.—*BURTON v. HODSOLL* (1827), 2 *Sim.* 24; 57 *E. R.* 699.

985. Trustees under trusts to several & their heirs & the heirs of the survivor—Take estate in fee.—Where there was a devise of copyhold & other estates, unto *N.*, *H.* & *H.*, their heirs, exors., administrators, & assigns, & to the heirs, exors., administrators, & assigns of the survivor upon trust for *M.* for life, & after her decease, upon trust for *A.*, *B.* & *C.*, & their lawful issue respectively, in tail general, with benefit of survivorship to & amongst their issue respectively, as tenants in common, & after the death of *A.*, *B.* & *C.*, or either of them, to apply the rents & profits of the trust estates, towards maintenance of children during minority:—*Held*: the trustees took an estate in fee in the copyholds.—*CURSHAM v. NEWLAND* (1835), 2 *Bing. N. C.* 58; 1 *Hodg.* 272; 2 *Scott*, 105; 132 *E. R.* 23; *subsequent proceedings* (1838), 4 *M. & W.* 101; (1839), 2 *Beav.* 145.

986. Trustee under trust for named beneficiaries—Followed by devise to heirs of beneficiaries dying without issue—Takes estate determinable on death of beneficiaries without issue.—Testator by his will desired his debts to be paid, & then devised all his residuary copyhold estates to trustees & the survivors & survivor of them & the heirs of such survivor upon trust to pay the rents to his wife & two daughters in equal shares for their

Sect. 11.—Trust estates: Sub-sects. 2, 3, 4 & 5.]

respective lives, with survivorship amongst them, &, after their deaths, upon certain trusts for the issue of his said daughters, & in the event of the deaths of both daughters without issue he devised his copyhold estates to the right heirs of the survivor of his daughters for ever. The trustees were also appointed exors. of the will to the uses of which, testator having in his lifetime surrendered to such uses, they were after his death duly admitted as tenants. Both daughters survived the wife of testator, & died without having been married:—*Held*: (1) there was a charge of debts created upon the residuary copyholds by the will; (2) the charge, coupled with the legal estate devised to the trustees, vested the legal estate in fee simple in the trustees, & made all the estates limited after the devise to them equitable estates.

Semble: had there not been a charge of debts, the fee simple in the trustees would have determined on the death of the survivor of the tenants for life for whose benefit alone they would have been trustees.—*CREATON v. CREATON* (1856), 3 Sm. & G. 386; 26 L. J. Ch. 266; 28 L. T. O. S. 171; 2 Jur. N. S. 1223; 5 W. R. 123; 65 E. R. 705.

Annotations:—As to (2) *Appl. Marshall v. Gingell* (1882), 21 Ch. D. 790. *Generally, Re Brooke, Brooke v. Brooke*, [1894] 1 Ch. 43. *Mentd. Spence v. Spence* (1862), 12 C. B. N. S. 199; *Re Lashmar, Moody v. Penfold*, [1891] 1 Ch. 258.

See, also, No. 983, *ante*.

987. — Coupled with charge of debts—Takes legal estate in fee simple.]—CREATON v. CREATON, No. 986, *ante*.

988. Sole trustee of equitable estate in copyholds—No words of limitation in conveyance—Takes life estate only—Apart from special custom.]—By a settlement of 1908 a contingent equitable estate in fee-simple in copyholds, was conveyed to a sole trustee without words of limitation, the *habendum* being obviously defective; though words of limitation occurred in the declaration of the beneficial interests. The trustee died in 1913:—*Held*: in the absence of any special custom the trustee took a life estate only, & the limitations of the settlement had therefore determined.—*Re MONCKTON'S SETTLEMENT, MONCKTON v. MONCKTON*, [1913] 2 Ch. 636; 83 L. J. Ch. 34; 109 L. T. 624; 57 Sol. Jo. 836.

Annotations:—*Mentd. Re Nutt's Settltmt., McLaughlin v. McLaughlin*, [1915] 2 Ch. 431; *Re Bostock's Settltmt., Norrish v. Bostock*, [1921] 2 Ch. 469; *Re Dickson's S. E.*, [1921] 2 Ch. 108.

Whether subject to dower or freebench.]—See Nos. 916, 917, 918, *ante*.

SUB-SECT. 3.—DEVOLUTION AND TRANSMISSION OF TRUST ESTATE.

989. Devolution on death of sole trustee—& failure of trust—Heir of trustee has no equity to compel admittance.]—Where there was a devise of a copyhold, duly surrendered, to A., & his heirs in trust for B., & his heirs & B. died without heirs:—*Held*: the heir of the trustee had no equity to compel the lord to admit him.—*WILLIAMS v. LONSDALE (LORD)* (1798), 3 Ves. 752; 30 E. R. 1255.

Annotations:—*Consd. R. v. Coggan* (1805), 6 East, 431. *Refd. Gallard v. Hawkins* (1884), 27 Ch. D. 298. *Mentd. Barrow v. Wadkin* (1857), 24 Beav. 1.

990. — Heir of trustee entitled.]—*GALLARD v. HAWKINS*, No. 1952, *post*.

991. — Under Conveyancing Act, 1881 (c. 41), s. 30—Copyholds vest in trustee's executors—

Vesting order unnecessary.]—A sole trustee of copyholds was admitted, & died intestate as to the copyholds. It was not known who was his heir, but he had by his will appointed exors., who proved. A petition for a vesting order was presented:—*Held*: s. 30 of the above Act applied to copyholds, & a vesting order was not required.—*Re HUGHES*, [1884] W. N. 53.

Annotation:—*Refd. Re Mills' Trusts* (1888), 37 W. R. 81.

992. — Copyhold Act, 1887 (c. 73), s. 45 divests estate & vests in customary heir.]—A sole trustee of copyholds, who was tenant on the ct. rolls, died in 1884. His exors. had not been admitted to the property when the above Act was passed. On a petition for a vesting order presented after the passing of the Act:—*Held*: on the passing of the above Act, Conveyancing & Law of Property Act, 1881 (c. 41), ceased to have any application to copyholds, & the legal estate became vested in the customary heir. The validity of any disposition of the property made by the personal representatives before the passing of the Copyhold Act, 1887 would be unaffected by that Act.—*Re MILLS' TRUSTS* (1888), 40 Ch. D. 14; 60 L. T. 442; 37 W. R. 81, C. A.

993. When persons appointed to surrender—Appointment of new trustee—Customary heir of deceased trustee refusing to act.]—In the appointment under Trustee Act, 1850 (c. 60), s. 28, of a new trustee of copyholds where the consent of the lord of the manor was not obtained, the customary heir of the last surviving trustee was ordered to do all such acts as would duly vest the copyholds in the new trustee and if he refused a person would be appointed to complete the assurance.—*Re HEYS' WILL* (1851), 9 Hare, 221; 22 L. J. Ch. 248; 68 E. R. 483.

994. — Trustee ordered by court to surrender—Trustee not to be found.]—Where the ct. had declared a person a trustee, & directed him to surrender certain copyholds, it was, upon evidence that he could not be found, ordered that a person be appointed to surrender the lands in his stead.—*Re JAMES' TRUST* (1852), 19 L. T. O. S. 338.

995. — Trustee covenanting to surrender—Leaving jurisdiction before surrender.]—A. covenanted to surrender copyholds to the use of B., & in the meantime, & until such surrender should be made, to stand seised of the copyholds upon trust for, & to surrender the same unto B. A. went out of the jurisdiction without making any surrender. The ct. made an order under Trustee Act, 1850 (c. 60) for the appointment of a person to surrender the copyholds to B.—*Re COLLINGWOOD'S TRUSTS* (1858), 6 W. R. 536.

996. Admittance of person appointed to surrender—Enforceable by mandamus to lord.]—*Re LANE & IRVING*, No. 1692, *post*.

997. Vesting orders—On disclaimer by heir of trustee—Lord's consent necessary.]—Where the party entitled to the legal estate in copyholds had been admitted, & the legal estate descended on his death to his customary heirs, who disclaimed:—*Held*: the consent of the lord was necessary to a vesting order.—*Re HOWARD* (1855), 3 Eq. Rep. 846; 3 W. R. 605.

998. — On appointment of new trustee—Lord's consent not necessary.]—*Re FLITCROFT* (1855), 1 Jur. N. S. 418.

Annotation:—*Consd. Re Howard* (1855), 3 Eq. Rep. 846.

999. —]—PATERSON v. PATERSON (1866), L. R. 2 Eq. 31; 35 Beav. 506; 35 L. J. Ch. 518; 14 L. T. 320; 12 Jur. N. S. 408; 14 W. R. 601; 55 E. R. 992; *subsequent proceedings, sub nom. BRISTOW v. BOOTH* (1869), L. R. 5 O. P. 80.

1000. — Customary heir of last trustee an infant—Guardian need not be served.]—On a petition for a vesting order of copyholds in a newly appointed trustee, where the customary heir of the last surviving trustee was an infant:—*Held*: it was not necessary to serve the petition on the guardian of the infant heir.—*Re DAVIES'S TRUST*, [1889] W. N. 215.

1001. — In sole beneficiary—On death of sole trustee—Without heir.]—The sole trustee of copyholds held in trust for A. absolutely, having died intestate & without an heir A. presented a petition under Trustee Act, 1850 (c. 60) asking that the property might be vested in himself:—*Held*: the ct. had jurisdiction to make the order under the combined operation of ss. 15 & 28 of the above Act.—*Re GODFREY'S TRUSTS* (1883), 23 Ch. D. 205; 52 L. J. Ch. 479; 48 L. T. 389; 31 W. R. 426.

1002. — Jurisdiction to make—Customary co-heir out of jurisdiction.]—Where lands were held by a trustee jointly with a person who was out of the jurisdiction:—*Held*: the provisions of Trustee Act, 1850 (c. 60) empowering the ct. to make a vesting order applied to the case of a trust descended upon customary co-heirs of copyholds.—*Re GREENWOOD'S TRUSTS* (1884), 27 Ch. D. 359; 54 L. J. Ch. 623; 51 L. T. 283; 33 W. R. 342.

SUB-SECT. 4.—ENTRY OF TRUST ON MANORIAL RECORDS.

Entry on court rolls—Whether notice to purchaser.]—*See*, Part V., Sect. 1, sub-sect. 4, *ante*.

1003. — Not necessary—Indorsement on surrender sufficient.]—*CAR v. ELLISON* (1744), 3 Atk. 73; 26 E. R. 845, L. C.

*Annotations:—**Refd.* *Judd v. Pratt* (1806), 13 Ves. 168; *Torre v. Browne* (1855), 5 H. L. Cas. 556; *Copeslake v. Hoper*, [1907] 1 Ch. 366.

1004. — Notice of trusts in surrender—Blinds lord.]—A., being seised of a copyhold in fee, surrendered it to the use of B. & his heirs, according to the custom of the manor, but subject to the trusts of a certain indenture therein referred to; those trusts were, after giving one year's previous notice, to sell the tenement, to retain out of the proceeds of the sale a sum of £700 & interest, for which the surrender was a security, & to pay the overplus to A. B. was admitted, & died intestate & without an heir, the £700, with an arrear of interest, still remaining due to him:—*Held*: (1) the lord did not become entitled to the tenement by reason of failure of heirs of B.; (2) A. had a right to redeem the premises, & on payment of what was due on the mtge. to be re-admitted as tenant in fee according to the custom of the manor; (3) it was the personal representative of B. & not the lord who was entitled to receive the mortgage debt; (4) where a lord of a manor admitted a tenant upon the trusts of an indenture referred to in the surrender he was to be considered as consenting to those trusts, & was bound by them upon the death of the trustee without an heir.—*WEAVER v. MAULE* (1830), 2 Russ. & M. 97; 39

E. R. 331; *sub nom.* *WEAVER v. KINGLAKE*, 9 L. J. O. S. Ch. 20.

1005. — Steward may consent to.]—*R. v. HOUGHTON (LORD & STEWARD OF THE MANOR)* (1854), 24 L. T. O. S. 14.

1006. Whether tenant can compel lord to accept surrender—With notice of trust—Not trust to such uses as third party shall appoint—To take effect in life time of tenant.]—*FLACK v. DOWNING COLLEGE (MASTER, ETC.)*, No. 1606, *post*.

SUB-SECT. 5.—ENFORCEMENT OF TRUSTS.

1007. Against infant heir of trustee—Fraudulent investment of trust funds in copyholds—Heir ordered to surrender when of age—Beneficiary let into possession.]—A trustee purchased copyholds with the trust money, & after admittance, surrendered the same to himself for life & then on limitations in favour of his nephews who were infants. On his death one of his nephews was presented to be his heir, & the lord refused to admit the *cestui que trust*:—*Held*: the nephews should surrender when they came of age & the *cestui que trust* should hold the lands till that time.—*COSIN v. YOUNG* (1635), Nels. 33; 21 E. R. 782.

1008. Surrender to marriage settlement—Trust for husband till marriage—Death before marriage—Trust enforced against intended wife—After 30 years.]—A. & B. being about to marry, surrendered their respective copyhold estates to the use of themselves & the survivor. The man died before the marriage, & the woman entered on his land, and remained in quiet enjoyment for thirty years:—*Held*: (1) she must surrender to the heir & account for the profits; (2) it was a trust for the husband & his heirs until the marriage took effect.—*DAMOND v. HICKS* (1686), 1 Vern. 432; 23 E. R. 568, L. C.

1009. — — — — —.]—*LOCKYER v. SIMPSON* (1730), Mos. 298; 25 E. R. 404.

1010. Equity of redemption—Change in destination by surrender—Lord bound by acceptance.]—*EDDLESTON v. COLLINS*, No. 1453, *post*.

1011. Annuities secured by right of entry—On land of which covenantor seised—Covenantor in receipt of rents of copyholds as cestui que trust—Not seised of copyholds.]—A. covenanted to pay certain annuities, with power of distress, or entry for the recovery of the same, upon the real estate of which he might die seised. At the time of his death A. was in receipt of the rents & profits of certain copyholds of which he had never been admitted tenant, but as to which the admitted tenant had declared that he stood possessed of the same in trust for A. & his heirs & assigns:—*Held*: A. had not died, seised of the copyhold premises.—*Re NORMAN, THACKRAY v. NORMAN* (1914), 111 L. T. 903; 58 Sol. Jo. 706.

Enforcement of contract for sale—Where cestui que trust refuses.]—*See* No. 1433, *post*.

Effect of admittance—As notice of trust.]—*See* No. 1004, *ante*.

Rights of an alien—At common law.]—*See* *ALIENS*, Vol. II., p. 136, No. 116.

Part X.—Relationship of Lord and Tenant as affecting Property.

SECT. 1.—RIGHT TO MINES AND MINERALS, AND IN SOIL.

SUB-SECT. 1.—IN GENERAL.

1012. Mines under copyhold—No right in lord to enter—To work mines—In absence of custom.]—The lord of a manor as such has no right, without a custom, to enter upon the copyholds within his manor under which there are mines & veins of coal in order to bore for & work the same, & the copyholder may maintain trespass against him for so doing.—*BOURNE v. TAYLOR* (1808), 10 East, 189; 103 E. R. 747.

Annotation:—Mentd. *Rogers v. Taylor* (1857), 1 H. & N. 706.

1013. ——— Property in lord—Possession in tenant—Right of customary tenant against owner of adjoining colliery for entering subsoil.]—In copyhold lands, although the property in mines be in the lord, the possession of them is in the tenant. The latter, therefore, may maintain trespass against the owner of an adjoining colliery for breaking & entering the subsoil & taking coal therein, although no trespass be committed on the surface.—*LEWIS v. BRANTHWAITE* (1831), 2 B. & Ad. 437; 9 L. J. O. S. K. B. 263; 109 E. R. 1205.

Annotations:—Consd. *Keyse v. Powell* (1853), 2 E. & B. 132; *Bowser v. Maclean* (1860), 2 De G. F. & J. 415. *Refd.* *Hardley v. Granville* (1876), 3 Ch. D. 826.

1014. ——— In absence of special custom.]—*Re CLAVERING, PUBLIC TRUSTEE v. CLAVERING*, [1915] W. N. 195.

1015. ——— Space after minerals removed belongs to tenant.]—In an ordinary copyhold manor the estate of the copyholder is in the soil throughout except as regards trees, mines, & minerals, the property in which remains in the lord. When the lord has removed minerals the space left belongs to the copyholder. The right of the lord is not like that of a vendor of freeholds who has reserved mines, & remains owner of the vacant space from which minerals have been removed.

In a Crown manor, where the Crown & its lessees were by custom entitled to enter on the land for the purpose of working the minerals, *deft.*, the lessee of the Crown mines, who was also lessee of the S. mine outside the manor, claimed a right to use a crut or underground way beneath the land of *pltf.*s, who were copyholders of part of the manor, for the purpose of conveying minerals from the S. mine to the deep pit by which the manorial mines were worked, & thence by a branch railway constructed by *deft.* over part of the same copyhold to the main line:—*Held*: such user was a trespass, & no case of acquiescence on the part of *pltf.*s. or their predecessor in title having been established, they were entitled to an injunction to restrain *deft.* from carrying the S. minerals over or under their copyhold land.—*HARDLEY v. GRANVILLE* (1876), 3 Ch. D. 826; 45 L. J. Ch. 669; 34 L. T. 609; 24 W. R. 528.

Annotations:—Appld. *Batten Pooll v. Kennedy*, [1907] 1 Ch. 256. *Consd.* *Derry v. Sanders*, [1919] 1 K. B. 223. *Refd.* *Powell v. Vickerman* (1887), 3 T. L. R. 358; *G. W. Ry. v. Cefn Cribbwr Brick Co.*, [1894] 2 Ch. 157; *Thomson v. St. Catharine's College, Cambridge, etc.*, [1919] A. C. 468. *Mentd.* *Tucker v. Linger* (1882), 21 Ch. D. 18; *Ruabon Brick & Terra Cotta Co. v. G. W. Ry.*, [1893] 1 Ch. 427; *Webb v. Knight*, *Hedley v. Webb* (1901), 70 L. J. Ch. 663.

1016. Stone on surface of copyhold—Fallen from cliffs outside manor—Before admittance of copyholder—Copyholder not entitled.]—Large masses of

rocks had fallen from time to time, & from beyond the time of memory, from some cliffs above, which did not belong to the lord of the manor, into the field of a copyholder which was within the manor, & the copyholder had removed portions of them from his field & sold them:—*Held*: he was liable for so doing, to an action of trover by the lord, as they had become a portion of the soil, there being no evidence to show that they had fallen since the copyholder was admitted.—*DEARDEN v. EVANS* (1839), 5 M. & W. 11; 2 Horn. & H. 7; 8 L. J. Ex. 171; 3 Jur. 703; 151 E. R. 5; *sub nom.* *DEERLING v. EVANS*, 3 J. P. 404.

1017. Stone beneath surface of copyhold—Copyholder may not remove.]—Suit by a lord of the manor against a tenant of lands within the manor to restrain *deft.* from taking stone from lands in his occupation. *Deft.* alleged that it was & had been a common practice in the manor to remove the stone which laid immediately under the surface, for the benefit of cultivation:—*Held*: a perpetual injunction would be granted to restrain *deft.* from taking the stone since he declined to try his right to take the stone by an action at law.—*CUDDON v. MORLEY* (1848), 7 Hare, 202; 68 E. R. 82.

1018. Coal under customary freeholds—Ownership as in case of copyholds—Tenant may not dig—In absence of custom.]—*PORTLAND (DUKE) v. HILL*, No. 572, *ante*.

Mines & minerals under waste.]—*See* COMMONS & RIGHTS OF COMMON, Vol. XI., pp. 28, 42, 66, Nos. 363, 575, 912.

1019. Waiver by tenant of right to compensation—For injury by removal of support—By working mines in tenant's freehold—Does not bind lord.]—The owner of freehold & copyhold lands adjoining each other surrendered the copyhold lands to a grantee, who covenanted for himself, his heirs & assigns, with the grantor, his heirs & assigns, that the grantor should have full power to mine under his own freehold lands without paying compensation for any injury which might be sustained by the copyhold portion & buildings erected thereon, in consequence of the removal of the support. *Pltf.* was the assignee of the grantee, & *deft.* was the assignee of the grantor; & compensation was sought by *pltf.* for damage resulting from the sinking of his land, in consequence of the mines excavated under *deft.*'s land:—*Held*: the grantee had no power to disclaim the right to compensation so as to bind the lord of the manor without his consent, & the covenant did not run with the land.—*RICHARDS v. HARPER* (1866), L. R. 1 Exch. 199; 4 H. & C. 55; 35 L. J. Ex. 130; 30 J. P. 662; 12 Jur. N. S. 770; 14 W. R. 643.

Annotation:—Refd. *Wakefield v. Buccleuch* (1867), L. R. 4 Eq. 613.

See, generally, MINES, MINERALS & QUARRIES.

SUB-SECT. 2.—BY CUSTOM.

A. In Favour of Lord.

1020. To keep coal & rubbish—From mines under freehold lands—On land of customary tenants—Without stint—Bad.]—A custom that where the customary tenant of a manor has coal mines lying under the freehold lands of other customary tenants, within & parcel of the manor, he may

sink pits in those lands to get the coals, may lay the coals when got & the earth & rubbish on the land near to such pits, such lands being customary tenements & parcel of the manor, there to remain & continue, not saying how long or for a convenient time, may lay & continue wood there for the necessary use of the pits, may take away in carts & waggons part, not saying how much, of the coals, & burn & make into cinders the other parts there at his will & pleasure:—*Held*: a bad custom, being uncertain & unreasonable.—*WILKES v. BROADBENT* (1744), 1 Wils. 63; 2 Stra. 1224; 95 E. R. 494; *affg. S. C. sub nom. BROADBENT v. WILKS* (1742), Wilses, 360.

Annotations:—*Consd.* *R. v. White* (1757), 1 Burr. 333; *Hilton v. Granville* (1845), 5 Q. B. 701; *Carlyon v. Lovering* (1857), 1 H. & N. 784; *Salisbury v. Gladstone* (1861), 9 H. L. Cas. 692. *Refd.* *Rogers v. Taylor* (1857), 1 H. & N. 706. *Mentd.* *Da Costa v. Clarke* (1801), 2 Bos. & P. 376; *Clement v. Lewis* (1822), 10 Price, 181; *Gillingham v. Waskett* (1824), M'Cle. 198; *Gwynne v. Burnell* (1840), 6 Bing. N. C. 453.

1021. To work mines—Beneath foundations of houses in manor—Without compensation to tenants—Bad.]—A custom or prescription to dig under the foundations of the houses in a manor in search of ores & minerals without making compensation to the tenants of the houses for injury done to the foundations is bad, & cannot be sustained in law.—*HILTON v. GRANVILLE (EARL)* (1844), 5 Q. B. 701; 1 Dav. & Mer. 614; 13 L. J. Q. B. 193; 2 L. T. O. S. 419; 8 Jur. 311; 114 E. R. 144; *subsequent proceedings* (1848), 12 Q. B. 737, n.

Annotations:—*Consd.* *Humphries v. Brogden* (1850), 12 Q. B. 739; *Carlyon v. Lovering* (1857), 1 H. & N. 784; *Rowbotham v. Wilson* (1857), 8 E. & B. 123; *Rogers v. Taylor* (1858), 6 W. R. 249; *Salisbury v. Gladstone* (1861), 9 H. L. Cas. 692. *Expld.* *Blackett v. Bradley* (1862), 1 B. & S. 940. *Consd.* *Buccleuch v. Wakefield* (1870), L. R. 4 H. L. 377. *Apprvd.* *Bell v. Love* (1883), 10 Q. B. D. 547. *Refd.* *Williams v. Bagnall* (1866), 15 W. R. 272; *Taylor v. Shatto* (1867), 8 B. & S. 228; *Buchanan v. Andrew* (1873), L. R. 2 Sc. & Div. 286; *Hall v. Byron* (1877), 46 L. J. Ch. 297; *Gill v. Dickinson* (1880), 5 Q. B. D. 159. *Mentd.* *Hilton v. Whitehead* (1848), 12 Q. B. 734; *Smart v. Morton* (1855), 5 E. & B. 30; *Hext v. Gill* (1872), 7 Ch. App. 699; *Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.

Minerals under waste—Customary right of lord.]

—*See COMMONS & RIGHTS OF COMMON, Vol. XI.*, pp. 42, 63, Nos. 581, 899, *ante*.

B. In Favour of Tenant.

1022. To open new copper mines—Cannot be established—If no copper mines previously in manor.]—Lord of a manor may bring a bill for an account of ore dug, or timber cut, by deft.'s testator, for, there never having been any mine of copper before discovered in the manor, the jury could not find that the customary tenant might by custom dig & open new copper mines.—*WINCHESTER (BP.) v. KNIGHT* (1717), 1 P. Wms. 406; 24 E. R. 447, L. C.

Annotations:—*Distd.* *Jesus College v. Bloom* (1745), 1 Amb. 54. *Consd.* *Bourne v. Taylor* (1808), 10 East, 189; *Salisbury v. Gladstone* (1861), 9 H. L. Cas. 692; *Portland v. Hill* (1866), L. R. 2 Eq. 765. *Mentd.* *Pulteney v. Warren* (1801), 6 Ves. 73; *Lansdowne v. Lansdowne* (1815), 1 Madd. 116; *Powell v. Aiken* (1858), 4 K. & J. 343; *Peck v. Gurney* (1873), L. R. 6 H. L. 377; *Phillips v. Homfray* (1883), 24 Ch. D. 439; *Phillips v. Homfray*, [1892] 1 Ch. 465.

1023. To dig copper—In vill within manor—Good—Notwithstanding right of lord to tin mines.]—Though the lord of a manor in C. may by conveyance & acts of ownership establish his right to all tin mines within the manor as well under the freehold tenements as under customary tenements & the wastes, yet, consistently therewith, the tenants of certain tenements in a vill within the manor, some of them freehold & some customary, may, by acts of ownership for more than 20 years past, establish their right to copper mines under the waste & customary lands as well as under the

freehold lands within the vill.—*CURTIS v. DANIEL* (1808), 10 East, 273; 103 E. R. 779.

Annotations:—*Refd.* *Parrott v. Palmer* (1834), 3 My. & K. 632. *Mentd.* *Keyse v. Powell* (1853), 2 E. & B. 132.

1024. To dig lord's soil for turf—In fenny lands—Good.]—*ELY (DEAN & CHAPTER) v. WARREN*, No. 259, *ante*.

1025. To dig clay for bricks—From copyholds—Good.]—In ejectment for a forfeiture by a lord against a copyholder of inheritance for digging & taking clay from the manor to be sold off the manor to any one, deft. pleaded & proved a custom from time immemorial for the copyholders of inheritance, without license from the lord, to break the surface & dig clay without limit from & out of their copyhold tenements for the purpose of making it into bricks to be sold off the manor:—*Held*: this custom was good in law.—*SALISBURY (MARQUIS) v. GLADSTONE* (1861), 9 H. L. Cas. 692; 34 L. J. C. P. 222; 4 L. T. 849; 8 Jur. N. S. 625; 9 W. R. 930; 11 E. R. 900, H. L.

Annotations:—*Consd.* *Blewett v. Jenkins* (1862), 12 C. B. N. S. 16; *Hall v. Byron* (1877), 4 Ch. D. 667; *Mercer v. Denno*, [1904] 2 Ch. 534. *Refd.* *Constable v. Nicholson* (1863), 14 C. B. N. S. 230; *Lingwood v. Gyde* (1866), L. R. 2 C. P. 72; *Warrick v. Queen's College, Oxford* (1871), 6 Ch. App. 716. *A.-G. for Isle of Man v. Mylchreest* (1879), 4 App. Cas. 294; *Goodman v. Saltash Corpn.* (1882), 7 App. Cas. 633. *Tucker v. Linger* (1883), 52 L. J. Ch. 941; *Heath v. Deane*, [1905] 2 Ch. 86; *Johnson v. Clark*, [1908] 1 Ch. 303; *Hanmer v. Chance* (1865), 11 L. T. 667; *Portland v. Hill* (1866), L. R. 2 Eq. 765.

1026. To dig sand—Good.]—Defts., copyholders of a manor, claimed a custom to dig sand from their copyhold tenements; & the practice of digging for this was carried back by the evidence to twenty-seven years, & no more, before the filing of the bill:—*Held*: (1) the Prescription Act, 1832 (c. 71), s. 1, applies only to cases where one man claims, by custom, prescription or grant, some profit or benefit to be taken from or enjoyed upon the land of another; & has no application to the case of a right claimed by a copyholder in his own tenement; (2) that a custom for a copyholder to dig sand in his own tenement, to the extent of removing even a whole stratum of sand, was not unreasonable & custom upheld.

Customary rights of copyhold tenure differ from prescriptive rights; the former are usages which apply to a number of persons in a certain district or locality, but prescriptive rights are claimed by one or more person or persons as existing in themselves or their ancestors, or as attached to a particular estate (*LORD WESTBURY, C.*).—*HANMER v. CHANCE* (1865), 4 De G. J. & Sm. 626; 6 New Rep. 4; 34 L. J. Ch. 413; 12 L. T. 163; 29 J. P. 324; 11 Jur. N. S. 397; 13 W. R. 556; 46 E. R. 1061, L. C.

Annotations:—*As to* (2) *Refd.* *A.-G. for Isle of Man v. Mylchreest* (1879), 4 App. Cas. 294. *Generally, Mentd.* *Portland v. Hill* (1866), L. R. 2 Eq. 765.

1027. To work & sell coal—From under copyholds—Provided lord's sale not hindered—Good.]—In an action by the lord of the manor to restrain copyhold tenants from working & selling coal under their tenements, defts. set up a special custom for the tenants of the manor to work & sell the coal so long as the sale thereof in no way hindered the lord's sale:—*Held*: the custom was proved, & the deft.'s sales being comparatively small were not in the circumstances a hindrance within the meaning of the restriction.—*SITWELL v. WORRALL* (1898), 79 L. T. 86; 42 Sol. Jo. 740.

SUB-SECT. 3.—EXTENT OF RIGHT.

1028. Tunnel under copyholds—May be used by lord—For working mines within manor—Not for

Sect. 1.—Right to mines and minerals, and in soil:
Sub-sects. 3, 4 & 5, A. & B. Sects. 2 & 3.
Part XI. Sect. 1: Sub-sects. 1 & 2, A. (a).]

working mines outside manor.]—The lord may drive carriages along a tramway under copyholds of the manor for the purpose of working mines within the manor but not of working mines beyond its limits, & a bill will lie for an injunction at the suit of a copyholder to restrain the lord from using the tramway for the latter purpose; nor is it an objection to such a bill that the copyholder is not in possession of the surface, but has let it to a tenant.—**BOWSER v. MACLEAN** (1860), 2 De G. F. & J. 415; 30 L. J. Ch. 273; 3 L. T. 456; 6 Jur. N. S. 1220; 9 W. R. 112; 45 E. R. 682, L. C.

Annotations:—*Consd.* Eardley v. Granville (1876), 3 Ch. D. 826; Cooper v. Crabtree (1882), 20 Ch. D. 589. *Refd.* Proud v. Bates (1865), 6 New Rep. 92. *Mentd.* Cochrane v. Willis (1864), 9 L. T. 792; Batten Pooll v. Kennedy, [1907] 1 Ch. 256; Thomson v. St. Catharine's College, Cambridge, etc., [1919] A. C. 468.

1029. — May not be used by lord—For conveying minerals from mines outside manor.]—EARDLEY v. GRANVILLE, No. 1015, *ante*.

Reservation of mines and minerals on enfranchisement.]—See No. 1989, *post*.

SUB-SECT. 4.—REMEDIES OF LORD.

1030. Injunction & account against tenants refused—Where lord claimed right of property in mines—But during long period did not object to tenants working mines.]—The lord of a manor, who claimed against the tenants the right of property in the mines within the manor, had stood by for a long period & allowed the tenants, without objection, to work the mines & to expend large sums of money upon their mining operations:—**Held:** the ct. would not assist him by making a decree for an injunction or account against the tenants but would leave him to his legal remedy.—**PARROTT v. PALMER** (1834), 3 My. & K. 632; 40 E. R. 241, L. C.

Annotations:—*Refd.* Wright v. Pitt (1870), L. R. 12 Eq. 408; Elias v. Griffith (1877), 8 Ch. D. 521; Blackmore v. White, [1899] 1 Q. B. 293. *Mentd.* Haigh v. Jaggard (1845), 2 Coll. 231; Powell v. Aitken (1858), 4 K. & J. 343; Hunter v. Stewart (1861), 4 De G. F. & J. 168.

1031. Injunction granted till hearing—To restrain copyholder from working mines—On claim by lord that lands were copyhold.]—Pltfs. stated on their bill that certain lands were copyhold but did not allege circumstances sufficient to prove that they were so & that B., the tenant, had never worked mines. B. said the lands were freehold:—**Held:** an injunction would be granted to restrain B. from working mines till the hearing.—**GREENWICH HOSPITAL COMRS. v. BLACKETT** (1848), 12 Jur. 151.

1032. Perpetual injunction—To restrain tenant from taking stone.]—CUDDON v. MORLEY, No. 1017, *ante*.

SUB-SECT. 5.—REMEDIES OF TENANT.

A. Nature of Remedies.

1033. May maintain trespass—Against lord—For entering copyhold tenement—To work mines.]—BOURNE v. TAYLOR, No. 1012, *ante*.

1034. Injunction till hearing—Against lord—For entering copyhold tenement—To work mines.]—Injunction in the case of trespass by the lord of a manor digging for coal on the premises of a copyhold tenant. From the nature of the subject & the consequences such an injunction not to be continued without securing the means of a speedy

trial.—GREY v. NORTHUMBERLAND (DUKE) (1809), 17 Ves. 281; 34 E. R. 109, L. C.

Annotations:—*Consd.* Hilton v. Granville (1841), Cr. & Ph. 283. *Refd.* Haigh v. Jaggard (1845), 2 Coll. 231; Lowndes v. Bettle (1864), 10 L. T. 55.

Right of action against owner of adjoining colliery.]—See No. 1013, *ante*.

B. When Lord Necessary Party to Action.

1035. Action by copyholder—To restrain lessees of lord—From working mines under copyhold—Lord properly added as defendant.]—In an action by a copyholder to restrain the working of minerals under his land against lessees who claimed the right to work minerals by virtue of their lease from the lord of the manor, the lord of the manor was by amendment added as deft. & an allegation inserted in the amended statement of claim that he claimed the right by himself and his lessees to work the minerals, that he justified the acts of his lessees, & that he had received & claimed to be entitled to receive rents & royalties in respect of such wrongful working:—**Held:** the lord of the manor as lessor had been properly added as a deft.—**SHAFTO v. BOLCKOW, VAUGHAN & CO.** (1887), 34 Ch. D. 725; 56 L. J. Ch. 735; 56 L. T. 608; 35 W. R. 562.

Annotations:—*Mentd.* Leckhampton Quarries Co. v. Ballinger & Cheltenham R. D. Co. (1904), 68 J. P. 464; Dickens v. National Telephone Co., National Telephone Co. v. Hythe Corp'n. (1911), 75 J. P. 557; Thornhill v. Weeks, [1913] 1 Ch. 438; Westhoughton U. C. v. Wigan Coal & Iron Co., [1919] 1 Ch. 159.

SECT. 2.—TREES AND TIMBER.

Right to trees & timber.]—See AGRICULTURE, Vol. II., p. 66, No. 419, *et seq.*

1036. Right of tenant—To cut trees growing on land—May be prescribed for by special custom—Custom of Middlesex & Northampton.]—ANON. (1551), Ben. & D. 8; 123 E. R. 231.

1037. — To cut down trees for repairs & for sale—Good by custom.]—GLASCOCKS CASE (1608), 4 Leon. 238; 74 E. R. 844.

1038. Trees severed by tenant—Property in lord.]—FLEMING (LADY) v. SIMPSON (1828), 6 L. J. O. S. K. B. 207.

1039. Licence by lessee of manor—To copyholder to cut timber—Void against lessor.]—In evidence to a jury it was doubted: (a) if, upon a custom to surrender to two copyholders out of ct. a surrender to the heirs of a copyholder before admittance was good; (b) whether a lessee for years might grant a licence to a copyholder to free timber:—**Held:** (1) the surrender was good; (2) though the licence was good against the lessee it was void against the lessor because the licence was derived out of the interest & so could be of no greater extent than it, & the assignee of the lessee might take advantage of it; (3) if a copyholder committed a forfeiture the lord might grant the copyhold estate to another before any seizure, for it was a determination of the will, & the estate was immediately in the lord as in his reversion; (4) a lord *pro tempore* of any legal title, though it be at will, by admission of a copyholder after a forfeiture committed had dispensed with the forfeiture not only as to himself but also as to him in the reversion, for he might make voluntary grants, & such new grant & admittance amounted to an entry for the forfeiture & a new grant; (5) a lord by tort or by disseisin could not by such admittance purge the forfeiture as to the rightful lord; (6) the not appearing at a ct. being a forfeiture if a copyholder said if it were a ct. he would appear, if none he

would not though it appeared to be a ct. there was no forfeiture because no wilful contempt.—*MUNIFAS v. BAKER* (1661), 1 Keb. 25; 83 E. R. 789; *sub nom. MILEFAX v. BAKER*, 1 Lev. 26.
Annotation:—As to (3) *Reid. Doe d. Tarrant v. Hellier* (1789), 3 Term Rep. 162.

SECT. 3.—SPORTING RIGHTS.

1040. Right of lord to seize game in hands of unqualified person—May be delegated—Provided lord exercise judgment on specific case.]—Before game in the hands of an unqualified person can be seized within a manor for the use of the lord or lady of the manor, the lord or lady must exercise his or her judgment on the specific case whether the person possessing the game is or is not unqualified. But after such judgment exercised the lord or lady may take the game by the hands of another.

In trespass for taking hares, deft. justified seizing them by command of the lord of the manor & for his use within the manor, the hares being found in the possession of an unqualified person, & pltf. traversed the command:—*Held*: the command to be proved, to maintain the issue, must be such a command as would legally authorise the seizure, & evidence of a wrongful command would not maintain the issue.—*BIRD v. DALE* (1817), 7 Taunt. 560; 1 Moore, C. P. 290; 129 E. R. 223.

1041. No right in lord to enter all lands in manor—For purpose of killing game.]—*PICKERING v. NOYES* (1825), 4 B. & C. 639; 7 Dow. & Ry. K. B. 49; 4 L. J. O. S. K. B. 10; 107 E. R. 1198.

Annotations:—*Reid. Wickham v. Hawker, Heath & Rolph* (1840), 10 L. J. Ex. 153; *Sowerby v. Smith* (1874), L. R. 9 C. P. 524. *Mentd. Dayrell v. Hoare* (1840), 12 Ad. & El. 356; *Pannell v. Mill* (1846), 11 Jur. 109.

1042. Trustees possessed of manor upon trust to divide profits among tenants—Should let sporting rights to all eligible persons—& not to tenants on advantageous terms.]—Under a deed a manor with its rights members liberties & appurtenances, saving & reserving certain lands therein mentioned, was conveyed to trustees upon trust to permit the persons named in the schedule to the deed their

heirs & assigns, being tenants of the several messuages & tenements mentioned in the schedule, to have & convert to their own use a ratable proportion of the rents & profits of the manor according to the yearly rents & purchase-money paid by them respectively for the purchase of their messuages & tenements. A schedule was added to the deed, containing the names of certain persons & their tenements. Upon a bill filed by a person claiming to be a tenant of the manor under the deed who proved that his estate was part of one of the tenements mentioned in the schedule praying to be declared entitled to the benefits of the deed of trust & particularly to the right of sporting over the manor:—

Held: (1) pltf. could not sustain the bill simply as a tenant of the manor, inasmuch as certain of the lands being reserved under the deed it did not appear that all the tenants were entitled to the benefits of the deed; (2) he could not sustain it as a tenant under the deed because it did not appear that any of the assurances by which the property was conveyed to him expressly mentioned the right of sporting, & such an interest in the profits of the manor could not be annexed to the various tenements mentioned in the schedule without appropriate words of conveyance for that purpose.

Where a manor is conveyed to trustees upon trust to divide the profits of it amongst the tenants of the manor it is the duty of trustees not to let the right of sporting to any of the tenants upon terms advantageous to them as tenants, but to make the best profit they can by letting the right of sporting to all eligible persons whether tenants or otherwise, & to divide the profit so made ratably amongst the *cestuis que trust*.—*HUTCHINSON v. MORRITT* (1839), 3 Y. & C. Ex. 547; 160 E. R. 818.

Sporting rights over waste.]—See COMMONS & RIGHTS OF COMMON, Vol. XI., p. 42, No. 582 *et seq.*

Erection of coney burrows.]—See ANIMALS, Vol. II., p. 250, No. 325.

Reservation of sporting rights in Inclosure Act.]—See COMMONS & RIGHTS OF COMMON, Vol. XI., p. 60, No. 884.

Rights of fishery.]—See FISHERIES.

Freewarren.]—See COMMONS & RIGHTS OF COMMON, Vol. XI., pp. 26–28.

Part XI.—Relationship of Lord and Tenant as affecting Services, Dues, etc.

SECT. 1.—FINES.

SUB-SECT. 1.—FINES ON CHANGE OF LORD.

1043. Payable on death of lord—Not on alienation—Tenure by tenant right.]—Tenure by tenant right, as it is usual towards the borders of Scotland, shall not pay any uncertain fine or income at the change of the lord by alienation, but by death, which is the act of God; for otherwise the lord might weary the tenant by frequent alienations; but it may be fine uncertain upon the alienation of the tenant as well upon death as descent, for that is the act of the tenant.—*THWAITES' MANNOR CASE* (1599), Cary, 6; 21 E. R. 4.

1044. — After alienation of manor—Custom to pay general fine—Good.]—By the custom of several manors in the counties of C. & W. a general fine became payable upon the death of the lord:—*Held*: this was a good custom even where the manor has been alienated by the lord in his life time.—*LOWTHER v. RAW* (1735), 2 Bro. Parl. Cas. 451; 1 E. R. 1058, H. L.

1045. On death of last admitting lord—General fine payable—To tenant for life under marriage settlement.]—*SOMERSET (DUKE) v. FRANCE* (1725), 1 Stra. 654; 93 E. R. 762, L. C.

Annotations:—*Reid. Thanet v. Paterson* (1738), Barn. Ch. 247; *Doe d. Hamilton v. Clift* (1840), 12 Ad. & El. 566. *Mentd. R. v. Ellis* (1813), 1 M. & S. 652; *Anglesea v. Hatherton* (1842), 12 L. J. Ex. 57.

On succession of infant lord—Whether payable.]—See No. 263, *ante*.

SUB-SECT. 2.—FINES ON CHANGE OF TENANT.

A. When Payable.

(a) On Admittance.

1046. Not due until admittance.]—*SANDER (LORD) CASE* (1562), 2 Dyer, 215; 73 E. R. 476.
Annotations:—*Reid. Hobart v. Hammond* (1600), 4 Co. Rep. 27 b; *Penn v. Baltimore* (1750), 1 Ves. Sen. 444; *Johnstone v. Spencer* (1885), 30 Ch. D. 581. *Mentd. Searle v. Williams* (1618), Hob. 288.

Sect. 1.—Fines: Sub-sect. 2, A. (a) & (b), B.

1047. —.]—Upon evidence to a jury:—**Held:** (1) if the fines of copyholders of a manor were uncertain yet the lord could not demand excessive or unreasonable fines, & if he did the copyholder might by law refuse to pay them without any forfeiture; (2) it should be determined by the justices either upon demurrer or evidence to a jury upon the concession or proof of the yearly value of the land whether the fine demanded was reasonable or not; (3) if the lord in case of uncertainty of fines assessed a reasonable fine the copyholder was not bound to pay immediately because he could not tell what fine the lord would assess; (4) if the lord appointed no certain day for payment of the fine the copyholder should have a convenient time for payment; (5) where a fine was certain the tenant was bound to bring it to ct. & pay before admittance, & if he was not ready to pay there would be a forfeiture; (6) where a copyholder had several lands severally held by several services by copy the lord ought to assess & demand the fines severally for every parcel so severally held, for where there were several estates there should be several fines; (7) if all the several copyholds were surrendered to the use of A. & his heirs & the lord admitted him *tenendum per antiqua servitia*, the tenures were several & the fines ought to have been severally assessed & demanded; (8) where a copyholder has several lands severally held by several services by copy he might refuse to pay the fine for one parcel & forfeit that but pay the fines for the others; (9) non-payment of rent on the day fixed did not cause a forfeiture unless there was a refusal to pay; (10) waste in the copyhold did not cause forfeiture of another; (11) no fine was due either upon surrender or descent until admittance; (12) if after admittance the tenant refused to pay the fine it was a cause of forfeiture.—**HOBART v. HAMMOND** (1600), 4 Co. Rep. 27 b; 76 E. R. 942; *sub nom.* **DALTON v. HAMOND**, Moore, K. B. 622; Cro. Eliz. 779.

Annotations:—As to (1) **Refd.** *Willowes' Case* (1608), 13 Co. Rep. 1; *Godfrey's Case* (1614), 11 Co. Rep. 42 a; *Bell v. Wardell* (1740), Willes, 202; *Fraser v. Mason* (1883), 11 Q. B. D. 574. As to (6) **Refd.** *Johnstone v. Spencer* (1885), 30 Ch. D. 581. As to (11) **Consd.** *Graham v. Sime* (1801), 1 East, 632. *Generally, Refd.* *Attree v. Scutt* (1805), 6 East, 476; *Garland v. Jekyll* (1824), 9 Moore, C. P. 502.

1048. — Not payable on covenant to surrender.]—**R. v. HENDON** (LORD OF THE MANOR) & TROWARD, No. 1678, *post*.

1049. —.]—In an action on a covenant:—**Held:** (1) a covenant to surrender a copyhold to a purchaser, & to make & do all acts deeds etc. for the perfect surrendering & assuring the premises at the costs & charges of the seller, was not broken by non-payment of the fine to the lord on the admission of the purchaser; (2) the title of the purchaser was perfected by the admittance & the fine was not due till after admittance.—**GRAHAM v. SIME** (1801), 1 East, 632; 102 E. R. 244.

Annotations:—**Consd.** *Clarke v. Twyford, Re Pirkin's Estate* (1859), 33 L. T. O. S. 178. **Refd.** *R. v. Cottingham* (1827), 7 B. & C. 603.

1050. — Memorandum of admission of steward's book insufficient.]—**HAYWARD v. RAW**, No. 1102, *post*.

1051. Covenant by settlor to surrender copyholds to trustees—To intent that they might be admitted—At his costs & charges—Settlor not bound to pay fine.]—A husband covenanted with trustees that he would at his own costs & charges surrender copyhold hereditaments he held in right of his

wife to them to the intent that they might at his costs & charges be admitted tenants upon certain trusts:—**Held:** the husband was not bound to pay the fine upon admittance.—**BARROW v. BARROW** (1855), 26 L. T. O. S. 22; 3 W. R. 587.

Annotation:—**Consd.** *Re Eastern Counties Ry. Act, Ex p. Sawston & Wakelin's Charity Trustees* (1858), 31 L. T. O. S. 129.

See, also, No. 1695, post.

(b) On Transmission of Legal Estate.

1052. Admittance of executor of termor.]—A question arose whether the surviving exor. of T., the surviving trustee of a term of years in copyholds, ought to be admitted tenant of the premises, & if he ought to be whether the lord of the manor was entitled to a fine on the admittance:—**Held:** (1) during the continuance of those lives by which a term of years in a copyhold was supported, if the termor died it devolved upon his exor. of necessity to be admitted tenant in the lord's ct. & pay the fine thereon incident; (2) a right to admission & a fine accrued to the lord on the death or change of every tenant.—**BATH (EARL) v. ABNEY** (1757), 1 Keny. 471; 1 Burr. 206; 96 E. R. 1060.

Annotations:—As to (1) **Consd.** *Wilson v. Hoare* (1831), 2 B. & Ad. 350; *Everingham v. Ivatt* (1872), L. R. 7 Q. B. 683. **Refd.** *Doe d. Whitbread v. Jenney* (1804), 2 Smith, K. B. 116.

1053. Not on assignment of equitable interest—Under covenant to surrender.]—**R. v. HENDON** (LORD OF THE MANOR) & TROWARD, No. 1678, *post*.

1054. Not on devolution of equitable title—Only on transmission of legal estate.]—In an action by the lord of a manor for the recovery of fines:—**Held:** (1) the lord was entitled to a fine in respect only of a transmission of the legal estate in copyholds, & could not claim a fine in respect of any devolution of the equitable title where the legal estate remained in the person who has been already admitted tenant on the roll; (2) a covenant for value to surrender, though binding as between surrenderor & surrenderee, could not be enforced by the lord so as to entitle him to compel a new admittance & a fine in respect thereof.—**HALL v. BROMLEY** (1887), 35 Ch. D. 642; 56 L. J. Ch. 722; 56 L. T. 683; 35 W. R. 659; 3 T. L. R. 583, C. A.

B. Whether more than one Fine Payable.

(a) On Admittance of Co-owners.

1055. Joint tenants—On admittance of one of several joint tenants—After release of estate & interest by remaining joint tenants—Single fine payable.]—Devise of a copyhold to three persons in fee, who were also appointed exors. of the will & proved it. Two of them by deed released their interest & estate in the copyholds to the third to the intent that she might be admitted alone. The lord of the manor claimed a treble fine, & had not admitted:—**Held:** the lord was entitled to a single fine only, the deed operating as a disclaimer, & the fact that all three had proved the will not preventing any of them from disclaiming the devise under it.—**WELLESLEY (LORD) v. WITHERS** (1855), 4 E. & B. 750; 24 L. J. Q. B. 134; 25 L. T. O. S. 79; 1 Jur. N. S. 706; 3 C. L. R. 1187; 119 E. R. 277.

Annotations:—**Consd.** *Bence v. Gilpin* (1868), L. R. 3 Exch. 76. **Refd.** *R. v. Garland* (1870), L. R. 5 Q. B. 269.

1056. — After disclaimer by remaining joint tenants—When acts of ownership exercised before disclaimer—Fine as on admittance of all.]—There was a disclaimer by two out of three joint tenants, surrenderees of certain copyhold lands belonging to a manor, executed before the admittance of the remaining joint tenant, but after

the exercise by all three of various acts of ownership over the estate:—*Held*: the disclaimer was void, & the lord was entitled to a fine as upon the admittance of all.—*BENCE v. GILPIN* (1868), L. R. 3 Exch. 76; 37 L. J. Ex. 36; 17 L. T. 655; 16 W. R. 705.

Annotation:—*Refd.* *R. v. Garland* (1870), L. R. 5 Q. B. 269.

Assessment of fine—On admittance of joint tenant.—*See* Nos. 1140, 1141, 1142, 1143, *post*.

Custom to admit one only of several joint tenants.—*See* No. 1509, *post*.

1057. Coparceners—Entitled to admittance—On payment of single fine.—*Semble*: coparceners are entitled to be admitted to copyhold tenements as one heir & upon the payment of one set of fees.—*R. v. BONSALL (LORD OF THE MANOR) & WOLLEY (STEWART)* (1824), 3 B. & C. 173; 4 Dow. & Ry. K. B. 825; 107 E. R. 699.

Annotation:—*Refd.* *King v. Turner* (1833), 1 My. & K. 456.

Tenants in common.—*See* No. 1078, *post*.

(b) *On Admittance of Tenants having Limited Interests.*

i. *Tenant for Life and Remainderman.*

1058. Admittance of tenant for life—Is admittance of remainderman—Without prejudice to lord's fine.—*BROWN'S CASE*, No. 627, *ante*.

1059. —————*BLACKBURN v. GRAVES* (1874), 1 Mod. Rep. 102, 120; 2 Lev. 107; 3 Keb. 263, 329; 86 E. R. 764, 778; *sub nom.* *BATMORE v. GRAVES*, 1 Vent. 260.

Annotations:—*Consd.* *Ely v. Caldecot* (1832), 8 Bing. 439. *Refd.* *Bath v. Abney* (1757), 1 Burr. 206; *Kensington v. Mansell* (1806), 13 Ves. 240; *R. v. Woodham Walter* (1869), 10 B. & S. 439; *Everingham v. Ivatt* (1872), L. R. 7 Q. B. 683; *Re Hudson, Cassels v. Hudson*, [1908] 1 Ch. 655. *Mentd.* *Bern v. Mattaire* (1735), Lee temp. Hard. 119; *Garforth v. Bradley* (1755), 2 Ves. Sen. 675; *Everingham v. Ivatt* (1873), L. R. 8 Q. B. 388.

See, also, No. 1052, *ante*.

1060. ———— No new fine due for remainderman.—*DELL v. HIGDEN*, No. 721, *ante*.

1061. ———— Except by special custom.—*F.*, a copyholder, made a surrender to the use of himself for life & after to the use of his son A. for life, & after to the use of his will. He was admitted & died. The lord pretending forfeiture granted the lands to a stranger:—*Held*: (1) the admittance of a tenant for life was admittance of him in the remainder, but not to prejudice the lord of his fine due by custom of the manor; (2) the fee simple of the copyhold being limited to the use of the will remained in the copyholder & not in the lord.—*FITCH v. STUCKLEY* (1594), 4 Co. Rep. 23 a; 76 E. R. 923; *sub nom.* *FITCH v. HOCKLEY*, Cro. Eliz. 442.

Annotations:—*As to* (1) *Refd.* *Batmore v. Graves* (1874), 1 Vent. 260; *George d. Thornbury v. —* (1764), Amb. 627. *As to* (2) *Refd.* *Smith v. Triggs* (1721), 1 Stra. 487; *d. Jeffries v. —* (1754), 1 Keny. 110; *Holder d. Sulyard v. Preston* (1769), 2 Wils. 400.

1062. —————*A copyhold was granted to A. for life with remainder in fee:—Held*: (1) the admittance of a copyholder tenant for life was an admittance of him in the remainder; (2) except by special custom the lord of the manor should have only one fine.—*GYPPEN v. BUNNEY* (1596), Cro. Eliz. 504; 78 E. R. 754; *sub nom.* *TIPING v. BUNNING*, Moore, K. B. 465.

Annotations:—*As to* (1) *Consd.* *Everingham v. Ivatt* (1872), L. R. 7 Q. B. 683. *Refd.* *Batmore v. Graves* (1874), 1 Vent. 260; *Doe d. Whitbread v. Jenney* (1804), 5 East, 522; *Church v. Mundy* (1806), 12 Ves. 426; *Doe d. Tofield v. Tofield* (1809), 11 East, 246. *As to* (2) *Consd.* *Doe d. Whitbread v. Jenney* (1804), 5 East, 522. *Refd.* *Barnes v. Corke* (1691), 3 Lev. 308; *Kensington v. Mansell* (1806), 13 Ves. 240; *R. v. Dullingham* (1838), 8 Ad. & El. 858.

1063. —————*In an action of ejectment:—Held*: (1) admittance of a copyholder

for life was so of him in the remainder, & no fine was due by the remainderman in the absence of special custom; (2) refusal to pay a fine while the matter was in doubt was not such obstinate & wilful refusal as would incur a forfeiture.—*BARNES v. CORKE* (1691), 3 Lev. 308; 83 E. R. 703.

Annotations:—*As to* (1) *Consd.* *Kensington v. Mansell* (1806), 13 Ves. 240; *Ely v. Caldecot* (1832), 8 Bing. 439.

See, also, Nos. 1509, 1731, *post*.

1064. Full fine paid on admittance of tenant for life—No fine payable on admittance of remainderman—Except by special custom.—*In an action of assumpsit to recover the amount of certain fines alleged to be due from deft. upon his admission to certain copyhold premises:—Held*: the lord of a manor having taken a full fine on the admittance of a tenant for life was not entitled to another full fine upon the admittance of the remainderman as tenant in fee, unless the imposition of such latter fine was authorised by a special custom of the manor.—*ELY (DEAN & CHAPTER) v. CALDECOT* (1832), 8 Bing. 439; 1 Moo. & S. 633; 1 L. J. C. P. 131; 131 E. R. 463.

Annotations:—*Consd.* *Everingham v. Ivatt* (1872), L. R. 7 Q. B. 683. *Refd.* *R. v. Woodham Walter* (1869), 10 B. & S. 439; *Smith v. Hobbs* (1887), 3 T. L. R. 293.

1065. —————*A devisee of copyhold paid the full fine due by the custom of the manor on his admittance to hold in fee. He afterwards surrendered to the use of himself for life with remainders over, & on being admitted to such life estate paid a nominal fine of 1s.:—Held*: without a custom to such effect, the remainderman was not liable on the death of the tenant for life to pay any fine.—*PHYPPERS v. EBURN* (1836), 3 Bing. N. C. 250; 2 Hodg. 230; 3 Scott, 634; 6 L. J. C. P. 20; 132 E. R. 406.

1066. —————*A return to a writ of mandamus directed to the lord of the manor of W. commanding him to admit R. as tenant for life to certain customary lands devised to her by M. stated that by immemorial custom of the manor a full fine ought to be paid, to the extent of that payable by a tenant in fee simple, by every tenant for life on his admission. The alleged custom was traversed:—Held*: a lord of a manor who had been paid a full fine on the admission of a tenant for life had no right on the death of the latter to another full fine from the remainderman for his admission, unless a special custom of the manor justified the claim.—*R. v. WOODHAM WALTER (LORD OF THE MANOR OF)* (1869), 10 B. & S. 439.

1067. Special custom—For admittance of remainderman—& payment of fine—Good.—*A copyholder in fee who had paid a fine on his original admittance surrendered to the use of himself for life, remainder to his wife for life, remainder over. On the surrender & re-admittance no new fine was paid, & by the custom a remainderman coming into possession on the death of tenant for life had to be admitted & pay a fine:—Held*: (1) such a custom was good; (2) on the death of tenant for life, the next in remainder not coming in to be admitted & pay the fine, after proclamations made & presentment by the jury, the lord might seize *quousque* the tenant came in, & maintain ejectment to recover the possession in the mean time; (3) such proclamations being in general terms for any person to come in & make title, etc. & the presentment of default being also general, were good, though the person next in remainder were known & named in the surrender.—*DOE d. WHITBREAD v. JENNEY* (1804), 5 East, 522; 2 Smith, K. B. 116; 102 E. R. 1170.

Annotations:—*As to* (1) *Consd.* *Phyppers v. Eburn* 3 Bing. N. C. 250; *Everingham v. Ivatt* (1872), L. J. Q. B. 203. *Refd.* *Evelyn v. Worsfold* (1849),

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L. T. O. S. 4; R. v. Woodham Walter (1869), 10 B. & S. 439. *As to (3) Rejd. Doe d. Bover v. Trueman* (1831), 1 B. & Ad. 736.

1068. ————.]—Action by the lord of the manor of W. to recover a fine assessed by the homage on the admittance of deft. to a remainder expectant on the determination of a life estate in copyholds:—*Held*: (1) there might exist a special custom in a manor for the remainderman upon a life estate to be admitted, & to pay a fine for his admittance after the admittance of the tenant for life, & if such remainderman desired to be admitted during the life of the tenant for life, he might be so admitted, but then he would have to pay his fine immediately upon his admittance; (2) the remainderman could not claim to be admitted to a part only of the premises during the life of the tenant for life & to pay a part only of the fine, but if he desired to be admitted the lord might compel him to be admitted to all the premises, & to pay all the fine payable by the remainderman.—*EVELYN v. WORSFOLD* (1849), 15 L. T. O. S. 4.

Annotation:—*As to (2) Consd. Johnstone v. Spencer* (1885), 30 Ch. D. 581.

1069. ————.]—Action by S. as lord of the manor of B. to recover a fine alleged to be due to him from deft.:—*Held*: custom of manor was proved that the lord was entitled to claim a fine for the admission of the remainderman, to which a tenant for life had previously been admitted & paid a fine.—*SMITH v. HOBBS* (1887), 3 T. L. R. 293.

1070. ———— *Remainderman may claim admittance during life of tenant for life—On payment of full fine.*]—*EVELYN v. WORSFOLD*, No. 1068, *ante*.

See, also, No. 1145, *post*.

ii. Tenant for Life and Reversioner.

1071. *Admittance of tenant for life—Is not admittance of reversioner.*]—*DELL v. HIGDEN*, No. 721, *ante*.

1072. *No fine payable by heir—Until death of tenant for life—Unless heir surrenders in lifetime of tenant for life.*]—*R. v. DULLINGHAM (LADY OF THE MANOR OF)*, No. 1082, *post*.

iii. Other Cases.

1073. *Special custom for admittance of remainderman—& payment of fine—Notwithstanding admittance of tenant for life—Rule applied to executory devise—On defeasance of estate in fee.*]—Where by the custom of a manor it was necessary for a copyhold tenant in remainder to be admitted & pay a fine on becoming entitled in possession notwithstanding the admission of the tenant for life:—*Held*: the same rule ought to be applied to an executory devisee who became entitled on the defeasance of an estate in fee, although no custom applicable to that case was established.—*RANDFIELD v. RANDFIELD, Ex p. GARLAND* (1861), 3 De G. F. & J. 766; 31 L. J. Ch. 113; 5 L. T. 698; 8 Jur. N. S. 161; 45 E. R. 1075, L. C. & L.JJ.

Annotation:—*Mentd. Walmsley v. Mundy* (1884), 13 Q. B. D. 807.

(c) On Admittance of Tenant claiming through Unadmitted Persons.

i. Purchaser.

1074. *Purchaser from trustees—Selling under trust for sale—One fine only.*]—A copyholder surrenders to the use of his will, & by his will orders & directs two persons to sell, & to apply the monies

for the purposes in the will:—*Held*: they might sell without being admitted, & the lord should admit the vendee, & should have but one fine.—*HOLDER d. SULYARD v. PRESTON* (1769), 2 Wils. 400; 95 E. R. 884.

Annotations:—*Consd. R. v. Oundle* (1834), 1 Ad. & El. 283; *Glass v. Richardson* (1852), 2 De G. M. & G. 658. *Distd. Flack v. Downing College, Cambridge* (1853), 13 C. B. 945. *Rejd. Re Townsend's Contract*, [1895] 1 Ch. 716; *Sissons v. Chichester-Constable*, [1916] 2 Ch. 75.

1075. ———— *Substituted by private Act for trustees previously admitted—One fine only.*]—Testator surrendered copyholds to the use of his will, & devised them to trustees for a term of years, on certain trusts, subject to which he devised them for life, with remainder in tail, & divers remainders over, with a provision for cesser of the term on the trusts being satisfied. On testator's death, the trustees were admitted tenants to hold for the term upon the trusts of the will; & a fine was duly paid upon such admission. Afterwards, & after the trusts of the term were satisfied, a private Act was passed, which enacted that certain new trustees therein named might sell the premises freed from the limitations of the will, & declare the copyhold tenants of the premises should thenceforth be trustees of the legal estate thereof for the purchaser, & such tenants should be such trustees accordingly, until the same should have been surrendered; with power for the new trustees, by any surrender according to the custom of the manor, & in the same manner as if they were copyhold tenants of the same, to surrender the copyhold hereditaments so to be sold to the use of the purchaser. The Act contained a clause saving the rights of all persons except those interested under the will. The trustees, having sold the premises, tendered a formal surrender to the steward, which he refused to accept, because the trustees were not tenants of the manor, & must themselves be admitted before they could surrender; that the estate tail was not barred, for this could only be done by a surrender for that purpose, on which, by the custom of the manor, a fine would be payable; & that the lord was no party to the private Act, & not bound by it:—*Held*: as the tenant for life & remainderman in tail had already been admitted by the admittance of the original trustees, & as, under the Fines & Recoveries Act, 1833 (c. 74), s. 50, & other sections, the tenant for life & remainderman in tail might, independently of the private Act, by one surrender, have barred the entail & conveyed to the purchaser, the lord was not prejudiced by the private Act, substituting the new trustees as surrenderors in lieu of the tenant for life & remainderman in tail: & he was bound to accept the surrender.—*R. v. WEEDON BECK (LORDS, ETC.)* (1849), 13 Q. B. 808; 18 L. J. Q. B. 289; 13 L. T. O. S. 446; 13 Jur. 1121; 116 E. R. 1472.

1076. ———— *Selling under power of sale—One fine only.*]—*Re HEATHCOTE & RAWSON'S CONTRACT*, No. 1689, *post*.

1077. *Purchaser from heir—Double fine.*]—*MORSE v. FAULKNER*, No. 1369, *post*.

1078. *Purchaser from five tenants in common—One of whom admitted—Five fines.*]—Testator devised copyhold tenements to his son W. for life, remainder to the children of W. as tenants in common in tail, remainder as to one moiety to his daughter P. for life, remainder to her children as tenants in common in tail, & as to the other moiety to his daughter S. for life, remainder to her children as tenants in common in tail. W. was admitted, & died in 1844, without issue, P. & S. having previously died, leaving issue. After the death of W., the only child of P. & the four children of S. surrendered to T., all that piece or parcel of

land late in the occupation of W. :—*Held* : on the admittance of T., five different fines, & five sets of fees, & five stamp duties were payable.—*R. v. ETON COLLEGE* (1846), 8 Q. B. 526; 6 L. T. O. S. 369; 115 E. R. 973; *sub nom.* *R. v. EVERDON (LORDS OF THE MANOR)*, 16 L. J. Q. B. 18.

Annotation :—*Expld.* *Doe d. Croft v. Tidbury* (1853), 23 L. J. C. P. 57.

1079. Purchaser from tenant for life under Settled Land Act, 1882 (c. 38)—When trustees not admitted—One fine only.]—A copyholder who had been admitted to the copyhold to him & his heirs died, leaving a will by which he devised it to trustees upon trust to pay the rents to his widow for life. Shortly after his death the widow sold the property under the powers of the above Act. The trustees had not been admitted. The lord of the manor claimed to be paid, in addition to the fine payable by a purchaser on admittance, the fine which would have been payable if the trustees had been admitted :—*Held* : the lord could only claim one fine.—*Re NAYLOR & SPENDLA'S CONTRACT* (1886), 34 Ch. D. 217; 56 L. J. Ch. 453; 56 L. T. 132; 35 W. R. 219; 3 T. L. R. 242, C. A.

ii. Devisee.

1080. Admission of devisee—Of unadmitted surrenderee—Two fines payable.]—*R. v. WILBERTON (LADY OF THE MANOR)* (1857), 29 L. T. O. S. 126.

1081. — Of unadmitted trustee—Two fines payable—Notwithstanding admission of cestuis que trust on payment of accustomed fines.]—Where a person entitled to copyhold tenements in fee, who had never been admitted, & never sought admission to them, died, having devised all his property to his eldest son & heir :—*Held* : (1) on the admission of the son the lord was entitled to two fines, one for the tenant's own admission, & the other as if his father had been admitted; (2) the lord was not estopped from claiming this on the ground that the property was held in trust, & that he had admitted some of the *cestuis que trust* on payment of the accustomed fines.—*LONDESBOROUGH (LORD) v. FOSTER* (1863), 3 B. & S. 805; 2 New Rep. 24; 32 L. J. Q. B. 225; 8 L. T. 240; 9 Jur. N. S. 1173; 122 E. R. 301; *sub nom.* *LONSBOROUGH (LORD) v. FOSTER*, 11 W. R. 593.

Annotation :—*As to* (1) *Distd.* *Hall v. Bromley* (1887), 35 Ch. D. 642.

iii. Other Cases.

1082. On enrolment of surrender of reversion—By surrenderee from unadmitted heir of devisor—Fine payable in respect of descent to heir.]—K., copyholder in fee, devised to R. for life, who was admitted, & paid, in respect of her admittance to hold for life, as large a fine as if she had been admitted tenant in fee. During R.'s life K.'s heir at law surrendered to such uses as L. should appoint, & in default, etc., to the use of L. in fee. K. had not been admitted or paid any fine :—*Held* : though the lord could not compel the heir to come in & be admitted, & pay his fine, during the life of the tenant for life, yet he could not be compelled on the application of the heir, nor, *a fortiori*, on that of L., to receive & enrol the surrender without payment of the fine for the descent of the reversion to the heir.—*R. v. DULINGHAM (LADY OF THE MANOR)* (1838), 8 Ad. & El. 858; 1 Per. & Dav. 172; 1 Will. Woll. & H. 605; 112 E. R. 1063; *sub nom.* *R. v. PIGOTT*, 8 L. J. Q. B. 37; *sub nom.* *R. v. CAREW*, 1 Jur. 261.

Annotations :—*Folld.* *Evelyn v. Worsfold* (1849), 15 L. T.O.S. 4. *Refd.* *Flack v. Downing College, Cambridge* (1853), 13 C. B. 945.

1083. On admittance of heir—Of unadmitted surrenderee of reversion—One fine only payable.]—

A copyholder of the manor of W. devised certain copyhold property to a tenant for life, with remainder to tenants in common in fee; the tenant for life was admitted & paid his fine to the lord of the manor; the remaindermen surrendered their reversions to another person, who died without admittance, the surrenders being duly enrolled. Subsequently, upon the admission of that person's customary heir, the lord of the manor claimed a double fine, one for the heir on his admittance, & one as for his ancestor, who had not been admitted :—*Held* : the lord of the manor was entitled to a single fine only upon the admittance of the customary heir.—*GARLAND v. ALSTON* (1858), 3 H. & N. 390; 27 L. J. Ex. 438; 31 L. T. O. S. 237; 4 Jur. N. S. 539; 6 W. R. 689; 157 E. R. 522.

1084. On admittance of trustee—Appointed in place of disclaiming trustee—One fine only payable.]—P., a trustee of copyholds, devised them to S., who was not his customary heir, & died. S. having disclaimed the devise, the Ct. of Ch., upon the petition of the *cestui que trust*, which was not served upon the lord of the manor, made an order under the Trustee Act, 1850, appointing B. trustee in the place of P., & vesting in B. all the estate in the copyholds, which would have vested in S., if S. had accepted the devise in P.'s will. Upon a petition by the lord of the manor to discharge the order & rehear the former petition :—*Held* : the order was in the proper form, & was properly made without the consent of the lord of the manor, & did not prejudice the question whether he was entitled to a single or a double fine for B.'s admittance; & the *cestuis que trust* were right in not serving their petition upon the lord :—*Semble* : the lord was not entitled to a double fine.—*PATERSON v. PATERSON* (1866), L. R. 2 Eq. 31; 35 Beav. 506; 35 L. J. Ch. 518; 14 L. T. 320; 12 Jur. N. S. 408; 14 W. R. 601; 55 E. R. 992; *subsequent proceedings, sub nom.* *BRISTOW v. BOOTH* (1869), L. R. 5 C. P. 80.

1085. — Substituted by order of court—In place of trustee out of jurisdiction—One fine only payable.]—P., devisee in trust under the will of his father R. of copyhold tenements of the manor of W., was duly admitted as tenant, & paid his fine. He died, having by his will devised all his estate of what nature or kind soever to S., his widow, whom he appointed sole extrix. of his will. S. proved the will, but was never admitted to the copyhold tenements; & she shortly afterwards executed a deed of disclaimer as to them. The customary heir-at-law of P. was his nephew, J. : but he being abroad, out of the jurisdiction of the ct., a decree was made whereby deft. was appointed a trustee of the will of R., so far as it related to the copyhold or customary hereditaments devised thereby, in substitution for P., deceased, & the estate vested in him, under the powers of 13 & 14 Vict. c. 60, s. 32, & The Trustee Act, 1852 (c. 55), s. 9. Upon the admittance of the deft., the substituted trustee under the above decree, the lords of the manor claimed two fines, one for his admittance, & another as for the admittance of J. the customary heir :—*Held* : the lords were entitled to one fine only.—*BRISTOW v. BOOTH* (1869), L. R. 5 C. P. 80; 39 L. J. C. P. 47; 21 L. T. 427; 18 W. R. 138.

Annotation :—*Refd.* *Hall v. Bromley* (1887), 35 W. R. 659.

(d) On Admittance to Several Tenements.

1086. Where several estates—Several fines.]—*HOBART v. HAMMOND*, No. 1047, *ante*.

1087. — — — In absence of contrary custom.]—Four several copyhold tenements were devised to the same persons, & no custom was proved that

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the lord was entitled in such case to but one admission fine:—*Held*: four several admissions were payable thereon & four several fines to the lord, but it did not follow that the steward was entitled to four sets of fees thereon, & if there were no customary steward's fees in such case, the steward could only claim *quantum meruit*.—*TRAHERNE v. GARDNER* (1856), 5 E. & B. 913; 25 L. J. Q. B. 201; 2 Jur. N. S. 394; 119 E. R. 721; *sub nom.* *TREHERNE v. GARDNER*, 26 L. T. O. S. 271; 4 W. R. 281; *subsequent proceedings, sub nom.* *TRAHERNE v. GARDNER* (1857), 8 E. & B. 161.

Annotations:—Consd. *Johnstone v. Spencer* (1885), 30 Ch. D. 581. *Mentd.* *Bryant v. Foot* (1868), L. R. 3 Q. B. 497; *Lawrence v. Hitch* (1868), 9 B. & S. 467.

1088. Custom to pay one general fine—On purchase of several copyhold tenements—Under one disposition—Good.]—There is no general copyhold law that, in manors in which a fine is only payable on the first admittance of a tenant, a purchaser of several distinct copyhold tenements under one disposition, whether a will, or surrender, or otherwise, is entitled as of right to split his admittances, *i.e.*, is entitled to compel the lord of the manor to admit him to any one or more of such several tenements, & to take admittance to the others at any subsequent time, as & when he pleases. A special custom in a manor, that a purchaser of several distinct copyhold tenements under one disposition, must take admittance to all at one & the same time, & pay one general fine in respect of all, is good.—*JOHNSTONE v. SPENCER* (EARL) (1885), 30 Ch. D. 581; 53 L. T. 502; 34 W. R. 10; 1 T. L. R. 682.

1089. Custom to pay fine on first admittance—Purchaser of several copyhold tenements—Under one disposition—Not entitled to split admittances.]—*JOHNSTONE v. SPENCER* (EARL), No. 1088, *ante*.
See, also, Nos. 1124, 1125, *post*.

(e) On Admittance of Surrendered from Tenants in Common.

1090. Separate fines payable.]—*R. v. ETON COLLEGE*, No. 1078, *ante*.

(f) On Admittance of Remainderman Subject to Term.

1091. Admittance of devisee in fee—Subject to term of years—& full fine paid—Lord cannot require admittance of trustees of term.]—A copyholder in fee devised his estate to trustees for a term of years &, subject to the term, to A. in fee. A. was admitted & paid a full fine; the admittance on the roll recited the will, & stated that the lord by his steward delivered to A. seisin of the lands by the rod to hold the same to him & his heirs & assigns for ever according to the purport & effect of the will; & saving the rights of the lord & all other persons; A. was admitted tenant thereof, & he paid the fine & relief, but because A. was an infant the custody as well of his person as of the premises was committed to the guardians of the infant. After the admittance of A. the lord made proclamations, &, the trustees refusing to be admitted, he seized *quousque*:—*Held*: as by the form of the admission A. was admitted *in presenti* & not merely to the remainder, the lord had both a tenant on the roll & a full fine, & therefore could not force the trustees to come in & be admitted.—*EVERINGHAM v. IVATT* (1873), L. R. 8 Q. B. 388; 42 L. J. Q. B. 203; 28 L. T. 672; 21 W. R. 952, Ex. Ch.

SUB-SECT. 3.—FINES ON ALIENATION.

1092. Custom of arbitrary fine on purchase of lands within manor—Bad.]—A custom for the lord of a manor of ancient demesne to receive a fine arbitrary upon the purchase of lands within the manor is bad, whether limited to purchases by strangers (that is, persons not already tenants of the manor) or not, as being contrary to *Quia Emptores* & other statutes.—*MERTTENS v. HILL*, [1901] 1 Ch. 842; 70 L. J. Ch. 489; 17 T. L. R. 289; *sub nom.* *MARTTENS v. HILL*, 84 L. T. 260; 65 J. P. 312; 49 W. R. 408.

1093. Custom of fine of year & half's rent of whole tenement—Payable on alienation of any part of tenement—Bad.]—Custom that upon any alienation in fee of any parcel of lands, or tenements held of a manor, a fine of a year & half's rent at which the whole tenement was held, should become due:—*Held*: unreasonable. *Qu.*: whether custom was good as to claiming an alienation fine upon an alienation for life, because by that tenure the land alienated was not altered, for the reversion was still held as before by the same tenant.—*HOLLAND v. LANCASTER* (1890), 2 Vent. 134; 86 E. R. 353.

1094. Custom to claim on alienation for life—Bad.]—*HOLLAND v. LANCASTER*, No. 1093, *ante*.

SUB-SECT. 4.—AMOUNT AND ASSESSMENT OF FINES.

A. Amount.

(a) Whether Arbitrary or Certain.

1095. To be decided by court rolls—Not by witnesses.]—*HOPTON v. HIGGINS* (1613), Toth. 102; 21 E. R. 136.

1096. — Of greater number.]—*BIRRASTON v. WALSH* (1639), Toth. 103; 21 E. R. 136.

1097. To prove fines uncertain—Entries on court rolls—Must show payment of fines above two years' rent—In cases of descent.]—*ALLEN v. ABRAHAM* (1612), 2 Bulst. 32; 80 E. R. 936.

1098. — Showing fines uncertain over 168 years to 1440—& afterwards certain with few exceptions—Sufficient.]—Where by ancient rolls of ct. it appeared that the fines of the copyholds had been uncertain from the time of Hen. 3 to 1440, & from thence to this day had been certain, except twenty or thirty:—*Held*: these few ancient rolls destroyed the custom for certainty of fine. But if from 1440 all were certain except a few, & so in certain rolls before, the few should be intended to have escaped, & should not destroy the custom for certain fines.—*GERARD'S (LORD) CASE* (1615), Godb. 265; 78 E. R. 155.

Annotation:—Refd. *Johnstone v. Spencer* (1885), 30 Ch. D. 581.

1099. Decree between lords & tenants—To reduce fines to certainty—Confirmed.]—*MEADOWS v. PATHERICK* (1674), Cas. temp. Finch, 154; 23 E. R. 85.

(b) Must be Reasonable.

i. In General.

1100. Must be reasonable—Although uncertain & arbitrary.]—In a case of trespass for breaking a house & close:—*Held*: (1) where there was a custom in a manor for the lord or his steward to assess a reasonable fine upon admission to a copyhold a certain time & place ought to have been appointed for the payment of the fine; (2) although a fine was uncertain & arbitrary, yet it ought to be reasonable; (3) if the fine was unreasonable the tenant might refuse to pay it; (4) the reasonableness of a fine when the lord & tenant could not agree should be determined by action; (5)

£5 6s. 8d. was an unreasonable fine for the admittance in fee simple to a cottage & one acre, especially when the annual value of them was, on a rack rent, 53s.—**WILLOWES' CASE** (1608), 13 Co. Rep. 1; 77 E. R. 1413.

Annotations:—As to (1) *Refd.* Douglas v. Dysart (1861), 10 C. B. N. S. 688. As to (4) *Consd.* Fraser v. Mason (1883), 11 Q. B. D. 574. Generally, *Mentd.* Godfrey's Case (1614), 11 Co. Rep. 42 a; Schelbel v. Fairbairn (1799), 1 Bos. & P. 388.

1101. ———.]—*Dow v. GOLDING* (1629), Cro. Car. 196; 79 E. R. 772.

Annotation:—*Consd.* Richardson v. Kensit (1843), 5 Man. & G. 485.

1102. ——— *Though uncertain.*]—Action by the lord of a manor to recover fines:—*Held*: (1) he could not recover a fine not certain unless it was reasonable, assessed, & demanded; (2) a surrenderee of copyhold premises had a right to have in his admittance a description of the premises corresponding with that in the surrender; (3) an entry by a steward of a manor in his book of the admission of a surrenderee of copyhold premises was a mere memorandum & not such an admittance as would entitle the lord to claim a fine.—*HAYWARD v. RAW* (1861), 6 H. & N. 308; 30 L. J. Ex. 178; 4 L. T. 519; 158 E. R. 126.

Annotations:—As to (1) *Refd.* Fraser v. Mason (1883), 11 Q. B. D. 574; Blackmore v. White, [1899] 1 Q. B. 293. As to (3) *Refd.* Blackmore v. White, [1899] 1 Q. B. 293.

See, also, No. 1123, *post*.

ii. What Fine Reasonable.

1103. *One year's value—Reasonable.*]—*BLACKWALL v. LOW* (1576), Cary, 54; 21 E. R. 29.

1104. ———.]—*FOX v. HUDDLESTON* (1607), Toth. 100; 21 E. R. 135.

1105. ——— *On change of tenant—Reasonable.*]—A copyhold fine might be a year's value & book, upon change of tenant, & half a year's value on change of lord.—*GADDESSEN (TENANTS) v. CAREY* (1607), Toth. 100; 21 E. R. 135.

1106. ——— *Reasonable.*]—*WATSON v. MAIHNE* (1618), Toth. 101; 21 E. R. 135.

1107. ——— *Tenant right.*]—*MIDDLETON v. JACKSON* (1630), 1 Rep. Ch. 33; Toth. 100; 21 E. R. 499.

Annotations:—*Refd.* Popham v. Lancaster (1636), 1 Rep. Ch. 96; Cowper v. Clerk (1732), 3 P. Wms. 155; Fraser v. Mason (1883), 11 Q. B. D. 574.

1108. ———.]—*POPHAM v. LANCASTER* (1636), 1 Rep. Ch. 96; 21 E. R. 518.

Annotations:—*Refd.* Cowper v. Clerk (1732), 3 P. Wms. 155; Fraser v. Mason (1883), 11 Q. B. D. 574.

1109. *Half year's value—On charge of lord—Reasonable.*]—*GADDESSEN (TENANTS) v. CAREY*, No. 1105, *ante*.

1110. *Two year's value—Reasonable.*]—*RELICK v. EYES* (1576), Ch. Cas. in Ch. 113; 21 E. R. 70.

1111. ———.]—*GITTINGS v. BROWE* (1598), Toth. 100; 21 E. R. 135.

1112. ———.]—*LAKE v. JETHERELL* (1611), Toth. 100; 21 E. R. 135.

1113. ——— *On renewal.*]—*MORGAN v. SCUDAMORE* (1680), Cas. temp. Finch, 464; 2 Rep. Ch. 134; 23 E. R. 251.

Annotations:—*Refd.* Garland v. Jekyll (1824), 9 Moore, C. P. 502; Fraser v. Mason (1883), 11 Q. B. D. 574.

1114. ——— *Excess recoverable.*]—Case for money had & received by deft. as lord of the manor for pltf.'s use, being part of a fine paid by pltf. on admittance to certain copyhold lands:—*Held*: the overplus above two years' value, if paid under compulsion, might be recovered.

Fines were formerly arbitrary, the estate being held at the will of the lord, but the law having now drawn the line & copyhold estates being permanent, no more than two years' value can be

taken; but the lord has a right to two years' value. The custom to take 10 per cent. on the purchase money, be it of even so long a continuance, cannot bind (YATES, J.).—*LEAKE v. PIGOT (LORD)* (1769), 1 Selwyn's N. P. 2nd ed. at p. 98.

See, also, No. 1125, *post*.

1115. £5 6s. 8d. for admittance in fee simple—When annual value on rack rent 53s.—*Unreasonable.*]—*WILLOWES' CASE*, No. 1100, *ante*.

iii. How Reasonableness Ascertained.

1116. *Determined by action.*]—*HOBART v. HAMMOND*, No. 1047, *ante*.

1117. ——— *If lord & tenant cannot agree.*]—*WILLOWES' CASE*, No. 1100, *ante*.

1118. *Onus of proof—That fine unreasonable—On tenant.*]—A copyholder brought an action of trespass against the lord, who pleaded that he had admitted pltf. & had assessed a fine, but that it had not been paid. Pltf. demurred:—*Held*: in a copyhold the unreasonableness of the fine must come on the part of the tenant.—*DENNY v. LEMMAN* (1615), Hob. 135; 80 E. R. 285.

Annotations:—*Refd.* Moore v. Hastings Corp'n. (1737), Lee temp. Hard. 353; Doe d. Twining v. Muscott (1844), 12 M. & W. 832.

1119. ———.]—*DOE d. TWINING v. MUSCOTT*, No. 1393, *post*.

See, also, No. 1125,

(c) By Special Custom.

i. Validity of Custom.

1120. *To pay different fines—According to manner of alienation—Good.*]—*PAGE'S CASE* (1623), Cro. Jac. 671; 79 E. R. 581.

1121. *To pay year's value of land at time of admission—Good.*]—There was a custom of a manor that every tenant who should be admitted to any copyhold estate should pay a year's value for a fine according to the value of the land at the time of admission:—*Held*: the custom was good, for although it was uncertain what the value might be it might be reduced to a certainty by a jury.—*PERKINS v. TITUS* (1687), 3 Mod. Rep. 132; Comb. 43; 2 Show. 507; 87 E. R. 85; *sub nom.* PARKINS v. TITUS, Carth. 12; *sub nom.* TITUS v. PERKINS, 1 Freem. K. B. 494; *affg.* S. C. *sub nom.* TITUS v. PERKINS (1686), 3 Lev. 255.

Annotations:—*Consd.* Grant v. Astle (1782), 2 Doug. K. B. 722; Fraser v. Mason (1883), 11 Q. B. D. 574. *Refd.* Fletcher v. Ingram (1695), 1 Ld. Raym. 69; White v. Cuddon (1842), 8 Cl. & Fin. 766.

1122. *To pay ten per cent. on purchase-money—As fine on admission—Bad.*]—*LEAKE v. PIGOT (LORD)*, No. 1114, *ante*.

1123. *To pay unlimited fine—On admission of stranger—Bad.*]—There was a custom that the lord of a manor in assessing the fine upon admittance of one not being a copyhold tenant on the court rolls, except a customary heir claiming admittance as such, was not restricted in amount to any number of years' value of the tenement to which such admittance was made:—*Held*: custom was unreasonable & bad.—*DOUGLAS v. DYSART (EARL)* (1861), 10 C. B. N. S. 688; 6 L. T. 327; 142 E. R. 624.

ii. Extent and Interpretation of Custom.

1124. *Fine for existing tenants lower than for strangers—Stranger purchasing valuable equity of redemption—May purchase tenement of small value—To obtain benefit of custom.*]—Mandamus to the lord & steward of a manor to hold a ct. & accept a surrender of a piece of copyhold his wife, & admit B. *Datum* 41 custom within the manor that if any person, before being a customary tenant or not being

Sect. 1.—Fines: Sub-sect. 4, A. (c) ii., (d), B. (a), (b) & (c), C. (a).]

resident within the manor, took any interest as a purchaser by surrender or otherwise of any lands, etc. within the manor, he should pay for his fine on admission as he & the lord could agree, which was usually assessed at two years' value, but persons already customary tenants or resident within the manor should pay another & a smaller fine to the lord upon so taking any such interest. B. having purchased the equity of redemption of a customary estate of considerable value, afterwards & before he was admitted to that estate, purchased the land in question, being a small customary estate, in order to be admitted to that first, & so elude the payment of the larger fine whenever he should apply to be admitted to the larger estate, & by that means to defraud the lord of his said fine:—*Held*: the return was bad, for B. might lawfully make such second purchase in order to avail himself of the custom in favour of tenants of the manor. *Semble*: if the second purchase were fraudulent, still the purchaser would be entitled to admittance, but would not be enabled to avail himself of the custom.—*R. v. BOUGHEY* (1823), 1 B. & C. 565; 107 E. R. 208; *sub nom. R. v. MEER & FORTON* (LORD & STEWARD OF THE MANOR), 2 Dow. & Ry. K. B. 824; 1 L. J. O. S. K. B. 184.

Annotations:—*Consd. Johnstone v. Spencer* (1885), 30 Ch. D. 581; *A.-G. v. Sandover*, [1904] 1 K. B. 689.

1125. Arbitrary fine on admittance of stranger—Stranger making colourable purchase of small tenement—Not entitled to benefit of custom—On subsequent purchase of more valuable tenement.]—By the custom of a manor the purchaser of a copyhold tenement was required to pay to the lord on admittance a substantial arbitrary fine if he was a stranger to the manor, but only a nominal fine if he was already a tenant of the manor. A stranger, who was about to buy a copyhold tenement of considerable value, with the object of first becoming a tenant of the manor & thereby avoiding the payment of the larger fine, entered into an agreement with a third person for the sale to him of a cottage of small value in the manor on the terms that the vendor should after the expiration of three months repurchase it, & in the interval should receive the rent of it for his own use, & should pay all outgoing in connection with it. In pursuance of that agreement the cottage was surrendered, & the purchaser was admitted tenant, he paying a comparatively small arbitrary fine in respect of that admittance. The terms of the agreement were not disclosed to the lord. Subsequently the purchaser was admitted tenant of the larger tenement, & as being already a tenant of the manor, was charged in respect of it only a nominal fine:—*Held*: (1) the stipulation in the agreement for the sale of the cottage that the vendor should retain the rent & remain liable for the outgoing showed that the purchase was merely colourable, the admittance of the purchaser was consequently void, & the lord was entitled to claim a substantial fine upon the admittance to the larger tenement; (2) in manors in which such a custom obtained the arbitrary fine which the lord was entitled to take from a stranger was not limited, in accordance with the general rule, to two years' improved value of the tenement, but something more might be added on account of the fact that admittance would entitle the purchaser to be admitted to future purchase at a nominal fine; & for the purpose of determining how much it was reasonable to add on that account regard would have to be had to the value of the property,

& to the consequent probability that it had been bought with the express object of getting the benefit of the custom on the future admittance to some other property which it was then intended to buy.—*A.-G. v. SANDOVER*, [1904] 1 K. B. 689; 73 L. J. K. B. 478; 90 L. T. 480; 52 W. R. 573; 20 T. L. R. 351; 48 Sol. Jo. 352.

1126. — Custom for strangers to pay arbitrary fine—Fine on admittance of stranger not limited to two years' improved value.]—*A.-G. v. SANDOVER*, No. 1125, *ante*.

(d) *Decree in Chancery.*

1127. No order for tenants in generality—Only in particular cases.]—In a case of tenant right between M. & some of his tenants on the borders:—*Held*: (1) neither in tenant right nor in other copyholds would any order be made in ct. for all the tenants in generality, but for special men in special cases; (2) an order would not be made for any longer time than the present except it were by agreement between the lord & the tenants, when it would be made if it appeared reasonable.—*MUSGRAVE'S CASE* (1603), Cary, 27; 21 E. R. 15, L. C.

1128. No order for longer than present time—Except by agreement between lord & tenants.]—*MUSGRAVE'S CASE*, No. 1127, *ante*.

1129. Bill by tenant for life & remainderman—For declaration as to general fines—Cross bill by tenants as to lord's title—Issues to be tried at bar.]—A bill was brought by T. as tenant for life & his son the next remainderman in tail praying that certain general fines due upon the death of the lord might be paid, & that certain customs might be established. Defts. set forth their answer & preferred a cross bill praying that the fines & certain other customs might be established & the bill further set forth that the daughters of the late lord had entered upon the land on his death claiming title to them. These ladies were made defts. to the bill together with T. & the bill prayed that they might interplead one another:—*Held*: (1) so much of the cross bill as sought to bring in question the dispute between T. & the ladies ought to be dismissed; (2) the trial should be at bar.—*THANET (EARL) v. PATERSON* (1738), Barn. Ch. 247; West temp. Hard. 454; 27 E. R. 632, L. C.

B. Assessment.

(a) *How Value Ascertained.*

1130. Fine of one year's value on alienation—Reserved before statute Quia Emptores—Value of land at time of tenure—Not present value.]—If a man before stat. Quia Emptores makes a gift, & reserves to himself upon every alienation the value of the land by a year, this shall be adjudged according to the value of the land at the time of the tenure, & not that whereunto it is enhanced at this day, for a tenure ought to be certain when it is made (*ANDERSON, O.J.*).—*JOHNS OF SURREY CASE* (1587), Gouldsb. 66; 75 E. R. 998.

1131. Improved value.]—*HALTON v. HASSELL* (1736), 2 Stra. 1042; 93 E. R. 1020.

Annotations:—*Consd. Verulam v. Howard* (1831), 7 Bing. 327. *Reid. Simpson v. Clayton* (1838), 4 Bing. N. C. 758; *Richardson v. Kenalt* (1843), 5 Man. & G. 485.

1132. Assessment of single fine—On admittance to several tenements—Bad.]—*GRANT v. ASTLE* (1781), 2 Doug. K. B. 722; 99 E. R. 459; *subsequent proceedings* (1782), 2 Doug. K. B. 731, n.

Annotations:—*Consd. Hayward v. Cruden* (1861), 6 H. & N. 317; *Fraser v. Mason* (1883), 11 Q. B. D. 574. *Reid. Seward v. Baker* (1787), 1 Term Rep. 616. *Mentd. King v. Pippet* (1786), 1 Term Rep. 235; *Lickbarrow v. Mason* 6 Term Rep. 131; *Bird v. Appleton* (1800), 111; *Richardson v. Mellish* (1826), 3 Bing.

Leach v. Thomas (1837), 2 M. & W. 427; *White v. Cuddon* (1842), 8 Cl. & Fin. 766; *O'Connell v. R.* (1844), 11 Cl. & Fin. 155.

1133. Rent reserved under lease granted by copyholder—Not conclusive of annual value—For purpose of fine—Copyholder may show value less.]—Assumpsit for the amount of a fine payable to pltf. as lord of the manor of G.:—*Held*: (1) in ascertaining the amount of a fine, payable by a copyholder, dependent on the annual value of the premises, the amount of rent reserved by a lease granted by such copyholder was not conclusive of the annual value of the copyhold; (2) the copyholder might show that the annual value was less.—*VERULUM (LORD) v. HOWARD* (1831), 7 Bing. 327; 5 Moo. & P. 148; 9 L. J. O. S. C. P. 69; 131 E. R. 126.

Annotation:—As to (1) *Refd. Fraser v. Mason* (1883), 31 W. R. 550.

1134. Calculated without deduction for repairs—Unreasonable.]—RICHARDSON v. KENSIT, No. 1145, post.

1135. Value of licence of public house—In estimating improved value—May be included.]—HUMPHREYS v. BLYTHER (1878), cited in *Brown's Enfranchisement* (1903) 474.

(b) *By whom Assessed.*

1136. Decree by consent—Making binding & permanent survey of commission—Appointed by court to ascertain values—Disapproved.]—Copyhold fines were ascertained at two years' value, & a commission was issued to ascertain the value of the tenements issued under a decree by consent:—Held: this method was improper.—*HOLLES (LORD) v. HUTCHINSON* (1679), 3 Swan. 665; 36 E. R. 1015.

Annotations:—*Consd. Fraser v. Mason* (1883), 11 Q. B. D. 574. *Mentd. Buckley v. Barber* (1851), 20 L. J. Ex. 114.

1137. By lord—Not by homage.]—In assumpsit for a fine on admission to a copyhold where the lord remitted a part of the fine:—Held: it was not necessary to prove an entry on the ct. rolls either of the original assessment of the fine or the reassessment, for the lord & not the homage was to assess the fine.—*NORTHWICK v. STANTON* (1805), 2 Smith, K. B. 225.

(c) *In Respect of Several Tenements.*

1138. Several tenements—Held by several services—Fines must be severally assessed.]—HOBART v. HAMMOND, No. 1047, ante.

1139. ——— Surrendered to one tenant—Holding by ancient services—Fines must be severally assessed.]—HOBART v. HAMMOND, No. 1047, ante.

C. *Multiplied Fines.*

(a) *On Admission of Joint Tenants.*

1140. On admission of three joint tenants—For first life two years improved value—For second life half fine for first life—For third life half fine for second life.]—Three joint tenants were admitted to a copyhold tenement in the manor of S. H. The lord of the manor demanded as a fine for the first life, two years' improved value; for the second, half that sum, & for the third, half of the second fine:—Sembles: the fine was reasonable, as it would never amount to four years' improved value.—*TAYLOR v. PEMBROKE* (1815), cited in 2 B. & Ad. 354; 109 E. R. 1173.

Annotation:—*Consd. Wilson v. Hoare* (1831), 2 B. & Ad. 350.

1141. ———.]—Testator devised real estates to three trustees, upon certain trusts, & by his will directed, that in the event of any of the trustees dying or ceasing to act, others should be appointed, so that there might always be three trustees for the purpose of carrying the trusts of the will into execution; & he also directed a

transfer of the estates upon every such new appointment. In execution of the trust contained in the will, several copyhold estates were purchased, & the trustees admitted, & the estates were transferred to new trustees from time to time. At length, one of the trustees having died & another having declined to act, the third surrendered the copyhold estates to himself & two new trustees, & the three were duly admitted by the lord:—*Held*: although one of the surrenderees was also a surrenderor, this was an admittance of all three to a new estate, & the fine being payable in respect of the admission in that new estate, was correctly assessed as upon an admission *de novo* of three tenants as joint-tenants of the estate.

The fine payable, according to the custom of the manor, on the admittance of a single tenant in fee, was two years improved value, & where several persons had been admitted they had paid fines assessed two years for the first life, one half of that for the second, & one half of that last sum for the third:—*Held*: it was the proper mode of calculating the fine in the present case.—*SHEPPARD v. WOODFORD* (1839), 5 M. & W. 608; 9 L. J. Ex. 90; 151 E. R. 257.

Annotations:—*Consd. Hall v. Bromley* (1887), 35 Ch. D. 642. *Refd. Richardson v. Kensit* (1843), 5 Man. & G. 485.

1142. On admission of fourteen trustees—When power in lord to nominate nine if number reduced to five—Deduction on account of right to new fine on failure of nine lives out of fourteen—Instead of nine absolutely.]—Where the lord admitted fourteen joint tenants to a copyhold of inheritance, with a power in himself to nominate nine others with the approbation of a Master in Chancery, when the number should be reduced to five, & thereupon to take a reasonable fine on such fresh admission of the old & new tenants:—Held: a deduction should be made on account of the right to take a new fine on the failure of nine lives out of fourteen, instead of nine absolutely.—*HOARE v. WILSON* (1834), 10 Ad. & El. 245 n.; 113 E. R. 95, Ex. Ch.

1143. ——— Fine made up of sum of geometrical series of nine terms—First term double value & common ratio one half—With deduction on account of right to renewal fine recurring on failure of any nine lives out of fourteen.]—By Ch. decree, to which the lord of the manor was a party, it was ordered, whenever the trustees of a certain parochial charity, consisting of copyhold of inheritance, should be reduced to five, the lord should, with the approbation of a master, name nine others, being copyholders & inhabitants of the parish; a surrender of the lands should then be made, & the fourteen be admitted, paying a reasonable fine. The trust became vacant by the death of ten, & resignation of two, of the trustees so appointed; & fourteen new ones were thereupon duly appointed & admitted:—Held: since there was no special custom as to fines on such admittance, a fine, made up of the sum of a geometrical series of nine terms, whose first term was the double value & common ratio $\frac{1}{2}$, with a deduction on account of the right to a renewal fine recurring on the failure of any nine lives out of fourteen, instead of nine absolutely, was reasonable.—*WILSON v. HOARE* (1839), 10 Ad. & El. 236; 2 Per. & Dav. 659; 113 E. R. 91.

Annotation:—*Refd. Richardson v. Kensit* (1843), 5 Man. & G. 485.

1144. On appointment of three trustees—Including surviving trustee surrenderor—Fine payable in respect of three tenants.]—SHEPPARD v. WOODFORD, No. 1141, ante.

See, also, No. 1145, post

Sect. 1.—Fines: Sub-sect. 4, C. (b); sub-sect. 5, A., B., C. & D.; sub-sect. 6, A., B. & C.]

(b) Other Cases.

1145. Admittance of successive life tenants—Followed by remainderman in fee—Custom for payment of fine on admittance of remainderman—Method of calculation.]—By the custom of a manor a fine was due on the admittance of a remainderman, whether admitted at the same time as the tenant of the particular estate, or during the continuance of such estate. A., a copyholder in fee of the manor, devised certain copyhold premises to B. for life, remainder to C., & D., his wife, for life, with benefit of survivorship, remainder to E. for life, remainder to F. in fee. B. was admitted, paying a fine of full two years' value, & died. The custom gave to the lord, upon the admittance of C. & D., three years' value, for a fine & a half, treating the wife, D., as the party next in remainder, half a fine, being one year's value, from E., & a quarter of a fine, being half a year's value, from F.:—*Held*: (1) the mode of assessing the fine was reasonable; (2) the fine, having been calculated without making a deduction for repairs, was unreasonable.—*RICHARDSON v. KENSIT* (1843), 5 Man. & G. 485; 6 Scott, N. R. 419; 12 L. J. C. P. 154; 7 Jur. 856; 134 E. R. 653.

Annotations:—As to (1) Refd. Evelyn v. Worstfold (1849), 15 L. T. O. S. 4; *R. v. Woodham Walter* (1869), 10 B. & S.

SUB-SECT. 5.—HOW AND BY WHOM PAYABLE.

A. As between Tenant for Life and Remainderman.

1146. On admittance of new trustees—To be borne by tenant for life & remainderman—In proportion to respective interests.]—The fines, fees & expenses for the admission of new trustees to copyholds must be borne by the tenant for life & those in remainder, in proportion to their respective interests.—*CARTER v. SEBRIGHT* (1859), 26 Beav. 374; 28 L. J. Ch. 411; 32 L. T. O. S. 348; 5 Jur. N. S. 259; 7 W. R. 225; 53 E. R. 942.

Annotation:—Folld. Re Bullock's S. E., Lofthouse v. Haggard (1904), 91 L. T. 651.

1147. — — —.]—The fines & fees payable in respect of the admission of new trustees to copyhold estates devised to trustees in trust for a tenant for life, with remainders over to other persons, must be borne by the tenant for life & remaindermen in proportion to the value of their respective interests.—*Re BULLOCK'S SETTLED ESTATES, LOFTHOUSE v. HAGGARD* (1904), 91 L. T. 651.

1148. — — — Fine not paid during life of equitable tenant for life—One third of fine payable out of personal estate of tenant for life—Having regard to interests in personal estate of persons entitled to copyholds.]—Equitable tenant for life of copyholds, under a will which contained no special provision for the payment of expenses on admission, died without having paid the fines & fees incurred on the admission of a trustee in her lifetime. By her will she bequeathed her personal estate to her daughter for life for her separate use, & after her decease to her children. The daughter & her husband & children took estates in remainder in the copyholds:—*Held*: having regard to the frame of the will under which the tenant for life was entitled, & to the interest which the parties entitled to the copyhold estates took in the personal estate of the tenant for life, one-third of the fees was properly payable out of the corpus

of the personal estate of the tenant for life: the husband of the daughter consenting to pay the residue.—*BULL v. BIRKBECK* (1843), 2 Y. & C. Ch. Cas. 447; 1 L. T. O. S. 359; 63 E. R. 199.

1149. Fund for payment of fines provided by testator—Contribution between tenant for life & remainderman—Depends on intention of testator.]—Where testator provides a fund for the payment of fines on admission to copyholds, or on renewals of leases, the manner of raising the fines, & the question of contribution between the tenant for life & the remainderman, must depend upon the intention of the testator, to be collected from the whole will.—*PLAYTERS v. ABBOTT* (1833), 2 My. & K. 97; 3 L. J. Ch. 57; 39 E. R. 881.

Annotations:—Refd. Jones v. Jones (1846), 5 Hare, 440; *Carter v. Sebright* (1859), 26 Beav. 374; *Ainslie v. Harcourt* (1860), 28 Beav. 313; *Re Bute, Bute v. Ryder* (1884), 27 Ch. D. 196.

1150. Lands held under lease for four lives renewable on payment of fine—Limited to successive life tenants—Life tenant liable only for expense of renewing lives due to be substituted during his tenancy.]—Lands held under a lease for four lives, & renewable upon payment of a fine, were devised to trustees in trust for testator's wife for life, she keeping good the renewals & filling up the lives, & subject to her life-interest, in trust to let & set the same, & after paying the chief & other rents & land-tax, & keeping full the lives, to pay the residue to W.; & after his decease, upon certain trusts for the benefit of the testator's grandchildren. Upon the death of testator, his widow entered. She afterwards died insolvent, having neglected to substitute a life for that of C., one of the nominees for life, who died in her lifetime. W. then entered & likewise omitted to substitute a life for that of C.; & seven years after the commencement of his possession Q., another nominee, died:—*Held*: two lives must be substituted for those of C. & Q., & the costs of the renewal being in the first instance raised by a mtge. of the estate, W. must repay such part of the expenses as was incurred in renewing the second life, but he was in no default for not having renewed the first life, & was exempt from such portion of the expenses as ought, on the death of C., to have been paid by the widow, together with interest thereon, at the rate of £5 per cent. per annum, from the death of C. to the death of Q.—*WADLEY v. WADLEY* (1845), 2 Coll 11; 63 E. R. 613.

1151. Fine for renewal of lease—Paid by tenant for life—No claim for repayment from estate until death of tenant for life—When rights of all parties ascertainable.]—Where a tenant for life of copyholds paid a portion of a fine for renewal of a lease of them, on the supposition that the trustees of the property would recoup him the money in a particular way, but that supposition was erroneous, he was not allowed to claim the repayment of the money during his lifetime. The question was directed to be left open until his death, when the rights of all parties in the property could be ascertained, & it would be seen whether he had acquired any benefit from the renewal.—*HARRIS v. HARRIS* (1862), 7 L. T. 58; 10 W. R. 826; *subsequent proceedings* (1863), 11 W. R. 451.

1152. Grant of reversionary term determinable on new life—Obtained by tenant for life of leaseholds for years determinable on lives—Possession of estate by tenant for life during part of term under new grant—Amount payable by remainderman ascertained by reference to actual enjoyment by tenant for life—Compound interest on proportion attributable to remainderman up to death of tenant for life.]—A tenant for life of copyhold leaseholds

for years determinable on lives, obtained, before his estate for life had come into possession the grant of a reversionary term determinable on a new life, & to commence after the determination of the old term. He came into possession, & afterwards died, having possessed the estate during part of the term created by the new grant :—*Held* : the amount to be paid by the remainderman in respect of the fine & expenses of renewal was to be ascertained by reference to the actual enjoyment of the tenant for life, & compound interest to be computed on the proportion attributable to the remainderman up to the death of the tenant for life, & simple interest from that time until payment.—*BRADFORD v. BROWNJOHN* (1868), 3 Ch. App. 711; 38 L. J. Ch. 10; 19 L. T. 248; 16 W. R. 1178, L.JJ.

Annotation :—*Consd. Isaac v. Wall* (1877), 6 Ch. D. 706.

B. As between Vendor and Purchaser.

1153. Copyholds devised in trust for sale—Sold during infancy of heir—Purchaser cannot have portion of purchase-money retained in court—As provision against fine if heir should die before conveyance.]—The purchaser of a copyhold estate, devised subject to payment of debts, in trust for sale, & sold, during the infancy of the heir, under the usual decree is not entitled to have a portion of the purchase money retained in ct., as a provision for defraying the expense of the fine which would become payable on the death of the heir before a conveyance.—*MORRIS v. CLARKSON* (1819), 3 Swan. 558; 36 E. R. 974.

Annotation :—*Mentd. Bullock v. Bullock* (1820), 1 Jac. & W. 603.

1154. Fine between contract & conveyance—On death of trustee for sale—Borne by vendor—Although conveyance at expense of purchaser.]—Where, between the date of the contract & conveyance, any deterioration to the property occurs from accident, without the fault of either party, the loss falls on the purchaser. But where, without any improper neglect or delay, a purchase could not be completed for three years, & the death of a trustee for sale occasioned the expense of a fine on a new admittance, although by the contract the conveyance was to be at the expense of the purchaser :—*Held* : the extraordinary expense of the fine should be borne by the trust estate.—*PARAMORE v. GREENSLADE* (1853), 1 Sm. & G. 541; 23 L. J. Ch. 34; 22 L. T. O. S. 182; 17 Jur. 1064; 65 E. R. 237.

See, also, No. 1049, *ante*.

On compulsory purchase.]—*See* Vol. XI., COMPULSORY PURCHASE OF LAND & COMPENSATION, p. 262, No. 1779.

C. Manner of Raising.

1155. Fund for payment of fines provided by testator—Manner of raising fines—Depends on intention of testator.]—*PLAYTERS v. ABBOTT*, No. 1149, *ante*.

1156. On admission of infant—No jurisdiction of court to direct mortgage of copyholds—For payment of fine.]—The ct. has no jurisdiction to direct a fine in respect of copyholds to which an infant has become entitled as customary heir of an intestate to be raised by a mtge. of the copyholds.—*HARBROE v. COMBES* (1874), 43 L. J. Ch. 336.

D. Other Cases.

1157. Copyholds devised to trustees in trust for life tenant—Residuary estate charged with costs & charges of proving & executing will—Fines payable on admittance of trustees a charge on copyholds—Not payable out of residue.]—Devise of a copyhold estate to three trustees, upon trust to permit A.

to occupy the same or receive the rents & profits thereof for his life; & after the death of A. upon trust to sell the estate & divide the proceeds amongst the children of A.; the gift of the testator's residuary estate to the trustees upon other trusts, but charged with debts & the costs & charges of proving & executing the will :—*Held* : the fines payable on the admission of the devisees in trust to the copyhold estate were not part of the costs & charges of executing the will to be borne by the residuary estate, but that such expenses of admission were a charge upon the copyhold estate so devised.—*COLE v. JEALOUS* (1845), 5 Hare, 51; 67 E. R. 823.

Annotation :—*Refd. Re London United Tramways Act*, 1900, [1906] 1 Ch. 534.

SUB-SECT. 6.—TO WHOM PAYABLE.

A. As between Vendor and Purchaser.

1158. On sale of manor—Fines due before date of possession by purchaser—But not paid or assessed until after date of possession—Belong to vendors.]—A manor was sold under the decree of the ct. as part of the real estate of the testator; & an order was made on Mar. 13, that the purchaser should, on or before May 17, pay his purchase-money into ct., & be let into possession of the profits from Lady-day. Several deaths & admissions had taken place prior to Lady-day, but the fines due thereon had not been paid or assessed until after that time, no ct. having been holden :—*Held* : these fines belonged to the vendors & not to the purchaser.—*GARRICK v. CAMDEN (EARL)* (1790), 2 Cox, Eq. Cas. 231; 30 E. R. 107, L. C.

Annotation :—*Consd. Cuddon v. Tite* (1858), 1 Giff. 395.

1159. — Date of completion postponed—Fines due between original & actual date of completion—Belong to vendors.]—*HARDWICKE (EARL) v. SANDYS (LORD)*, No. 67, *ante*.

1160. — Fines due between date of contract & completion—Not paid until after completion—Belong to vendor.]—*CUDDON v. TITE*, No. 53, *ante*.

B. As between tenant for Life and Remainderman.

1161. Fines for admission—Received by trustees—Belong to tenant for life.]—Fines for admission received by the trustees of a manor upon grants of parts of the waste :—*Held* : to belong to the tenant for life.

Preliminary fines received on enfranchising copyholds by reason of the admission having taken place before July, 1853, as is mentioned in 15 & 16 Vict. c. 51 :—*Held* : to belong to the tenant for —*COWLEY (EARL) v. WELLESLEY* (1866), L. R. 1 Eq. 656; 35 Beav. 635; 14 L. T. 245; 14 W. R. 528; 55 E. R. 1043.

Annotations :—*Refd. Brigstocke v. Brigstocke* (1878), 8 Ch. D. 357. *Mentd. Honeywood v. Honeywood* (1874), L. R. 18 Eq. 306; *Elias v. Snowden Slate Quarries Co.* (1879), 4 App. Cas. 454; *Dashwood v. Magniac*, [1891] 3 Ch. 306; *Re Kemcys-Tynte, Kemcys-Tynte v. Komeys-Tynte*, [1892] 2 Ch. 211; *Re Maynard's S. E.*, [1899] 2 Ch. 347.

— Preliminary to enfranchisement—Belong to tenant for life.]—*COWLEY (EARL) v. WELLESLEY*, No. 1161, *ante*.

1163. Fines on renewal of leases for lives—By tenant for life unimpeachable for waste—Belong to tenant for life.]—*Re MEDOWS, NORIE v. BENNETT*, No. 657, *ante*.

Fine on death of last admitting lord.]—*See* No. 1045, *ante*.

C. Steward of Manor.

1164. Payment to steward of manor—Valid payment to lord.]—Deft. purchased copyhold land in

Sect. 1.—Fines: Sub-sect. 6, C.; sub-sects. 7, 8 & 9, A. & B. (a), (b) & (c); sub-sect. 10. Sect. 2: Sub-sects. 1 & 2, A. & B.]

pltf.'s manor, & was admitted by C., who had been appointed by the steward of the manor as his deputy to admit the deft. C. also acted as the deft.'s attorney in completing the purchase. Nine days afterwards the deft. gave C. a cheque for £87 10s. 8d., viz., £78 15s. for the lord's fine, £4 11s. 8d. steward's fees, & £4 4s. C.'s own charges as the deft.'s solr. This cheque was crossed by the deft., at the request of C. to C.'s bankers. The cheque was duly paid by the deft.'s bankers to C.'s bankers, & they retained the money in discharge of a debt due to them by C., who had overdrawn his account:—*Held*: there was evidence for the jury to support a finding that the payment of the fine to C. was a valid payment to the lord.—**BRIDGES v. GARRETT** (1870), L. R. 5 C. P. 451; 39 L. J. C. P. 251; 22 L. T. 448; 18 W. R. 815, Ex. Ch.

Annotations:—Mentd. *Pearson v. Scott* (1878), 9 Ch. D. 198; *Crossley v. Magniac*, [1893] 1 Ch. 594; *Papè v. Westacott*, [1894] 1 Q. B. 272; *Hine v. Steamship Insce. Syndicate, The Netherholme, Glen Holme & Rydal Holme* (1895), 72 L. T. 79; *Re Heath, Parker & Brett* (1898), 43 Sol. Jo. 98; *Walker v. Barker* (1900), 16 T. L. R. 393; *Robinson v. Marsh*, [1921] 2 K. B. 640.

SUB-SECT. 7.—DEMAND AND PLACE OF PAYMENT.

1165. Time & place for payment—Must be appointed.]—WILLOWES' CASE, No. 1100, *ante*.

1166. Demand of two years' value—When value found by homage—Although assessment not entered on court rolls—Lord may recover.]—The lord may recover from a copyholder the fine assessed by him on admittance not exceeding two years' value of the tenement, although there be no entry of the assessment of such fine on the ct. rolls, but only a demand of such a sum for a fine, after the value of the tenement had been found by the homage.—NORTHWICK (LORD) v. STANWAY** (1805), 6 East, 56; 102 E. R. 1208.**

1167. Demand must be personal—Demand on wife of tenant—Insufficient.]—The demand of a fine on the wife of the tenant was not a sufficient demand to entitle the lord to maintain an action for the fine; the demand must be personal, for, otherwise, the lord might compel the tenant, under pain of an action, to follow him wherever he might chance to be, in order to tender the fine.—COPEMAN v. HUDSON** (1837), 1 Jur. 241.**

1168. Must be demanded.]—HAYWARD v. RAW, No. 1102, *ante*.

1169. Demand by description of three years improved annual value—Without stating precise amount—Sufficient.]—A lord, who is entitled by the custom of the manor to a reasonable fine upon admission to a copyhold tenement, may demand & recover such fine by the description of three years' improved annual value of the tenement to which the admittance relates, & without stating in money the precise amount of the fine.—FRASER v. MASON** (1883), 11 Q. B. D. 574; 52 L. J. Q. B. 643; 49 L. T. 761; 32 W. R. 421, C. A.**

Annotation:—Refd. *Blackmore v. White*, [1899] 1 Q. B. 293. *See, also*, Nos. 508, 1166, *ante*.

SUB-SECT. 8.—TIME OF PAYMENT.

1170. Uncertain fine—Not payable immediately.]—HOBART v. HAMMOND, No. 1047, *ante*.

1171. — When day for payment appointed—Convenient time for payment allowed.]—HOBART v. HAMMOND, No. 1047, *ante*.

1172. Certain fine—Payable immediately.]—HOBART v. HAMMOND, No. 1047, *ante*.

SUB-SECT. 9.—REMEDIES OF LORD.

A. Forfeiture.

Right of lord to forfeiture—On refusal of fine.]—See Part XIX., Sect. 1, sub-sect. 2, B. (d), *post*.

B. Action to recover.

(a) What Action will lie.

1173. On admittance of infant—Debt will not lie.]—Debt will not lie against an infant for a copyhold fine upon his admission, & therefore an infant arrested upon such an action, being five years of age, was discharged.—BOROUGH'S CASE (1695), 1 Ld. Raym. 36; 91 E. R. 920.

1174. — Lord may maintain action—When infant comes of age.]—Lord of a manor may maintain an action for the fine due upon the admittance of an infant copyholder when he comes of age.—EVELYN v. CHICHESTER (1765), 3 Burr. 1717; 97 E. R. 1062.

Annotations:—Consd. *Seward v. Baker* (1787), 1 Term Rep. 816. *Refd.* *Holmes v. Blogg* (1817), 1 Moore, C. P. 466; *Birkenhead, Lancashire & Cheshire Junction Ry. v. Pilcher* (1851), 6 Ry. & Can. Cas. 622; *Leslie v. Shell*, [1914] 3 K. B. 607. **Mentd.** *Newry & Enniskillen Rty. v. Coombe* (1849), 3 Exch. 565.

(b) Statute of Limitations.

1175. Stat. Limitations does not apply to debt for copyhold fine.]—Stat. Limitations does not extend to debt for a copyhold fine.—HODGSON v. HARRIS (1669), 1 Lev. 273; 83 E. R. 403; *sub nom.* **HODSDEN v. HARRIDGE**, 1 Sid. 415; 2 Keb. 536; 2 Saund. 61.

Annotations:—Mentd. *Tobacco Pipe Makers' Co. v. Loder* (1851), 16 Q. B. 765. **Mentd.** *Paget v. Foley* (1836), 3 Scott, 120. *Mentd.* *Ambrose v. Brooks* (1738), *West temp. Hard.* 567; *R. v. Morrall* (1818), 6 Price, 24; *Scales v. Jacob* (1826), 11 Moore, C. P. 553; *Thorne v. Kerr* (1855), 25 L. J. Ch. 57; *Curlewis v. Mornington* (1858), 27 L. J. Q. B. 439; *Lee v. Wilmot* (1866), L. R. 1 Exch. 364; *Lievesley v. Gilmore* (1866), L. R. 1 C. P. 570; *Spencer v. Hemmerde* (1922), 38 T. L. R. 869.

1176. Period of limitation under Civil Procedure Act, 1833 (c. 42)—In action for recovery of fine—Runs from date of admittance.]—The lord of a manor was entitled to an arbitrary fine on the admittance of a tenant to copyhold. He brought an action for the fine more than six years after the admittance, but less than six years from the assessment & demand of the fine:—*Held*: the period of limitation began to run from the time of the admittance, & the lord's right was therefore barred by the above Act, s. 3.—MONCKTON v. PAYNE**, [1899] 2 Q. B. 603; 68 L. J. Q. B. 951; 81 L. T. 204; 48 W. R. 44; 15 T. L. R. 531; 43 Sol. Jo. 706.**

(c) Procedure.

1177. Payment into court—In action of debt for fine—Not allowed.]—In debt for a fine set out in the ct. of a manor, you cannot pay money into ct.—GOLD v. FREAME** (1722), Bunb. 124; 145 E. R. 619.**

SUB-SECT. 10.—REMEDIES OF TENANT.

1178. Claim by lord to fine of two years' value—On surrender for six months by way of mortgage—To secure money not paid on previous mortgage—No relief in equity.]—Copyholder in fee makes a conditional surrender for securing a sum of money at the end of six months. Money not being paid, & mtgee. willing to continue his money, they desire the lord that the old surrender might be taken up, & a new one made for six months longer. But the lord insisted the mtgee. should come in & be admitted, & pay a fine of two years' value. Equity will not relieve against the lord.—TREDWAY****

v. FOTHERLEY (1699), 2 Vern. 367 ; 1 Eq. Cas. Abr. 120, pl. 16 ; 23 E. R. 831.

1179. Excessive fine—No remedy in equity—To single copyholder.]—A single copyholder is not relievable in equity for an excessive fine, because this is determinable at law, but, to avoid multiplicity of suits, several copyholders may join to be relieved against a general fine that is excessive.—*COWPER v. CLERK* (1732), 3 P. Wms. 155 ; 2 Eq. Cas. Abr. 229, pl. 14 ; 24 E. R. 1010, L. C. Annotation :—*Expld. Fraser v. Mason* (1883), 11 Q. B. D. 574.

SECT. 2.—HERIOTS.

SUB-SECT. 1.—IN GENERAL.

1180. Lord entitled to best beast—Lord may take worst.]—The heriot by law is *optimum animal in rei veritate*, but if the lord will, he may take the worst.—*FOSTER v. JACKSON* (1615), Hob. 52 ; 80 E. R. 201.

Annotations :—*Mentd. R. v. Patrick* (1667), 2 Keb. 65, 164 ; *Philips v. Bury* (1694), Skin. 447 ; *R. v. Baden* (1694), Show. Parl. Cas. 72 ; *R. v. Gripe* (1696), 1 Ld. Raym. 256 ; *Barber v. Palmer* (1697), 1 Ld. Raym. 693 ; *Beal v. Simpson* (1697), 1 Ld. Raym. 408 ; *Thorp v. Thorp* (1701), 12 Mod. Rep. 455 ; *Vaspor v. Edwards* (1701), 12 Mod. Rep. 658 ; *Worsenholm v. Berks* (1701), 12 Mod. Rep. 599 ; *Beacon v. Peck* (1719), 11 Mod. Rep. 311 ; *Lancaster v. Fielder* (1727), 2 Ld. Raym. 1451 ; *Bank of England v. Morrice* (1736), Lee temp. Hard. 219 ; *R. v. Cotton* (1751), Park. 112 ; *Hawks v. Crofton* (1758), 2 Burr. 698 ; *Camplin v. Bullman* (1761), Park. 198 ; *Mitchell v. Torup* (1766), Park. 227 ; *Giles v. Grover* (1832), 9 Bing. 128 ; *Lucas v. Nockells* (1833), 10 Bing. 157 ; *Canadian Prisoner's Case, Watson's Case, Re Parker, R. v. Batchelder* (1839), 3 State Tr. N. S. 963 ; *Bircham v. Tucker* (1840), 8 Scott, 469 ; *Thompson v. Parish* (1859), 5 C. B. N. S. 685 ; *Lehaine v. Philpott* (1875), 38 L. T. 98.

1181. Where tenant has no beasts—Lord loses heriot.]—Where the tenant has no beasts, the lord shall lose his heriot, for it is a casual thing if he have it unless the tenure or the custom be to have the best beast or such a sum. If the tenant has conveyed the beast away & deprived the lord of his heriot by fraud, then stat. 13 Eliz. c. 5, provides a remedy. A heriot is *quaedam praestatio*, etc.—*SHAW v. TAYLOR* (1616), Hut. 4 ; 123 E. R. 1059.

1182. If tenant conveys beast away—Or deprives lord of heriot by fraud—Remedy of lord under 13 Eliz. c. 5.]—*SHAW v. TAYLOR*, No. 1181, ante.

SUB-SECT. 2.—HERIOT SERVICE.

A. Nature of.

1183. Reservation by lease—For lives or for years determinable on lives—Good—If heriot reserved payable during term.]—Heriot service may be reserved on a lease for lives or years determinable on lives if the heriot is reserved payable during the term.

The heriot may be seized in any place whether within or out of the lands demised.—*OSBORNE v. STURE* (1686), 2 Lut. 1361 ; 125 E. R. 752.

1184. ——— Reservation not exception.]—Tenant in fee simple devised lands in L. & a manor & lands in P., to a tenant for life with power to let the lands in L. for twenty-one years in possession, & also to make leases of lands in the manor of P. for ninety-nine years, determinable as one, two, or three lives, in possession or reversion, of such parts as were or had been anciently demised for one, two, or three lives, so as the ancient & accustomed yearly rents & reservations should be thereby reserved ; & also to let all other lands in P. for twenty-one years, all the leases being made & granted in the same manner & form, & with &

under such & the like reservations, restrictions, covenants, conditions & agreements, as were usually & customarily contained in leases of the same kind in the several & respective parishes & places where the same premises were situate. Leases for ninety-nine years, determinable on lives, having been made by the tenant for life :—*Held* : (1) the reservations of rent, heriot, suit of ct., & suit of mill, are strictly reservations, a reservation & exception so called of the liberty of hawking, hunting, fishing, & fowling, is not legally a reservation or exception, but a privilege granted to the lessor ; (2) exceptions & reservations (so called), from the demise, of timber trees, mines, & quarries, are exceptions, not reservations ; (3) nor would these necessarily be construed as coming within the word reservations in a power, though the power mentioned rent & reservations, & there appeared to be in fact no reservation besides, except rent ; at any rate the construction would not be such where there were in fact reservations besides rent.

Qu. : whether, the ancient lease having reserved, as a heriot, the best beast of the lessee being one of the lives his exors., administrators, or assigns, or such person as should be in possession of the premises, & entitled to the same by virtue of the lease, a lease reserving only the best beast of the lessee being one of the lives, be good ?—*DOE d. DOUGLAS v. LOCK* (1835), 2 Ad. & El. 705 ; 4 Nev. & M. K. B. 807 ; 4 L. J. K. B. 113 ; 111 E. R. 271.

Annotations :—*As to* (1) *Reid. Wickham v. Hawker* (1840), 7 M. & W. 63. *Generally, Mentd. Durham & Sunderland Ry. v. Walker* (1842), 2 Q. B. 940 ; *Doe d. Wyndham v. Stephens* (1844), 6 Q. B. 208 ; *Doe d. Biddulph v. Hole* (1850), 15 Q. B. 848 ; *Doe d. Croft v. Tidbury* (1854), 2 C. L. R. 347 ; *Williams v. Hayward* (1859), 5 Jur. N. S. 1417 ; *Proud v. Bates* (1865), 6 New Rep. 92 ; *Thellusson v. Liddard*, [1900] 2 Ch. 635.

1185. Founded on ancient tenure.]—An heriot service is founded upon ancient tenure & either heriot service or heriot custom is seizable anywhere ; a suit heriot reserved by deed cannot be taken off from the manor.—*PARKER v. GAGE* (1688), Holt, K. B. 337 ; 1 Show. 81 ; 90 E. R. 1087.

Annotation :—*Consd. Western v. Bailey* (1896), 66 L. J. Q. B. 48.

B. Remedy for.

1186. Lord may distrain—On any beasts on the land.]—The lord of the manor can distrain on any beasts on the land for a heriot service due to him after the death of a tenant who holds of him by such service, but cannot distrain for heriot custom.—*ANON.* (1514), Keil. 167 ; 72 E. R. 342.

1187. ——— But not seize.]—Where there is heriot custom the lord can seize a heriot wherever he can find it. Where there is heriot service, he must distrain & not seize.—*GRESHAM v. GAINFORD* (1544), Benl. 18 ; 73 E. R. 943.

1188. ——— Or seize.]—*PETER v. KNOLL* (1584), Cro. Eliz. 32 ; 78 E. R. 297.

Annotation :—*Reid. Abington v. Lipscomb* (1841), 1 Q. B. 776.

1189. ———.]—The lord may seize or distrain for heriot service at his pleasure ; but for heriot custom, he can only seize the identical thing itself.—*ODHAM v. SMITH* (1597), Cro. Eliz. 589 ; 78 E. R. 832.

Annotation :—*Reid. Abington v. Lipscomb* (1841), 1 Q. B. 776.

1190. ———.]—*HUNGERFORD v. HAVYLAND*, No. 1256, post.

1191. ———.]—The lord may at his election distrain or seize for heriot service ; &, upon replevin, the avowry need not show the particular thing to which he is entitled as a heriot ; but if he seize, he can only take the identical thing.—

Sect. 2.—Heriots : Sub-sect. 2, B.; sub-sect. 3, A. & B.; sub-sects. 4, 5, 6, 7 & 8.]

MAJOR v. BRANDWOOD (1632), Cro. Car. 260; 79 E. R. 827.

1192. ———.]—A lord may seize as well as distrain for heriot service. But if a heriot be reserved by deed since stat. Quia Emptores, payable by tenant in fee, it will be considered as rent, & then the landlord cannot seize, but must either distrain or bring an action for nonpayment.—**EDWARDS v. MOSELEY** (1740), Willes, 192; 12 E. R. 1126.

Annotations:—Refd. Doe d. Douglas v. Lock (1835), 2 Ad. & El. 705; *Damerell v. Protheroe* (1847), 10 Q. B. 20.

1193. Lord may not distrain—Out of his fee.]—The lord cannot distrain for a heriot service out of his fee, no more than for a rent, but he may seize a heriot custom out of his fee.—**ANON.** (1588), Gouldsb. 97; 75 E. R. 1020.

1194. ——— Out of the manor.]—Deft. showed that S. was possessed of, etc. & died, & that he seized the cow as heriot service, & did not show that he seized it within the manor.

One may seize either for heriot custom or service, anywhere; but one cannot distrain for them out of the manor (*per CUR.*).—**AUSTIN v. BENNET** (1693), 1 Salk. 356; 91 E. R. 311.

Annotation:—Refd. Western v. Bailey (1896), 45 W. R. 115.

1195. Lord may seize.]—**BODYAM v. SMITH** (1601), Gouldsb. 191; 75 E. R. 1086.

1196. ——— Identical thing only.]—**MAJOR v. BRANDWOOD**, No. 1191, *ante*.

1197. ——— In any place—Within or out of lands demised.]—**OSBORNE v. STURE**, No. 1183, *ante*.

1198. ——— If service due by ancient tenure.]—**PARKER v. GAGE**, No. 1185, *ante*.

1199. ———.]—**AUSTIN v. BENNET**, No. 1194, *ante*.

1200. Heriot reserved by deed—Lord may not seize.]—**PARKER v. GAGE**, No. 1185, *ante*.

1201. ——— Since statute Quia Emptores—Lord may distrain—Or bring action for nonpayment—But not seize.]—**EDWARDS v. MOSELEY**, No. 1192, *ante*.

See, also, Sect. 8, post.

SUB-SECT. 3.—HERIOT CUSTOM.

A. Validity of.

1202. Custom to seize best beast on land—Either of tenant or other inhabitant—Bad.]—**HENLEY v. TAYLOR & BONNER** (1558), Benl. 39; Ben. & D. 77; 73 E. R. 959.

1203. ——— Levant & couchant—If tenant had no beast on manor—Bad.]—**WILSON v. VYSE** (1561), Benl. 39; 73 E. R. 959.

1204. ———.]—**PARTON v. MASON** (1561), 2 Dyer, 199 b; 73 E. R. 440.

Annotation:—Refd. Stukeley v. Butler (1614), Hob. 168.

1205. ——— Belonging to stranger—If tenant had no beast—Bad.]—**WILSON v. WISE** (1561), Ben. & D. 110; 123 E. R. 85.

1206. ———.]—**PARTON v. MASON**, (1561), 2 Dyer, 199 b; 73 E. R. 440.

Annotation:—Refd. Stukeley v. Butler (1614), Hob. 168.

1207. ——— Within manor—Bad.]—**WILSON v. WISE** (1561), Ben. & D. 110; 123 E. R. 85.

1208. ——— If tenant's best beast was outside manor—Bad.]—**WILSON v. WISE** (1561), Ben. & D. 110; 123 E. R. 85.

1209. ———.]—**ANON.** (1564), Ben. & D. 61; 123 E. R. 274.

1210. ——— If no beast of tenant be found—Bad.]—**LYNE v. BENNET** (1576), Ben. & D. 302; 123 E. R. 212.

1211. Custom to pay heriot on death of stranger—Dying within manor—Bad.]—**PARKER v. COMBLEFORD** (1599), Cro. Eliz. 725; 78 E. R. 959.

Annotation:—Mentd. London Corpn. v. Cox (1867), L. R. 2 H. L. 239.

1212. Custom to take heriot on alienation by copyholder—Good—Heriot due on alienation of part of holding.]—**SNAG v. FOX** (1622), Palm. 342; 81 E. R. 1114.

Annotation:—Refd. Holloway v. Berkeley (1826), 6 B. & C. 2.

1213. Custom for homage to assess compensation—In lieu of heriot—Bad.]—**PARKIN v. RADCLIFFE** (1798), 1 Bos. & P. 282; 126 E. R. 905; *subsequent proceedings* (1799), 11 Bos. & P. 393.

1214. Custom for pecuniary payment in lieu of heriot—When heriotable land let by tenant—& best beast not taken by lord within six weeks of tenant's death—Lord entitled to pecuniary payment only.]—**CROOME v. GUISE** (1837), 4 Bing. N. C. 148; 3 Hodg. 277; 5 Scott, 453; 132 E. R. 745.

1215. Heriot may be due by custom—In respect of free lands—Held in fee simple of manor.]—**DAMERELL v. PROTHEROE**, No. 246, *ante*.

B. Remedy for.

1216. Lord may seize—Wherever he can find.]—**GRESHAM v. GAINFORD**, No. 1187, *ante*.

1217. ———.]—**ANON.**, No. 1193, *ante*.

1218. ———.]—**HUNGERFORD v. HAVYLAND**, No. 1256, *post*.

1219. ——— May not distrain out of manor.]—**AUSTIN v. BENNET**, No. 1194, *ante*.

1220. ——— Only identical thing.]—**ODIHAM v. SMITH**, No. 1189, *ante*.

1221. ——— Out of manor—Although beast seized never within manor.]—**WESTERN v. BAILEY**, [1897] 1 Q. B. 86; 66 L. J. Q. B. 48; 75 L. T. 470; 45 W. R. 115; 13 T. L. R. 13, C. A.

1222. Lord seizing cattle—Found on tenancy—Onus of proof as to ownership not on lord.]—Where there is a custom for the lord to seize the best beast for a heriot & the lord does seize the best beast upon the tenancy it must come on the other side to show that it was not the tenant's beast (**TWISDEN, J.**).—**JORDAN v. MARTIN** (1670), 1 Mod. Rep. 63; 2 Keb. 669; 86 E. R. 733.

Annotation:—Refd. Kimp v. Cruwies (1695), 2 Lut. App. 1573.

1223. Seizure for heriot custom—Not within Distress for Rent Act, 1737 (c. 19)—In respect of double costs.]—**LOYD v. WINTON** (1755), 2 Wils. 28; 95 E. R. 667.

Annotations:—Mentd. Leominster Canal Co. v. Norris (1798), 7 Term Rep. 500; *Pluck v. Digges* (1831), 5 Bll. N. S. 31; *Newnham v. Bever* (1849), 8 C. B. 560.

1224. Lord may not distrain.]—**ANON.**, No. 1186, *ante*.

—— Out of manor.]—*See* No. 1193, *ante*.

1225. Stray beast on tenement—Liable to distress.]—**ANON.** (1564), Ben. & D. 61; 123 E. R. 212.

1226. Custom for pecuniary payment in lieu of heriot—Tenant not possessed of all lands alleged heriotable—Only aggregate amount known & not proportion due from different estates—No remedy in equity against successors of deceased tenant.]—Bill by lord of a manor against the tenant, alleging immemorial payments as rent, or in the nature of rent, on the death of each tenant, by his successors, in respect of thirty-eight different estates. The payments were in lieu of heriots & reliefs. It appeared by the evidence that the heriots were more probably heriot custom than heriot service, & that the relief was by custom, & not by common right or by reservation. Some of them had been paid by the exors. of deceased; it was not shown that the tenant was in possession of all the lands alleged to be liable; & only the aggregate amount of rent was known, not the proportion due from each

estate :—*Held* : (1) the lord had no equity against the successors of the deceased tenant, although it appeared that in consequence of the description & identity of the lands being lost, he could not enforce any claim at law ; (2) where money payment is due in lieu of heriots & relief by the custom, there must also be a custom of distress & the custom must be alleged positively & not merely by inference.—*BASINGSTOKE CORPN. v. BOLTON* (LORD) (1854), 3 Drew. 50 ; 3 W. R. 142 ; 61 E. R. 821.
See, also, Sect. 8, *post*.

SUB-SECT. 4.—PROOF OF CUSTOM.

1227. Agreement between lord & tenants—Establishing custom—Confirmed by decree in Chancery—Lord & tenants life tenants only.]—*DUNN v. ALLEN* (1686), 1 Vern. 426 ; 23 E. R. 563.

Sufficiency of evidence—Variance between customs alleged & proved.]—See No. 269, *ante*.

— Usage.]—See No. 278, *ante*.

Admissibility of evidence—Court rolls.]—See No. 246, *ante*.

— Exercise of right in other tenements.]—See No. 246, *ante*.

— Copy of Chancery decree.]—See No. 252, *ante*.

SUB-SECT. 5.—WHEN DUE.

1228. Due—On death or avoidance of head of body politic or corporation—By special custom.]—*CAMBRIDGE COLLEGE (PROVOST & SCHOLARS) CASE* (1465), Y. B. 5 Edw. 4, fo. 70, B. (Long Quinto).
Annotation :—*Refd.* *Stokes v. Porter* (1558), 2 Dyer, 166 b.

1229. — On death of settlor—Where land limited to use of settlor his wife & heirs of their bodies—Remainder to right heirs of settlor.]—If two joint tenants be of land held by heriot service, & one dies, the other shall not pay heriot service, for there is no change of the tenant, but the survivor continues tenant of the whole land. But if a man seised of land in fee, makes a feofment to the use of himself & his wife, & the heirs of their two bodies begotten, the remainder to the right heirs of the husband, & the husband dies, a heriot shall be paid, for the ancient use of the reversion was never out of the husband.—*BUTLER v. ARCHER* (1594), Owen, 153 ; 74 E. R. 968.

1230. — On death of tenant disseised.]—If by the custom if a copyholder dies seised he pays a heriot to the lord & then the copyholder is disseised & dies during the disseisin he pays the heriot nevertheless for he is tenant by right notwithstanding the disseisin. Where there is a particular estate in the manor & a remainder, the remainderman does not take the heriot.—*NORRICE & NORRICE'S CASE* (1639), March, 23 ; 2 Roll. Abr. 72 ; 82 E. R. 394.

1231. — On death of tenant for years determinable on lives—Expectant on determination of prior lease.]—*HAGON v. CARVE* (1670), 1 Sid. 437 ; 82 E. R. 1203.

1232. Not due—On death of one of two joint tenants.]—*BUTLER v. ARCHER*, No. 1229, *ante*.

1233. — On death of tenant for years—Expectant on lease for life—Dying during prior term.]—*LION v. CAREW* (1669), 1 Vent. 91 ; 86 E. R. 63 ; *sub nom.* *LLEMALL v. CARRE*, 2 Keb. 572, 677 ; *sub nom.* *LENIAL v. CARA*, 2 Keb. 505 ; *sub nom.* *LLENIAL v. CARA*, 2 Keb. 588 ; *sub nom.* *LANGAN v. CARNE*, 1 Lev. 294 ; *sub nom.* *LANYON v. CARNE*, 2 Saund. 161.

Annotations :—*Mentd.* *Cole v. Rawlinson* (1702), 1 Salk. 234 ; *Western v. Bailey*, [1897] 1 Q. B. 86.

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1234. — On death of cestui que trust.]—*TRINITY COLLEGE, CAMBRIDGE v. BROWNE* (1686), 1 Vern. 441 ; 23 E. R. 573, L. C.

Annotations :—*Consd.* *Burgess v. Wheate* (1759), 1 Eden, 177. *Refd.* *Copestake v. Hoper*, [1907] 1 Ch. 366.

1235. — On failure of successive lives—Where land held by custom for life of tenant & two other lives.]—*SMARTLE v. PENHALLOW*, No. 804, *ante*.

1236. — On death of mortgagor in possession.]—*COPESTAKE v. HOPER*, [1908] 2 Ch. 10 ; 77 L. J. Ch. 610 ; 99 L. T. 371 ; 24 T. L. R. 628 ; 52 Sol. Jo. 516, C. A.

Annotation :—*Consd.* *Re Norman, Thackray v. Norman* (1914), 111 L. T. 903.

SUB-SECT. 6.—WHO MAY CLAIM.

1237. Manor limited to particular estate & remainder—Remainderman not entitled.]—*NORRICE & NORRICE'S CASE*, No. 1230, *ante*.

SUB-SECT. 7.—WHEN PROPERTY PASSES.

1238. On taking for heriot.]—*PUTT v. ROSTER* (1682), 2 Mod. Rep. 318 ; 86 E. R. 1098.

1239. Seven beasts marked as heriots—Left in possession of owner—Lord entitled to five beasts only—No conversion of any beasts marked.]—*ABINGTON v. LIPSCOMB* (1841), 1 Q. B. 776 ; 1 Gal. & Dav. 230 ; 10 L. J. Q. B. 330 ; 6 Jur. 257 ; 113 E. R. 1328 ; *subsequent proceedings*, 11 L. J. Q. B. 15.

Annotation :—*Distd.* *Harrison v. Powell* (1894), 10 T. L. R. 271.

SUB-SECT. 8.—MULTIPLICATION OF HERIOTS.

1240. Tenants in common—Heriot due on death of each tenant.]—*ATTREE v. SCUTT*, No. 520, *ante*.

1241. — — —.]—When a copyhold tenement, holden by heriot custom, becomes the property of several as tenants in common, the lord is entitled to a heriot from each of them ; but if the several portions are reunited in one person, one heriot only is payable.—*HOLLOWAY v. BERKELEY* (1826), 6 B. & C. 2 ; 9 Dow. & Ry. K. B. 83 ; 5 L. J. O. S. K. B. 1 ; 108 E. R. 353.

Annotation :—*Consd.* *R. v. Eton College* (1846), 8 Q. B. 526.

1242. — Reunion of land in one person—Multiplication of heriots continues.]—*ATTREE v. SCUTT*, No. 520, *ante*.

1243. — — — One heriot only payable.]—*HOLLOWAY v. BERKELEY*, No. 1241, *ante*.

1244. Where tenements divided into moieties—Within memory—Immemorial custom of multiplied heriots—Disproved.]—Where a plea of justification in trespass for taking two horses as heriots, stated a custom in the manor that the lord from time immemorial, until the division of a certain tenement into moieties, had taken & been accustomed to take a heriot upon the death of every tenant dying seized ; & since the division the lord had taken & been accustomed to take on the death of every tenant dying seized of either of the moieties a heriot for each moiety :—*Held* : this must be taken to be one entire custom, & not two distinct customs, the one applicable to the tenement before, the other after the division of it ; (2) & being laid to be an immemorial custom, it was disproved by evidence that the division was made within memory.—*KINGSMILL v. BULL* (1808), 9 East, 185 ; 103 E. R. 543.

Sect. 2.—Heriots: Sub-sects. 8, 9, 10, 11 & 12. Sect. 3: Sub-sects. 1 & 2. Sect. 4: Sub-sects. 1 & 2.]

1245. Where multiplied heriots payable—If tenement divided among several owners—One heriot only payable—If tenement reunited in single owner.]—GARLAND *v.* JEKYLL (1824), 2 Bing. 273; 9 Moore, C. P. 502; 3 L. J. O. S. C. P. 227; 130 E. R. 311; *subsequent proceedings*, 2 Bing. 330.

*Annotations:—*Consd. Holloway *v.* Berkeley (1826), 6 B. & C. 2. *Refd.* Traherne *v.* Gardner (1856), 2 Jur. N. S. 394; Harrison *v.* Powell (1894), 10 T. L. R. 271. *Mentd.* R. *v.* Casement, [1917] 1 K. B. 98.

1246. On alienation by joint tenants—Where heriots payable by custom on death or alienation—One heriot only payable.]—From an entry on the rolls of a manor, it appeared that it was presented in 1778, to be the custom, that every copyhold tenant, that holdeth copyhold lands of the lord, upon death or alienation ought to pay a heriot; the custom had been in accordance with the entry, but there was no instance shown of an alienation by joint tenants, or of a claim of a heriot from each of several joint tenants on alienation:—*Held*: without proof of a special custom of which there was none, one heriot only was due on a joint alienation by several joint tenants.—PADWICK *v.* TYNDAL (1858), 1 E. & E. 184; 28 L. J. Q. B. 90; 32 L. T. O. S. 125; 7 W. R. 53; 120 E. R. 877; *sub nom.* PADWICK *v.* GREENFIELD, 5 Jur. N. S. 676.

SUB-SECT. 9.—HOW LORD'S TITLE DEFEATED.

1247. Heriot service extinguished—By enfeoffment of lord—By tenant—Of part of heriotable land.]—CHAPMAN *v.* PENDLETON (1609), 2 Brownl. 293; 123 E. R. 950.

1248. — On purchase by lord—Of part of heriotable land.]—*Held*: (1) if there were lord & tenant by fealty & heriot services, & the lord purchased part of the land, the heriot service was extinct; (2) if the tenant had first enfeoffed a stranger of part of the lands holden, & then had enfeoffed the lord of another part, the heriot service would have remained for the land the stranger held; (3) if a heriot were due by the custom of the manor upon the death of the tenant, & the lord purchased part of the tenancy, such purchase would not extinguish the lord's right to a heriot.—TALBOT'S CASE (1610), 8 Co. Rep. 104 b; 77 E. R. 635.

*Annotation:—*Generally, *Refd.* Holloway *v.* Berkeley (1826), 6 B. & C. 2.

1249. Heriot service not extinguished—On enfeoffment of stranger—Of part of heriotable land—& subsequent enfeoffment of lord of other part.]—TALBOT'S CASE, No. 1248, *ante*.

1250. Heriot custom not extinguished—On purchase by lord—Of part of tenancy.]—TALBOT'S CASE, No. 1248, *ante*.

1251. Long leases by tenants—To avoid payment of heriot—No relief in equity.]—The lord of a manor being entitled to heriots from his freeholders, upon every alienation or death, the tenants made long leases, by which they barred the lord of his heriots; the lord preferred his bill against the tenants to establish this custom.

Here does not appear to be any trust, and therefore I will not help the lord. I think the custom of heriots to be unreasonable, the loss a family sustains thereby being aggravated, & equity never will interpose in such cases (LORD COWPER, C.).—WIRTY *v.* PEMBERTON (1708), 2 Eq. Cas. Abr. 279; 22 E. R. 235.

1252. Conveyances in trust by tenants—To avoid payment of heriots—No relief in equity.]—Demurrer

to a bill charging that pltf. as lord of the borough of M. was entitled to a valuable heriot on the death of any tenant within the borough; & that several conveyances were made to defts. in trust, to defraud the lord thereof, whereas no persons in trust for others are entitled to those conveyances, praying therefore a discovery of those deeds, & an injunction or order in nature of injunction to stay proceedings on a *mandamus* issued to compel pltf. to hold a ct. & admit defts. as tenants.

If I should lay it down as a rule, that a lord of a manor can come into this ct., whenever any one comes to be admitted, by bringing a bill to discover whether that person is a trustee for another, & whether he is so capable to answer a good heriot to the lord, as another person might be, that would occasion infinite confusion. If this ct. was to entertain bills of discovery, whether this or that person was of the best ability to answer the heriot, it would lay such difficulties on copyhold estates, there would be no end of it (LORD HARDWICKE, C.).—MONTAGUE (LORD) *v.* DUDMAN (1751), 2 Ves. Sen. 396; 28 E. R. 253, L. C.

*Annotation:—**Mentd.* R. *v.* Ambergate, etc. Ry. (1852), 17 Q. B. 957.

SUB-SECT. 10.—STATUTES OF LIMITATION.

1253. Heriot not selsed on death of tenant over twenty years before—During possession of former lord—Right of lord to subsequent heriots not barred—By Real Property Limitation Act, 1833 (c. 27).]—In trover for a heriot, it was proved by entries in the ct. rolls of a manor, that down to the year 1804 the land, in respect of which the heriot was claimed, was freehold land, held of the lord by heriot, quit-rent, relief, etc. On the death of a tenant in 1804, a heriot was seized. In 1824, the next tenant died; but there was no entry of any seizure of a heriot on that occasion, or of any reason for the omission. In 1826 the present lord came into possession; & in 1847, upon the death of the next tenant, the heriot now claimed was seized. Since 1804, no quit-rent or relief appeared to have been demanded or paid, nor any service of any kind rendered to the lord of the manor:—*Held*: (1) the lord's right of action was not barred by above Act, s. 2; (2) there was no ground for presuming that the tenure of the lands had been changed, or even that the heriot had been released by the lord. *Semle*: the right to the quit-rent was barred by the statute.—CHICHESTER (EARL) *v.* HALL (1851), 17 L. T. O. S. 121.

*Annotations:—**Distd.* Walters *v.* Webb (1869), L. R. 9 Eq. 83. *Refd.* Warrick *v.* Queen's College, Oxford (1871), 6 Ch. App. 716; Harrison *v.* Powell (1894), 10 T. L. R. 271.

1254. — — — — —.]—To an action of trespass for seizing & taking a horse, deft. pleaded an immemorial custom for the lord of the manor, upon the death of a free tenant, to seize the best beast of which the tenant died possessed, wherever it could be found, & that in 1873, on the death of a tenant, deft., as lord of the manor, took the horse under this custom. Replication, that more than twenty years before the heriot in question became due, a heriot became due, for which the then lord of the manor, through whom deft. claimed, did not seize, though he could have done so; that the then lord, whilst entitled, discontinued the taking of heriots; that no heriot had since been taken until the trespass complained of; that the right to make an entry or distress or bring an action to recover heriots, at the time of such discontinuance then first accrued to the then lord within Real Property Limitation Act, 1833 (c. 27) & that such right so first accrued more than

twenty years before the death of the tenant or the trespass complained of. On demurrer:—*Held*: the replication was bad, since the seizure by debt. was not making an entry or distress, nor bringing an action to recover rent, within the meaning of the Act, & that debt.'s title to heriots therefore was not barred by the lapse of twenty years.—*ZOUCHE (LORD) v. DALBIAC* (1875), L. R. 10 Exch. 172; 44 L. J. Ex. 109; 33 L. T. 221; 39 J. P. 327; 23 W. R. 564.

SUB-SECT. 11.—REMEDIES FOR WRONGFUL SEIZURE.

1255. Owner may bring trover—Or trespass.]—*BISHOP & JURDAIN v. MONTAGUE (VISCOUNTESS)* (1604), Cro. Jac. 50; Cro. Eliz. 824; 79 E. R. 42. *Annotation*:—*Refd.* *Cooper v. Shepherd* (1846), 7 L. T. O. S. 282.

SUB-SECT. 12.—BETWEEN VENDOR AND PURCHASER.

Sale of part of copyhold to railway company—Vendor not entitled to discharge of remaining part from heriot.]—*See* Vol. XI., COMPULSORY PURCHASE OF LAND & COMPENSATION, p. 274, No. 2016.

SECT. 3.—RELIEF.

SUB-SECT. 1.—NATURE OF.

1256. On death of tenant—Relief to extent of year's rent—May be due as incident of tenure—Not as part of tenure.]—In socage tenure a relief to the extent of a year's rent may be due on the death of a tenant, not as part of the tenure but as an incident thereto, & for which the lord may distrain, but no relief is due on a succession *inter vivos* unless there is a special reservation or custom to that effect. A relief on alienation is not properly a relief but rather is a fine, & it may exist by tenure, special reservation, or custom. Where it is by tenure, distress lies for it, but not where it is by custom.—*HUNGERFORD v. HAVYLAND* (1626), W. Jo. 132; Benl. 180; 3 Bulst. 323; Lat. 129; 2 Roll. Rep. 370; 82 E. R. 70. *Annotations*:—*Refd.* *Basingstoke Corpn. v. Bolton* (1852), 1 Drew. 270. *Mentd.* *Hool v. Bell* (1697), 1 Ld. Raym. 172.

1257. On succession *inter vivos*—No relief due—Except by special reservation—Or by custom.]—*HUNGERFORD v. HAVYLAND*, No. 1256, *ante*.

1258. On alienation—May exist by tenure—Reservation—Or custom.]—*HUNGERFORD v. HAVYLAND*, No. 1256, *ante*.

SUB-SECT. 2.—REMEDY FOR.

1259. Action for debt—By executors of lord.]—*LEAK'S CASE* (1541), cited in 4 Co. Rep. 49 b; 76 E. R. 1002.

1260. ——— Against executor of heir.]—*ST. JOHN (LORD) v. BRANDRING* (1602), Cro. Eliz. 883; 78 E. R. 1107.

1261. Lord's claim for relief—Not estopped by acceptance of rent.]—*PARHAM v. NORTON* (1602), Cro. Eliz. 886; 78 E. R. 1110.

1262. Relief due by tenure—Lord may distrain.]—*HUNGERFORD v. HAVYLAND*, No. 1256, *ante*.

1263. Relief due by custom—No remedy except by custom.]—*HUNGERFORD v. HAVYLAND*, No. 1256, *ante*.

1264. Custom for pecuniary payment in lieu of relief—Tenant not in possession of all lands alleged to be liable—Only aggregate amount known—Proportion due from different estates not known—No remedy in equity against successors of deceased tenant.]—*BASINGSTOKE CORPN. v. BOLTON (LORD)*, No. 1226, *ante*.

See, also, Sect. 8, *post*.

SECT. 4.—QUIT RENTS, RENTS OF ASSIZE, ETC.

SUB-SECT. 1.—IN GENERAL.

1265. Rent out of copyhold—May be payable to lord of manor—Other than manor of which copyhold held.]—*STEWART v. BRIDGER*, No. 92, *ante*.

1266. Payment of rent to lord—Unvaried over long series of years—Quit rent presumed.]—*DOE d. WHITTICK v. JOHNSON* (1819), Gow, 173.

Annotations:—*Dbtd.* *R. v. Cuddington* (1845), 14 L. J. M. C. 182. The authority of *Doe d. Whittick v. Johnson* has been shaken, if not overruled (*PATTERSON, J.*). *Consd.* *Foljambe v. Smith's Tadcaster Brewery Co.* (1904), 73 L. J. Ch. 722. *Refd.* *Eliot v. Bristol Corpn.* (1894), 71 L. T. 659.

1267. ——— Increased from time to time during long series of years—Holders of land are annual tenants—Not freehold tenants at quit rent.]—*FOLJAMBE v. SMITH'S TADCASTER BREWERY CO.*, No. 568, *ante*.

1268. Customary tenants—Holding under corn rent or annual sum in lieu thereof—May elect to pay in corn or money—In absence of contrary custom.]—*BLEWETT v. JENKINS* (1862), 12 C. B. N. S. 16; 142 E. R. 1047.

Annotation:—*Mentd.* *Constable v. Nicholson* (1863), 14 C. B. N. S. 230.

SUB-SECT. 2.—REMEDY FOR.

1269. Lord may distrain—Without personal demand—After rent due—Although tenant ready to pay if demanded.]—The lord may distrain for rent service without a personal demand at any time after it falls due, & it is immaterial that on the day when the rent fell due the tenant was on the land ready to pay it, if demanded. Distress is both a demand & a distress, & if the tenant be there & offer the rent, the lord may not distrain.

Where a penalty or re-entry is joined to the thing, demand must be made at the proper time.

If the tenant had made a tender of the rent on or after the due day to the lord personally the lord could not have distrained without a personal demand.—*CRANLEY v. KINGSWELL* (1617), Hob. 207; 80 E. R. 354.

Annotations:—*Refd.* *Blucke v. Mole* (1661), 1 Lev. 40; *Crouche v. Fastolfe* (1680), T. Raym. 418; *Horn v. Luines* (1700), 12 Mod. Rep. 352; *Mallam v. Arden* (1833), 3 Moo. & S. 793.

1270. ——— Only after personal demand—If rent tendered.]—*CRANLEY v. KINGSWELL*, No. 1269, *ante*.

———.]—*See, generally*, DISTRESS.

1271. Where particular lands subject to quit rents not known—Satisfaction of arrears—& future payment—Decreed by Court of Chancery—On proof of payment within reasonable time.]—Where by great length of time it is become impossible to know out of what particular lands ancient quit rents are issuable, cts. of equity have exercised a jurisdiction; & have constantly, on proof of payment within a reasonable time, decreed a satisfaction for all arrears of such rents, & payment of the same for the future.—*BRIDGEWATER (DUKE) v. EDWARDS* (1733), 6 Bro. Parl. Cas. 368; 2 E. R. 1139.

Annotation:—*Refd.* *Basingstoke Corpn. v. Bolton* (1852), 1 Drew. 270.

Sect. 4.—Quit rents, rents of assize, etc.: Sub-sects. 2, 3 & 4. **Sect. 5:** Sub-sects. 1, 2, 3 & 4, A., B., (a) & (b) & C.; sub-sect. 5. **Sect. 6:** Sub-sects. 1 & 2. **Sect. 7:** Sub-sect. 1.]

1272. Remedy in law—Not in equity—Multi-farious suit not entertained.]—A bill does not lie against several tenants of a manor for quit rents; pltf.'s remedy being at law & the suit also multi-farious as to the different tenants.—**BOUVERIE v. PRENTICE** (1783), 1 Bro. C. C. 200; 28 E. R. 1082, L. C.

Forfeiture for refusal of rent.]—See Part XIX., Sect. 1, sub-sect. 2, B. (c), post.
See, also, Sect. 8, post.

SUB-SECT. 3.—STATUTES OF LIMITATION.

1273. General rule.]—Mere length of time, short of the period fixed by the Stat. of Limitations, & unaccompanied with any circumstances, is not of itself a sufficient ground to presume a release or extinguishment of a quit rent.—**ELDRIDGE v. KNOTT** (1774), 1 Cowp. 214; 98 E. R. 1050.

Annotations:—*Reid.* Stackhouse v. Barnston (1805), 10 Ves. 453; *Fellowes v. Clay* (1843), 4 Q. B. 313; *Bryant v. Foot* (1868), L. R. 3 Q. B. 497; *Dalton v. Angus, Works & Public Buildings Comrs. v. Angus* (1881), 6 App. Cas. 740; *A.-G. v. Horner*, [1913] 2 Ch. 140.

1274. Real Property Limitation Act, 1833 (c. 27)—Distress for quit rent—Period runs from last payment of rent.]—The twenty years within which, since the above Act a distress for rent must be made by the person to whom the right to make it has accrued, begins to run from the last payment of the rent; & therefore

Where the lord of a manor entitled to an ancient quit rent, which had remained unnoticed since Jan. 1825 when all arrears were paid up, distrained in May, 1845, for six years' rent due at the preceding Michaelmas:—*Held*: the distress was unlawful, the rent having been extinguished at the expiration of twenty years from the last payment in Jan. 1825.—**OWEN v. DE BEAUVOIR** (1847), 16 M. & W. 547; 9 L. T. O. S. 175; 11 Jur. 458; 153 E. R. 1307; *subsequent proceedings, sub nom.* **DE BEAUVOIR v. OWEN** (1850), 5 Exch. 160.

Annotations:—*Consd.* Zouche v. Dalbiac (1875), L. R. 10 Exch. 172; *Howitt v. Harrington*, [1893] 2 Ch. 497. *Reid.* **Chichester v. Hall** (1851), 17 L. T. O. S. 121.

1275. — No quit rent paid or demanded since 1804—Right barred.]—**CHICHESTER (EARL) v. HALL**, No. 1253, *ante*.

1276. — & Real Property Limitation Act, 1874 (c. 57)—Quit rent not excepted from operation.]—A quit rent payable in respect of a copyhold tenement is not, like a rent reserved upon a lease, excepted from the operation of the above Acts. Where, therefore, such a quit rent had remained unpaid for more than twelve years, & no acknowledgment had been given in respect thereof, the right to recover the same was held to be barred by the operation of those statutes.—**HOWITT v. HARRINGTON (EARL)**, [1893] 2 Ch. 497; 62 L. J. Ch. 571; 68 L. T. 703; 41 W. R. 664; 37 Sol. Jo. 440; 3 R. 568.

Annotation:—*Reid.* **Jones v. Withers** (1896), 74 L. T. 572.

1277. Quit rent unpaid over twelve years—& no acknowledgment given—Right barred.]—**HOWITT v. HARRINGTON (EARL)**, No. 1276, *ante*.

SUB-SECT. 4.—BETWEEN VENDOR AND PURCHASER.

Sale of part of copyhold to railway company—Copyholder may not refuse to execute conveyance—On ground that company had not apportioned rents.]—See Vol. XI., p. 274, COMPULSORY PURCHASE OF LAND AND COMPENSATION, No. 2015.

SECT. 5.—SUIT OF COURT.

SUB-SECT. 1.—NATURE OF.

1278. Suit twice yearly—At court leet—Is suit service.]—**TONKIN v. CROKER**, No. 4, *ante*.

1279. Inseparable incident to court leet—Cannot be released.]—**TOTT v. INGRAM** (1606), 1 Brownl. 185; 123 E. R. 744.

SUB-SECT. 2.—BY WHOM DUE.

1280. Attorney of copyholder—May essoin—May not do service.]—If a copyholder be dwelling in a town long distant from the manor, a general warning within the manor is not sufficient, but there ought to be to the person notice of the day when the ct. shall be holden, etc. For his not coming in such case cannot be called a wilful refusal: so if a man be so weak & feeble that he cannot travel without danger, so if he hath a great office, etc. these are good causes of excuse; if a copy-holder makes default at the ct., & be there amerced, although the amercement be not estreated, or levied, yet it is a dispensation of the forfeiture (**COKE**, C.J.).

General warning within the parish is sufficient, for if the tenant himself be not resident upon his copyhold, but elsewhere, his farmer may send to him notice of the ct. **Sir J. B.** by his letter of attorney appointed the son of his farmer his attorney to do the service for him due for his copyhold: such a person so appointed may essoin **Sir J.**, but not do the services for him, for none can do the same but the tenant himself (*per* **CUR.**).—**BRAUNCHES CASE** (1587), 1 Leon. 104; **Moore**, K. B. 219; 74 E. R. 96.

1281. Superior leet—Attendance of reeve & four resiants due—Attendance of inhabitants not due.]—There may be a superior leet belonging to a manor, at which the reeve & four resiants ought to attend, but they cannot compel the attendance of an inhabitant; for a man cannot be of two leets.—**COOK v. STUBBS** (1620), Cro. Jac. 583; 79 E. R. 498.

Annotation:—*Mentd.* **R. v. Mosley** (1835), 3 Ad. & El. 483.

1282. — Attendance of resiants of inferior leet due.]—**EVE v. WRIGHT** (1627), Cro. Car. 75; 79 E. R. 667.

Annotation:—*Reid.* **Tonkin v. Croker** (1703), 2 Ld. Raym. 860.

1283. Custom for discharge from suit of court—Of tenant living remote from court baron—On payment to lord & steward—Good.]—A custom in a manor that a copyholder who lives 10 miles from the ct. baron, shall upon payment to the lord & steward, be discharged from suit in the ct. for the year following such payment is good, *aliter* if the ct. be a customary one.

In bar of an avowry in replevin, pltf. pleaded a custom that certain copyholders should be discharged from suit at ct. baron upon payment to the lord & steward, & he averred that he had tendered payment which had been refused:—*Held*: the averment did not vitiate the plea.—**PORTBURY v. LEGINGHAM** (1668), 1 Sid. 361; 82 E. R. 1157; *sub nom.* **PORPHYRY v. LEGINGHAM**, 2 Keb. 344; *sub nom.* **LEGINGHAM v. PORPHYRY**, 1 Mod. Rep. 77.

Annotation:—*Reid.* **Isaake v. Legingham** (1671), 2 Keb. 847.

1284. — — — — —.]—A custom that tenants of copyhold "living remote" are discharged from suit of ct. on paying to the steward 1d. & to the lord 8d. every year:—*Held*: custom was good.—**ISAAKE v. LEGINGHAM** (1671), 2 Keb. 847; 1 Vent. 167; 84 E. R. 536.

SUB-SECT. 3.—SUMMONS TO ATTEND:

1285. General warning within parish—Sufficient—Although tenant living outside manor.]—BRAUNCHES CASE, No. 1280, *ante*.
See, also, Nos. 1853, 1854, 1858, *post*.

SUB-SECT. 4.—REMEDIES FOR REFUSAL.

A. Forfeiture.

For refusal of suit of court.]—See No. 1039, *ante*; Nos. 1804, 1853, 1854, 1858, *post*.

B. Amercement.

(a) How Assessed.

1286. Jury of twelve required—Jury of seven insufficient.]—In debt for amercement in the ct. leet, for not appearing on affeerment to 40s. to which debt. demurred:—*Held*: the amercement was bad as there were seven jurors only instead of twelve.—CUTLER v. CRESWICK (1674), 3 Keb. 362; 84 E. R. 767.

1287. Custom fixing amercement at definite sum—Without affeerment—Good.]—MORGAN'S CASE (1724), 8 Mod. Rep. 296; 88 E. R. 211.

1288. Must be settled by affeers—Sworn for the purpose.]—A custom in a manor that a freehold tenant of the manor should be amerced 7s. for non-attendance at the ct. of view of fresh pledge, such fine to be levied by distress & sale of the goods & chattels:—*Held*: to be bad. An amercement for default in a manor must be settled by affeers particularly sworn for the purpose; & a custom to amerce without affeerment is bad.—EDWARDS v. HUGHS (1726), Gilb. Ch. 209; 25 E. R. 146.

1289. Custom to amerce without affeerment—Bad.]—EDWARDS v. HUGHS, No. 1288, *ante*.

(b) How Enforced.

1290. By distress—But not on goods of stranger.]—J. de T. was amerced & another man's goods were taken & distrained on the ground of J. de T. for the amercement:—*Held*: the distress was not well taken for a fine & amercement were collateral duties & attended upon, & not charged the soil.—J. de T.'s Case (1367), Y. B. 41 Edw. 3, fo. 26, pl. 23.

1291. — Not on beasts of stranger.]—There is a difference between a distress for services & a distress for amercements, for not doing the services: for the first is by common right maintainable, the second against common right by prescription, & then for such amercements you must distrain the tenant's own beasts, & not the beasts of a stranger as for services you may conceive is, for that

it is for a personal crime. Moreover you may add any thing to a ct. baron by prescription; as to sell goods taken in execution upon a judgment (WALMESLY, J.).—PELL v. TOWERS (1618), Noy, 20; 74 E. R. 991.

Annotation:—Mentd. Ward v. Creswell (1741), Willes, 285.

1292. — If amercements assessed by suitors.]—The lord of a ct. baron can distrain for amercements in his ct. for the non-attendance of his tenants if the amercement is assessed by suitors.

The lord of a ct. leet can distrain for a fine, or can bring an action of debt.—ANON. (1504), Keil. 66; 72 E. R. 226.

Annotation:—Mentd. R. v. Huggins (1730), 2 Stra. 883.

1293. — By custom.]—There was a custom that the lord of a manor should have an annuity once a year from all inhabitants in the manor. An inhabitant was warned to appear at the next ct., when he made default & was amerced 10s.:—

Held: the custom was good, & the lord could distrain for the amercement.—ANON. (1566), Benl. 42; 73 E. R. 961.

1294. — By prescription.]—PELL v. TOWERS, No. 1291, *ante*.

C. Other Remedies.

1295. Mandamus—To burgesses—To make jury—Granted.]—WIGAN'S (RECTOR) CASE (1744), 2 Stra. 1207; 93 E. R. 1131; *sub nom.* R. v. WIGAN CORPN., 1 Wils. 76.

Annotation:—Distd. R. v. Ilchester Corpn. (1823), 2 Dow. & Ry. K. B. 724.

1296. Not by bill for specific performance.]—THORNHAGH v. HARTSHORN (1727), Bunb. 237; 145 E. R. 659.

See, also, Sect. 8, *post*.

SUB-SECT. 5.—STATUTES OF LIMITATION.

1297. Whether within Statute of Limitations (32 Hen. 8, c. 2)—In avowry for suit of court.]—Replevin, & avows upon tenure by fealty, rent, & suit of ct. Pltf. confesses the tenure, but pleads that the avowant nor none of his ancestors were seised of the services, or any of them within 50 years. The debt. demurred:—*Held*: fealty, homage, & such casual services, which peradventure may not happen in 50 years, are not within the above statute.—BENNET v. KING (1681), 3 Lev. 21; 83 E. R. 556.

SECT. 6.—FEALTY.

SUB-SECT. 1.—REMEDY FOR.

1298. Distress by lord—For neglect of fealty—Not valid after death of tenant—Unless fealty demanded in lifetime of tenant.]—The lord avows the distress for fealty due from D.; the tenant said that D. was dead at the day of the taking the distress:—*Held*: the plea was good. *Semble*: lord may distrain for fealty in lifetime but not after death of tenant. Lord may not distrain unless fealty demanded in lifetime of tenant.—CRAWLEY v. KINGSMILL (1618), Noy, 24; Hut. 13; 74 E. R. 995; *sub nom.* KINGSWELL v. CRAWLEY, Moore, K. B. 883.

Annotation:—Mentd. Machell v. Clarke (1702), 2 Ld. Raym. 778.

See, also, Sect. 8, *post*.

SUB-SECT. 2.—STATUTES OF LIMITATION.

1299. Whether within Statute of Limitations (32 Hen. 8, c. 2)—In advowry for v. KING, No. 1297, *ante*.

See, generally, LIMITATION OF ACTIONS.

SECT. 7.—CERTUM LAETAE.

SUB-SECT. 1.—IN GENERAL.

1300. Headmoney paid in certum laetae—To sheriff's tourn—Tenants not subject to lord's leet.]—T., within his manor of F. claimed a leet, a common pasture, etc., & strays, all by prescription, & did not say *tanquam ad manerium praedictum pertinentes*, as it ought to be, for a man cannot have strays in gross by prescription, because they lie in grant, & will not originally pass without charter; & therefore where they are in gross, are to be claimed in a *que* estate, & made title unto by mesne conveyances; but it is otherwise of things that lie in grant, & will pass without deed. T. had not

Sect. 7.—*Certum laetae*: Sub-sects. 1 & 2. Sect. 8. Part XII. Sects. 1, 2 & 3.]

used his leet a great while, nor were there officers or other things for the execution of justice; but it appeared by ancient rolls, that there had been a leet there; his tenants went, to the sheriff's tourn, & paid head-silver there. It was argued that head-silver is *certum laetae*, & that no man should be subject to two leets:—*Held*: T. could not have his leet & strays, but upon enquiring of the common, that he had used it, it was allowed.—*TOTTERSALL'S CASE* (1632), W. Jo. 283; 82 E. R. 149.

1301. Paid to lord—In consideration of charge in obtaining court leet.]—A bill was preferred by lord of a manor against tenants for *certum laetae*. The equity of the bill was to prevent multiplicity of suits & it was allowed.

Certum laetae is paid to the lord in consideration of the charge in obtaining the ct. leet, which saves the attendance of the resiants from the turn, etc.—*CHAFFIN v. GAWDEN* (1693), Freem. Ch. 191; 2 Vern. 278; 22 E. R. 1154.

1302. Lord may have certain sum for—Of all resiants within leet.]—*BULLEN'S CASE* (1610), 8 Co. Rep. 77 b; 77 E. R. 372; *sub nom.* *GODFREY v. BULLEIN*, 1 Brownl. 189; Yelv. 186.

SUB-SECT. 2.—REMEDY FOR.

1303. Bill by lord against tenants—To avoid multiplicity of action—Allowed.]—*CHAFFIN v. GAWDEN*, No. 1301, *ante*.

1304. Not by distraint.]—(1) A ct. leet is a ct. of record.

(2) The lord cannot distrain for the certainty of leet, because it is against common right.—*GODFREY'S CASE* (1614), 11 Co. Rep. 42 a; 77 E. R. 1199; *sub nom.* *BULLEN v. GODFREY*, 1 Roll. Rep. 32, 73.

Annotations:—*Reid*. *Hungerford v. Haveland* (1626), Benl. 180. *Mentd.* *Grips v. Ingleden* (1702), 7 Mod. Rep. 87; *Smith v. Gibson* (1735), Lee temp. Hard. 271; *Moir v. Munday* (1755), Say. 181; *Herries v. Jamieson* (1794), 5 Term Rep. 553; *Davidson v. Moscrop* (1801), 2 East, 56; *Morgan v. Brown* (1836), 4 Ad. & El. 515; *Kemp v. Neville* (1861), 10 C. B. N. S. 523.

See, also, Sect. 8, *post*.

SECT. 8.—REMEDIES IN GENERAL FOR REFUSAL OF SERVICES.

1305. Lord may distrain—For services.]—The lord may distrain the copyholder for the services, or he may seize the copyholder's land.—*RIVER v. DOWE* (1610), Noy, 135; 74 E. R. 1099.

Forfeiture—For refusal of fine.]—*See* Part XIX., Sect. 1, sub-sect. 2, B. (d).

— **For refusal of rent.]—***See* Part XIX., Sect. 1, sub-sect. 2, B. (e).

— **For refusal of suit of court.]—***See* Part XIX., Sect. 1, sub-sect. 2, B. (f), ii; No. 1039, *ante*; Nos. 1804, 1853, 1854, 1858, *post*.

— **For refusal of other services.]—***See* Part XIX., Sect. 1, sub-sect. 2, B. (f), iii, *post*.

Distress—For heriot service.]—*See* Part XI., Sect. 2, sub-sect. 2, B.

— **For heriot custom.]—***See* Part XI., Sect. 2, sub-sect. 3, B.

For reliefs.]—*See* Part XI., Sect. 3, sub-sect. 2.

For quit rents.]—*See* Part XI., Sect. 4, sub-sect. 2.

— **For fealty.]—***See* Part XI., Sect. 6, sub-sect. 1.

Action to recover—For fine.]—*See* Part XI., Sect. 1, sub-sect. 9, B.

— **For reliefs.]—***See* Nos. 1259, 1260, *ante*.

Amercement—For refusal of suit of court.]—*See* Part XI., Sect. 5, sub-sect. 4, B.

Seizure—Of heriot.]—*See* Part XI., Sect. 2, sub-sect. 2, B. & 3, B.

Remedies in equity—In regard to heriot.]—*See* No. 1226, *ante*.

In regard to rent.]—*See* Nos. 1271, 1272, *ante*.

In regard to relief.]—*See* Nos. 1226, 1256, *ante*.

— **In regard to suit of court.]—***See* Part XI., Sect. 5, sub-sect. 4, C.

— **In regard to certum laetae.]—***See* Part XI., Sect. 7, sub-sect. 2.

Part XII.—Descent of Copyholds.

SECT. 1.—IN GENERAL.

1306. General rule.]—There is no common law right of descent in copyhold land.—*HUTCHINSON v. JACKSON* (1686), 2 Lut. 1324; 125 E. R. 732.

1307. Meaning of "heir"—Lease of copyholds determinable by "heir"—Customary heir.]—A. being seised of copyholds descendable to the youngest son & of other common law lands, leased both to B. for years, on condition that the lease might be determined by notice given by A. or his heirs. After A.'s death, the eldest son granted his reversion in the common law lands to the youngest son, who gave notice:—*Held*: the lease was determined as to the copyholds, but not as to the other, for his youngest son was heir only as to the copyholds.—*ANON.* (1578), Godb. 2; 78 E. R. 2.

1308. — Youngest son taking borough English lands—Not heir at law—Within Statute of Distributions, 1670 (c. 10).]—Where a man seised of a copyhold estate of the nature & tenure of borough English lands surrendered the same to use of himself for life, remainder to his wife for life remainder to his own right heirs & died leaving

several sons & daughters:—*Held*: the youngest son was not the heir at law within Stat. Distributions, 1670 (c. 10), & the lands need not be brought into hotchpot within the statute.—*PRATT v. PRATT* (1732), Kel. W. 35; 2 Stra. 935; Fitz-G. 284; 25 E. R. 483; *reversd.* (1735), Cas. temp. Talb. 280, L. C. *Annotations*:—*Reid*. *Lutwich v. Lutwich* (1735), 2 Eq. Cas. Abr. 448, pl. 12. *Mentd.* *Re Roby*, *Howlett v. Newington*, [1908] 1 Ch. 71.

1309. Disinheritance of heir—Only by express words—Or necessary implication.]—An heir is not to be disinherited unless by express words or a necessary implication; & the rule holds equally where he is an heir of customary lands.—*GASCOIGNE v. BARKER* (1743), 3 Atk. 8; 26 E. R. 808, L. C. *Annotations*:—*Consd.* *Banks v. Denshaw* (1747), 3 Atk. 585; *Blunt v. Clitherow* (1805), 10 Ves. 589. *Reid*. *Wilson v. Mount* (1796), 3 Ves. 191. *Mentd.* *Roe d. Conolly v. Vernon* (1804), 5 East, 51; *Dean v. Gibson* (1867), 15 W. R. 809; *Cowen v. Truefitt* (1899), 68 L. J. Ch. 563.

1310. Breaking descent—Surrender to one & his heirs—In trust for another & his heirs.]—A surrender to one & his heirs, in trust for another & his heirs, breaks the custom; if a copyholder in borough English surrenders in trust for himself &

his heirs, the trust goes to the heirs-at-law; therefore the trust in the hands of the heirs is assets (LORD COWPER, O.).—*HELLEY v. HELLEY* (1708), 2 Eq. Cas. Abr. 509, pl. 4; 22 E. R. 431, L. C.

1311. — Tenant by descent ex parte materna—Recovery & declaration of uses to himself in fee—Descent not broken.]—*ROE d. CROW v. BALDWERE* (1793), 5 Term Rep. 104; 101 E. R. 59.

Annotation:—*Reid. Burgess v. Wheate* (1759), 1 Eden, 177.

1312. — Surrender to himself for life, remainder to appointee—Subsequent surrender to mortgagee in fee & re-surrender to mortgagor—Descent broken.]—*DOE d. HARMAN v. MORGAN* (1797), 7 Term Rep. 103; 101 E. R. 878.

1313. — Surrender of customary freeholds under special custom to enable tenant to devise—Descent not broken.]—*NANSON v. BARNES* (1869), L. R. 7 Eq. 250; 20 L. T. 154; 17 W. R. 429.

1314. Equitable estate—Devolves on personal representatives.]—*Re SOMERVILLE & TURNER'S CONTRACT*, No. 569, ante.

SECT. 2.—FROM WHOM TRACED.

1315. Tenant in possession—Though unadmitted heir.]—A man seised in fee simple of copyhold & customary land had issue two daughters by different *ventres* & died seised thereof; the daughters entered, & took the profits of it for several years without any admittance, or taking of it in the ct. of the lord. The eldest daughter died without issue; & afterwards the youngest is admitted to the whole as sole heir to the father:—*Held*: the eldest daughter's possession was sufficient to entitle her collateral heir; so possession by guardian to whom custody is committed during minority, if the infant die before admittance, will entitle his heir.—*ANON.* (1570), 3 Dyer, 291 b; Cary, 5; 73 E. R. 655.

Annotation:—*Reid. Doe d. Hamilton v. Clift* (1840), 12 Ad. & El. 566.

1316. —.]—Where the custom of a manor is that the customary tenements are held to the tenants & their heirs, & that, when a tenant dies seised, leaving sisters only, the eldest sister should take in exclusion of the other sisters, & that the heir of an eldest sister, who should die in the lifetime of such tenant, should take in exclusion of the younger sisters surviving the tenant, there, if the heir of a tenant, who has been admitted & has died seised, take possession, but die without having been admitted, he nevertheless dies seised, so as to let in the custom. Such heir, although he has taken possession, does not die seised, unless he has been admitted, where the customary tenement is held, not to the tenant & his heirs, but during the joint lives of the tenant & the lord, with a tenant-right of renewal, binding the lord to admit the customary heir of a tenant.—*DOE d. HAMILTON v. CLIFT* (1840), 12 Ad. & El. 566; 4 Per. & Dav. 579; 113 E. R. 927.

Annotations:—*Consd. Doe d. Dand v. Thompson* (1849), 13 Q. B. 670. *Reid. Smith v. Adams* (1854), 5 De G. M. & G. 712; *Mallinson v. Siddle* (1870), 39 L. J. Ch. 426.

1317. — Equitable tenant in tail.]—Devise of a copyhold to trustees & the survivor of them, & the exors. & administrators of such survivor for ever, upon trust, out of the rents & profits, to pay certain yearly charges, & the residue to T., for life; & from & after his decease, to pay the residue to T.'s children, & so on for ever; & for want of children lawfully begotten, to the testrix.'s daughters:—*Held*: T. took an equitable estate tail under this devise.

T. received the rents during his life, but having

an equitable estate only, was not admitted tenant of the copyhold, & died, leaving several sons. The custom proved, with respect to the descent of copyholds within the manor, was that upon the death intestate of a tenant seised of an estate of inheritance, his younger son was his customary heir:—*Held*: the youngest son of T., & not the eldest, became entitled, on his father's death, to call for a conveyance of the copyhold, as tenant in tail under the devise.—*TRASH v. WOOD* (1839), 4 My. & Cr. 324; 9 L. J. Ch. 105; 4 Jur. 669; 41 E. R. 126, L. C.

Annotations:—*Consd. Mallinson v. Siddle* (1870), 39 L. J. Ch. 426. *Apld. Re Hudson, Cassels v. Hudson*, [1908] 1 Ch. 655.

1318. — Not heir admitted to reversion on lease.]—A. is seised in right of his wife of certain customary lands in fee, & he & his wife by licence of the lord make a lease for years by indenture, rendering rent, have issue two daughters, & the husband dies. The wife takes another husband, they have issue a son & daughter. The husband & wife die, the son is admitted to the reversion, & dies without issue.

Held: the reversion shall descend to all the daughters, notwithstanding the half blood.—*ANON.* (1575), 4 Leon. 38; 74 E. R. 713.

1319. — Not heir admitted to remainder expectant on widow's freebench.]—Where the wife is endowed of a moiety of copyhold lands descendible in the nature of gavelkind, & two sons by different *ventres* are admitted to the reversion of that moiety, & the son by the second *ventre* dies; the admittance shall not cause a *possessio fratris* in him, so as to make his sister take.—*FOX v. SMITH* (1672), 1 Freem. K. B. 45; 89 E. R. 36.

See, generally, DESCENT & DISTRIBUTION.

1320. Devisee in remainder in fee—Though unadmitted.]—A copyhold is devised by A. to B. for life, remainder to C. in fee. B. is admitted & dies. C. has, before entry, a descendible estate; & upon the death of C. his customary heir, & not the customary heir of A., is entitled to the copyhold.—*DOE d. PARKER v. THOMAS* (1842), 3 Man. & G. 815; 4 Scott, M. R. 449; 11 L. J. C. P. 124; 133 E. R. 1367.

SECT. 3.—WHETHER HEIR AT COMMON LAW OR CUSTOMARY HEIR TAKES.

1321. Surrenderee dying before admittance—Heir at common law takes.]—*BARKER v. DENHAM* (1648), Sty. 145; 82 E. R. 598; *sub nom. BAKER v. DENHAM*, Co. Litt. 59 a.

Annotations:—*Consd. Doe d. Toffield v. Toffield* (1809), 11 East, 246. *Reid. Re Hudson, Cassels v. Hudson*, [1908] 1 Ch. 655.

1322. —.]—*HALE v. —* (1660), cited in 1 P. Wms. 66; 24 E. R. 298; *sub nom. PAIN v. HERBERT*, O. Bridg. 18, n.; *sub nom. FANE v. BARR*, cited in 1 Salk. 243.

Annotations:—*Consd. Clement v. Scudamore* (1704), 6 Mod. Rep. 120. *Distd. Trash v. Wood* (1839), 4 My. & Cr. 324. *Fold. Rider v. Wood* (1855), 3 Eq. Rep. 1064. *Distd. Re Hudson, Cassels v. Hudson*, [1908] 1 Ch. 655. *Reid. Doe d. Hamilton v. Clift* (1840), 12 Ad. & El. 566.

1323. —.]—*PAYNE v. BARKER* (1662), O. Bridg. 18; 124 E. R. 445.

Annotations:—*Consd. Rider v. Wood* (1855), 1 K. & J. 644. *Fold. Mallinson v. Siddle* (1870), 39 L. J. Ch. 426. *Reid. Symonds v. Cudmore* (1691), 12 Mod. Rep. 32; *Re Hudson, Cassels v. Hudson*, [1908] 1 Ch. 655. *Mentd. Woodward v. Fox* (1691), 2 Vent. 187.

1324. —.]—*CLEMENTS v. SCUDAMORE*, No. 1338, post.

Surrenderee dying—Before admittance of surrenderee.]—*See* No. 1624, post.

1325. Customary tenant dying before admittance

Sect. 3.—Whether heir at common law or customary heir takes. Sect. 4.]

—Heir at common law takes.]—RIDER v. WOOD, No. 1341, *post*.

1326. — Customary freeholds.]—A mere right to be admitted tenant to customary freehold lands is not sufficient to support the descent according to the custom.—MALLINSON v. SIDDLE (1870), 18 W. R. 569.

1327. Settlements of copyholds & freeholds—Copyholds settled to same uses as freeholds—Customary heir takes copyholds.]—Settlement before marriage on the husband & wife for life (of a freehold), remainder to the heirs of the husband (on the body of his wife begotten) & of copyhold in borough English on the husband & wife for life, remainder to the heirs of their two bodies, in like manner, & to the same uses as the freehold:—*Held*: the younger son shall succeed as heir in tail to the copyhold.—ROE d. AISTROP v. AISTROP (1778), 2 Wm. Bl. 1228; 96 E. R. 723.

1328. — Limitation creating estate tail—Customary heir takes copyholds—Though limitation refers to eldest son.]—Testator being seised in fee of freehold land, & of copyhold according to the custom of the manor (the freehold & copyhold being intermixed), devised as follows: As to my worldly estate, I dispose thereof as follows: I give to my nephew T. all my lands, to have & to hold during his life, & to his son, if he has one, if not, to the eldest son of my nephew T. & to his son after him, if he has one, if not to the regular male heir of the G. family. By a codicil stating that his nephew T. then had a son born, he gave to that son, after his father's decease, all his freehold & copyhold lands; & to his eldest son, if he had one; but if he had no son, then to the next eldest regular male heir of the G. family. By the custom of the manor, copyhold lands, parcel thereof, of which any tenant died seised in fee, passed by descent to the youngest son:—*Held*: by the will & codicil the son of T. G. took an estate tail, & consequently, upon his death the copyhold lands descended to the youngest son.—DOE d. GARROD v. GARROD (1831), 2 B. & Ad. 87; 9 L. J. O. S. K. B. 149; 109 E. R. 1076.

*Annotation:—*Refd. Doe d. Burrin v. Charlton (1840), 1 Man. & G. 429.

1329. Settlement of copyholds—To right heirs of settlor—Customary heir takes.]—M. being seised to him, his heirs & assigns, according to the custom of the manor of T. D., of certain messuages within that manor, surrendered the same to trustees, in pursuance of articles of agreement made in contemplation of marriage, on trust, to permit him, his heirs & assigns, to enjoy the premises until the marriage, & from the solemnisation thereof on trust for himself for life, & after his decease on trust for the intended wife for life, for her support & in bar of dower, & after the death of the survivor of the husband & wife, on trust to surrender the premises into the hands of the lord of the manor, to the use of the child or children of the marriage, their heirs & assigns, such surrenders to be made at the costs of the children, who should be entitled to take the same, & in default of issue of the marriage living at the death of the survivor of the husband & wife, then on this special trust, to surrender the premises into the hands of the lord of the manor, to the use of the right heirs of the settlor for ever, according to the custom of the manor; such surrender or surrenders last-mentioned to be made at the costs & charges in all things of the person or persons who by virtue of the last-mentioned condition or limitation should

be entitled to take the same. The only issue of the marriage was a daughter, who survived the settlor, but died in the lifetime of her mother. On the daughter's attaining 21, the premises were surrendered to the lord of the manor, to her use, & she by her will devised them to the sons of her mother by a second husband, & at the same time surrendered them to the use of her will; her mother surviving her continued in possession of the premises till her own death:—*Held*: by virtue of the ultimate limitation in the articles she was entitled to the customary estates from the death of the widow.—BUSH v. LOCKE (1834), 3 Cl. & Fin. 721; 9 Bli. N. S. 1; 6 E. R. 1607, H. L.; *affg.* S. C. *sub nom.* LOCKE v. SOUTHWOOD, 1 My. & Cr. 411.

*Annotation:—*Refd. Locke v. Colman (1836), 1 My. & Cr. 423.

1330. — Failure of limitation—Customary heir takes.]—A. devised certain copyhold lands to his widow, M. for life, remainder to his nephew, J. & his wife, S. for their lives, remainder to S. E. (the daughter of J. & S.) for life, & after the death of M., J. & S. & of S. E., to revert to my next male heirs for ever:—*Held*: these words meant heirs male of the body & as testator died without issue, the reversion, on the determination of the life estates, descended to the customary heir.—DOE d. EUSTACE v. EASLEY (1835), 1 Cr. M. & R. 823; 1 Gale, 36; 5 Tyr. 450; 4 L. J. Ex. 87; 149 E. R. 1313.

1331. Equitable estate—Estate tail—Customary heir takes.]—TRASH v. WOOD, No. 1317, *ante*.

1332. — In executed resulting trust—Customary heir takes—Apart from special custom.]—An equitable interest in copyholds arising under a resulting trust which is executed & which has none of the characteristics of an executory trust descends as the legal estate descends, provided the custom of descent is not confined to a tenant on the rolls or a tenant dying seised, & therefore will go to the customary & not to the common law heir.—RE HUDSON, CASSELS v. HUDSON, [1908] 1 Ch. 655; 77 L. J. Ch. 305; 98 L. T. 567; 24 T. L. R. 333.

On failure of customary heirs.]—See Sub-sect. 3, *post*.

SECT. 4.—WHO IS CUSTOMARY HEIR.

1333. Custom in favour of eldest son—For first descent after surrender—Descent restricted to single step in scale of genealogy.]—(1) Where the custom of a manor was stated in a presentment of the homage to be that copyholds for the first descent after a surrender descend to the eldest son, & if no surrender, to the youngest son:—*Held*: the word "descent" was not used in its strict legal sense, but meant a single step in the scale of genealogy.

(2) Where, therefore, the last surrender had been made to B., who devised to J., his heir according to the custom of the manor, & J. died intestate, leaving two sons:—*Held*: the youngest son of J. was entitled to succeed him.—BICKLEY v. BICKLEY (1867), L. R. 4 Eq. 216; 36 L. J. Ch. 817.

1334. Custom in favour of elder sister—Not construed in favour of elder niece—Or aunt.]—In an ejectment action:—*Held*: if the custom had been that the eldest sister only should inherit, yet by that custom the eldest aunt or the eldest niece should not inherit the land, for customs must be taken strictly.—RATCLIFFE & CHAPLIN'S CASE (1611), 4 Leon. 242; 74 E. R. 847; *sub nom.* RAPLEY & CHAPLEIN'S CASE, Godb. 166.

*Annotations:—*Consd. Denn v. Spray (1786), 1 Term Rep. 466; Muggleton v. Barnett (1857), 2 H. & N. 653. *Refd.* Roe d. Beebee v. Parker (1792), 5 Term Rep. 26.

1835. — — —.]—A custom within a manor, that lands shall descend to the elder sister, where there is neither a son nor a daughter, does not extend to an eldest niece; but the lands must descend according to the rules of the common law, in default of such a son, daughter, & sister.—DENN v. SPRAY (1786), 1 Term Rep. 466; 99 E. R. 1201.

*Annotations:—*Consd. Locke v. Colman (1836), 1 My. & Cr. 423; Muggleton v. Barnett (1857), 2 H. & N. 653. *Refd.* Roe d. Beebe v. Parker (1792), 5 Term Rep. 26; Rider v. Wood (1855), 1 K. & J. 644. *Mentd.* Johnstone v. Spencer (1885), 30 Ch. D. 581.

1836. Custom in favour of elder daughter—To take life estate—Extends to younger daughter—Where elder daughter dies before estate vests.]—NEWTON v. SHAFTO, No. 1342, *post*.

1837. Custom in favour of youngest son—Death of youngest son in life time of life tenant—Youngest surviving son does not take.]—A copyhold & a freehold borough English are alike; both shall descend, by custom, to the youngest son; & if a copyhold be surrendered to use for life, & the youngest son die before that estate determine, it shall not by the custom descend to his next youngest brother, for the custom only extends to youngest sons.—REVE v. MALSTER & BARROW (1635), Cro. Car. 410; 79 E. R. 957; *sub nom.* REEVE v. MALSTER, W. Jo. 361.

*Annotations:—*Consd. Payne v. Barker (1662), O. Bridg. 18. *Distd.* Foxe v. Smith (1672), Freem. K. B. 45; Clements v. Scudamore (1704), 1 P. Wms. 63. *Consd.* Muggleton v. Barnett (1857), 2 H. & N. 653. *Refd.* Newton v. Shafto (1667), 2 Keb. 111; Kellow v. Rowden (1690), 1 Show. 244; *Mentd.* Doe d. Norfolk v. Sanders (1783), 3 Doug. K. B. 303.

1838. — — — Leaving daughter—Daughter takes.]—One seised of a copyhold in fee in nature of borough English has five sons, the youngest of whom dies in the life of the father, leaving issue a daughter, & then the father dies; the youngest son's daughter is inheritable.

The custom is, that the copyhold lands of any tenant dying seised shall descend to his youngest son, & a surrender is made of a copyhold to the use of J. & his heirs, who dies before admittance:—

Held: his eldest son, & not his youngest son, shall take these lands; *secus* if the land had been laid to have been of the nature of borough English.—CLEMENTS v. SCUDAMORE (1704), 1 P. Wms. 63; Holt, K. B. 124; 6 Mod. Rep. 120; 2 Ld. Raym. 1024; 1 Salk. 243; 24 E. R. 295.

*Annotations:—*Consd. Locke v. Colman (1836), 1 My. & Cr. 423; Rider v. Wood (1855), 1 K. & J. 644. *Apld.* Hook v. Hook (1862), 1 Hem. & M. 43. *Distd.* Re Smart, Smart v. Smart (1881), 18 Ch. D. 165. *Refd.* Trash v. Wood (1839), 4 My. & Cr. 324; Doe d. Hamilton v. Clift (1840), 12 Ad. & El. 566; Re Hudson, Cassels v. Hudson, [1908] 1 Ch. 655. *Mentd.* Doe d. Norfolk v. Sanders (1783), 3 Doug. K. B. 303.

1839. — — — Or in default of issue to youngest brother—Does not extend to youngest son of youngest great uncle.]—MUGGLETON v. BARNETT, No. 271, *ante*.

1840. — — — Or daughter, brother, sister, uncle or aunt—Does not extend to first cousins.]—The custom of a manor was stated to be that all copyholds descended to the youngest son or daughter, brother or sister, uncle or aunt. A tenant died intestate seised of customary lands of the manor, leaving neither son, daughter, brother, sister, uncle, nor aunt; but leaving sons of deceased uncles:—*Held:* the youngest son of the youngest uncle was not entitled, & the heir-at-law was entitled to the lands.—*Re* SMART, SMART v. SMART (1881), 18 Ch. D. 165; 30 W. R. 43.

1841. Custom in favour of youngest sister—Extends to sister born after death of elder sister—Whose shares claimed.]—Testator devised copyhold hereditaments held of the manor of M. to G.

for life, with remainder to his eldest or only son & his customary heirs for ever; provided that if G. should leave no son or issue of a son living or *en ventre sa mere* at his death, then testator devised the same estate to the daughters or only daughter of G. as tenants in common, & their customary heirs for ever; provided also, that if G. should have neither son nor daughter living or *en ventre sa mere*, at his death, then over. On the death of testator, G. was admitted as tenant for life. G. had seven children, one son & six daughters, one of the daughters died in childhood, & the son died shortly afterwards in childhood, & before the births of the four daughters; one of the four younger daughters also died in childhood. On the death of G. his four surviving daughters were admitted each to an undivided fourth share in fee. By the custom of the manor of M. the descent was to the youngest son or youngest daughter; & for default of issue of such customary tenant, to the youngest brother or youngest sister, & in default of such brother or sister, to the youngest kinsman or kinswoman of the whole blood of the customary tenant in possession how far soever remote:—*Held:* (1) the devise was to all the daughters of G., & not merely to such as should be living at the death of the tenant for life, & they took descendible interests; (2) the youngest daughter of G. was entitled as heir by the custom to the shares of her deceased sisters, although born after their deaths, the inheritance shifting in accordance with the rule at law as often as a nearer heir was born.

If the custom is alleged to be according to the tenure of borough English, the ct. will take notice of all the incidents of the custom of borough English; but if the incidents of the custom only are alleged, the ct. will not go beyond the allegations. A particular custom as to the descent from a customary tenant will not apply where the tenant dies before admission, but the descent must be according to the common law.—RIDER v. WOOD (1855), 1 K. & J. 644; 3 Eq. Rep. 1064; 24 L. J. Ch. 737; 69 E. R. 618.

Proof of custom of descent.]—See Nos. 245, 257, 275, 1335, *ante*.

1342. Particular custom—For heirs male to take—After life estate to elder daughter—Good.]—A custom of a manor that if the father died leaving no son but two or more daughters, the elder daughter should have an estate for life only, & after her death it should descend to the next heir male who derived through males, & in default of such it should escheat:—*Held:* good.

Where the custom was that if the tenant left a wife & two daughters but no son, the wife had an estate first for life, then the elder daughter as above & in such a case the wife entered & during her lifetime the elder daughter died & there was no heir male deriving through males whereupon the second daughter entered:—*Held:* her entry was in accordance with the custom.—NEWTON v. SHAFTO (1667), 1 Lev. 172; 2 Keb. 111, 114, 158, 174; 1 Sid. 267; 83 E. R. 354.

*Annotations:—*Folld. Simpson v. Quiney (1670), 1 Lev. 293. *Refd.* Doe d. Hamilton v. Clift (1840), 12 Ad. & El. 566. *Mentd.* Pain v. Partridge (1691), Comb. 180.

1343. — — — Newcastle-on-Tyne—Good.]—The custom of Newcastle-on-Tyne, that the land shall descend to the elder daughter only for her life:—*Held:* good.—SIMPSON v. QUINEY (1670), 1 Lev. 293; 83 E. R. 414; *sub nom.* SYMSON v. QUINSEY, 2 Keb. 672; *sub nom.* Vent. 88.

1344. — — — Custom of deceased brother—Preferred to surviving sister—Manor of Taunton

Sect. 4.—Who is customary heir. Sect. 5: Sub-sects.

Deane.]—LOCKE v. COLMAN (1837), 2 My. & Cr. 635; 40 E. R. 782, L. C.

Annotations:—*Refd.* Muggleton v. Barnett (1857), 2 H. & N. 653. *Mentd.* O'Connor v. Malone (1839), 6 Cl. & Fin. 572; Wilson v. Beddard (1841), 12 Sim. 28; Waters v. Waters (1848), 2 De G. & Sm. 591; M'Gregor v. Topham (1850), 3 H. L. Cas. 132.

SECT. 5.—RIGHTS OF HEIR.

SUB-SECT. 1.—TO ADMITTANCE.

1345. Heir has absolute right—Enforceable by mandamus—On prima facie legal title—Though refused in equity for lack of equitable title.]—R. v. COGGAN, No. 1696, *post*.

1346. — Though estate devised—Where devisee makes no claim—Though motive to avoid fine.]—(1) The lord of a manor is bound to admit the customary heir of a copyholder in fee, although there be a surrender to the use of a will & a devise by the surrenderor, there being no claim of admittance on the part of the devisee. So, although it appear upon the return to a mandamus that the non-claim of admittance on the part of the devisee is the result of a contrivance between him & the customary heir to deprive the lord of the fine which would be payable upon the admittance of the devisee.

(2) In the case of a devise of copyhold surrendered to the use of the will, the estate descends upon the heir, subject to contingency of being divested by the admittance of the devisee. No disclaimer by the devisee is therefore necessary to vest the estate in the heir.

(3) A copyhold may be disclaimed by parol, or by other matter *in pais*.

(4) By the common law the estate is in the surrenderor & his heirs until the surrenderee comes in to be admitted.

(5) The lord has a right to have a person in whom the legal estate is, admitted on the roll, & that person has a right to be admitted.

(6) The heir may bring trespass. Except as against the lord, the heir would have the whole estate in him.

(7) The admittance is for the benefit of the lord. —**R. v. WILSON** (1829), 10 B. & C. 80; 5 Man. & Ry. K. B. 140; 2 Man. & Ry. M. C. 617; 8 L. J. O. S. K. B. 101; 109 E. R. 381.

Annotations:—*As to* (1) *Distd.* R. v. Garland (1870), L. R. 5 Q. B. 269. *Refd.* R. v. Ham (1839), 8 L. J. Q. B. 265. *As to* (2) *Refd.* Dimes v. Grand Junction Canal Co. (1846), 16 L. J. Q. B. 107; Bickley v. Bickley (1867), L. R. 4 Eq. 216. *Generally, Mentd.* R. v. Thruscross (1834), 1 Ad. & El. 126; Passingham v. Pitty (1855), 17 C. B. 299; Langford v. Selmes (1857), 3 K. & J. 220; Delacherols v. Delacherols (1864), 4 New Rep. 501; *Re* Holliday (1922), 127 L. T. 585.

See, also, No. 1494, *post*.

1347. — Lord not showing any adverse title.]—A tenant in fee of copyhold lands died, having made a will, dated Aug. 14, 1837. Proclamation was made for the heir or other person entitled to come & be admitted, & the land was seized *quousque*, for want of a tenant appearing. Subsequently, a party claiming to be heir applied for a mandamus to compel the lord to admit him; to which objection was made, that he had not established that he was heir, & that there was a devisee under the will of the last tenant. It was arranged that an ejectment should be brought, & that all technical objections should be waived. At the trial, the will appeared to contain a devise of testator's lands to the London Annuity Society,

of which I formerly was a member; & the claimant established that he was heir. A verdict was entered for the plff.:—*Held*: the lessor was entitled to retain the verdict, & a mandamus was issued to compel the lord to admit the claimant, as the lord had failed to show any adverse title.—**DOE d. LE KEUX v. HARRISON** (1844), 6 Q. B. 631; 14 L. J. Q. B. 77; 4 L. T. O. S. 156; 115 E. R. 237; *sub nom.* R. v. HARRISON, **DOE d. LE KEUX v. HARRISON**, 9 Jur. 104.

Annotations:—*Distd.* Smith v. Glasscock (1858), 4 C. B. N. S. 357. *Refd.* Walters v. Webb (1869), L. R. 9 Eq. 83.

1348. Heir has no absolute right—Estate devised to trustees—Heir an infant—Mandamus refused.]—**R. v. GARLAND**, No. 1499, *post*.

Heir of trustee.]—See No. 989, *ante*.

1349. How enforced—Mandamus to steward to answer affidavit refused—Relief in equity only.]—Motion was made, that deft., who was steward of a ct.-baron, might answer the matters of an affidavit, for refusing to admit an heir-at-law to copyhold lands, which descended to him. The affidavit went further, that a trial was had for these lands against the heir, & that he could not make any defence for want of his admission; & therefore he moved for a new trial:—*Held*: (1) the only relief was in equity; (2) if the heir had proved himself in by descent, it would have been enough of itself, & therein he differed from a purchaser. Motion refused.—**JACKSON & HALL** (1728), 1 Barn. K. B. 78; 94 E. R. 54.

1350. — Mandamus refused.]—R. v. RENNETT (1788), 2 Term Rep. 197; 100 E. R. 107.

Annotations:—*Distd.* R. v. Brewers' Co. (1824), 4 Dow. & Ry. K. B. 492. *Consd.* R. v. Bonsall (1824), 3 B. & C. 173; King v. Turner (1833), 1 My. & K. 456. *Expld.* R. v. Pitt (1839), 10 Ad. & El. 272. *Refd.* Doe d. Hamilton v. Clift (1840), 12 Ad. & El. 566; R. v. Dendy (1852), Bail Ct. Cas. 111.

1351. — Heirs title insufficiently proved.]—**R. v. GONVILLE & CAIUS COLLEGE, CAMBRIDGE (MASTER & FELLOWS)** (1845), 4 L. T. O. S. 320, 340; 9 J. P. Jo. 67; 9 Jur. 411.

1352. — Mandamus granted.]—R. v. BREWERS' CO. (MASTERS, ETC.) (1824), 3 B. & C. 172; 4 Dow. & Ry. K. B. 492; 2 Dow. & Ry. M. C. 307; 107 E. R. 698.

Annotations:—*Consd.* King v. Turner (1833), 1 My. & K. 456; Doe d. Hamilton v. Clift (1840), 12 Ad. & El. 566. *Refd.* R. v. Ham (1839), 8 L. J. Q. B. 265; R. v. Bonsall (1824), 3 B. & C. 173; R. v. Wilson (1829), 10 B. & C. 80; *Ex p.* Phillips (1836), 1 Har. & W. 660; Doe d. Le Keux v. Harrison (1844), 6 Q. B. 631; R. v. Dendy (1852), Bail Ct. Cas. 111.

1353. —]—R. v. HAM (LADY OF THE MANOR) (1839), 8 L. J. Q. B. 265.

1354. —]—R. v. DENDY (1853), 1 E. & B. 829; 22 L. J. Q. B. 247; 17 Jur. 970; 118 E. R. 647.

1355. — Issue of mandamus in discretion of court.]—R. v. GARLAND, No. 1499, *post*.

1356. How lost—Not by non-presentation of death of ancestor.]—*Held*: (1) he had not gained any estate so as to make a lease, but had a possession against all strangers; (2) if a copyholder died, his heir within age, he was not bound to come at any ct. during his non-age to pray admittance, or to tender his fine.

(3) If the death of his ancestor be not presented nor proclamation made, he was not at any mischief, although he were of full age.—**ANDERSON & HAYWARD'S CASE** (1588), 3 Leon. 221; 74 E. R. 645.

Annotations:—*As to* (2) *Consd.* King v. Dilliston (1888), 1 Show. 31, 83. *As to* (3) *Refd.* Doe d. Bover v. Trueman (1831), 1 B. & Ad. 736.

1357. — Not by delay—By special custom. A copyhold not claimed within a year & a day after the death of the ancestor shall be lost for ever by the custom of many manors, & such

custom shall be good.—**STOWEL v. ZOUCHE** (LORD) (1569), 1 Plowd. 353; 75 E. R. 534.

Annotations:—Distd. *King v. Dilliston* (1688), 3 Mod. Rep. 221. **Refd.** *Bingham's Case* (1600), 2 Co. Rep. 82 b; *Underhill v. Kelsey* (1609), Cro. Jac. 226; *Lechford's Case* (1610), 8 Co. Rep. 99 a; *Seymour's Case* (1612), 10 Co. Rep. 95 b; *Doe d. Tarrant v. Hellier* (1789), 3 Term Rep. 162; *Beckford v. Wade* (1805), 17 Ves. 87; *Tolson v. Kaye* (1843), 6 Man. & G. 536. **Mentd.** *Bedford's Case* (1586), 7 Co. Rep. 7 b; *Dormer's Case* (1593), 5 Co. Rep. 40 a; *Penryn v. Corbet* (1596), Cro. Eliz. 464; *Case of Fines* (1602), 3 Co. Rep. 84 a; *Whittingham's Case* (1603), 8 Co. Rep. 42 b; *Calvin's Case* (1609), 7 Co. Rep. 1 a; *Lampet's Case* (1612), 10 Co. Rep. 46 b; *Bartholomew v. Belfield* (1613), Cro. Jac. 332; *Parliament in Ireland Case* (1613), 12 Co. Rep. 110; *Magdalen College, Cambridge Case* (1616), 11 Co. Rep. 66 b; *Fawkeners v. Bellingham* (1627), Cro. Car. 80; *Stone v. Newman* (1635), Cro. Car. 427; *Benyon v. Evelyn* (1664), O. Bridg. 324; *Dighton v. Greenhill* (1693), 2 Vent. 321; *Clayton v. Kinaston* (1697), 1 Ld. Raym. 419; *Kinsey v. Heyward* (1697), 1 Ld. Raym. 431; *Buckinghamshire v. Drury* (1762), Wilm. 177; *Boulton v. Bull* (1795), 2 Hy. Bl. 463; *Doe d. George v. Jesson* (1805), 6 East, 80; *Horn v. Horn* (1806), 7 East, 529; *Wells v. Iggulden* (1824), 3 B. & C. 186; *Lane v. Bennett* (1836), 1 M. & W. 70; *Sussex Peerage Case* (1844), 11 Cl. & Fin. 85; *Cox v. Beavan* (1849), 8 C. B. 334; *Newry & Enniskillen Ry. v. Coombe* (1849), 3 Exch. 565; *N. W. Ry. v. M'Michael, Birkenhead, Lancashire, etc. Junction Ry. v. Pilcher* (1850), 5 Exch. 114; *Ruckmaboye v. Lulloobhoy Mottichund* (1852), 5 Moo. Ind. App. 234; *Knowlden v. R.* (1864), 5 B. & S. 532; *Income Tax Special Purposes Comrs. v. Pemsel*, [1891] A. C. 531; *R. v. City of London Court Judge*, [1892] 1 Q. B. 273; *Powell v. Kempton Park Racecourse Co.*, [1897] 2 Q. B. 242; *G. W. Ry. & Mid. Ry. v. Bristol Corpn.* (1918), 87 L. J. Ch. 414; *Bourne v. Keane*, [1919] A. C. 815; *Thomson v. St. Catharines College, Cambridge, etc.*, [1919] A. C. 468.

1358. — Heir abroad.—Copyhold is not forfeited by non claim of an heir beyond sea.—**WHITTON v. WILLIAMS** (1605), Cro. Jac. 101; 79 E. R. 87.

1359. — For twenty years.—A custom of a manor, that estates shall be forfeited unless the heir claims to be admitted at the next ct., or after three proclamations made of the death of his ancestor, does not extend to an heir who was beyond sea for 20 years after date of last proclamation.—**UNDERHILL v. KELSEY** (1609), Cro. Jac. 226; 79 E. R. 195.

Annotations:—Consd. *Doe d. Bover v. Trueman* (1831), 1 B. & Ad. 736; *Dimes v. Grand Junction Canal Co.* (1846), 9 Q. B. 469. **Refd.** *King v. Dilliston* (1688), 3 Mod. Rep. 221; *Ruckmaboye v. Lulloobhoy Mottichund* (1851-2), 8 Moo. P. C. C. 4.

1360. ——The custom of a manor was, that the heirs which claimed copyhold by descent, ought to come at the first, second, or third ct. upon proclamations made, & take up their estates, or else that they should forfeit them. A tenant of the manor having issue inheritable beyond the seas, died: the proclamations passed, & the issue did not return in twenty years. But at his coming over he required the lord to admit him to the copyhold, & proffered to pay the lord his fine: & the lord, who had seised the copyhold for a forfeiture, refused to admit him:—**Held**: it was no forfeiture, because the heir was beyond the seas at the time of the proclamations, & also because the lord was at no prejudice because he received the profits of the lands in the mean time.—**ANON.** (1609), Godb. 268; 78 E. R. 156.

1361. — Unless heir goes abroad after first proclamation.—The custom of a manor was, that those who claimed copyholds by descent ought to come at the first, second, or third ct., upon proclamation made, to take up their estates; or else their estates should be forfeited. A tenant of the manor, having issue inheritable by the custom, died, such issue being at that time beyond sea; the proclamations all passed, & the heir did not appear for two years, but remained beyond sea; immediately upon his return he prayed to be admitted to the copyhold, & proffered the lord his fine in court, which the lord refused to accept,

or to admit the heir, but seised the land as forfeited:—**Held**: there was no forfeiture.

If the heir had been within the realm at the time of the first proclamation, & afterwards had gone out of the realm, the proclamations would have bound him.—**LECHFORD'S CASE** (1610), 8 Co. Rep. 99 a; 77 E. R. 627.

Annotations:—Folld. *Dimes v. Grand Junction Canal Co.* (1846), 9 Q. B. 469. **Refd.** *Payne v. Barker* (1662), O. Bridg. 18; *King v. Dilliston* (1688), 3 Mod. Rep. 221; *Beckford v. Wade* (1805), 17 Ves. 87; *Doe d. Bover v. Trueman* (1831), 1 B. & Ad. 736.

1362. — By delay—Under Real Property Limitation Act, 1833 (c. 27).—Where the lord had seised copyholds *quousque*, & had held them for nearly forty years:—**Held**: a bill by the heir of the former tenant to compel admittance by the lord was a suit to recover land within the meaning of Real Property Limitation Act, 1833 (c. 27), ss. 2, 3, & that the right of the heir was barred by that statute.—**WALTERS v. WEBB** (1870), 5 Ch. App. 531; 39 L. J. Ch. 677; 18 W. R. 587, L. C. **Annotations:—Refd.** *Chetham v. Hoare* (1870), L. R. 9 Eq. 571; *Re Liddiard & Jackson's & Broadley's Contract* (1889), 42 Ch. D. 254.

See, generally, LIMITATION OF ACTIONS.

Right of lord to seize quousque.—**See** Sub-sect. 6, *post*.

Forfeiture.—**See, generally, Part XIX., Sect. 1, sub-sect. 2, post.**

SUB-SECT. 2.—BEFORE ADMITTANCE.

1363. Is not tenant.—Heir is not tenant to the lord until admitted, nor is a purchaser seised until admittance.—**HOLMES v. FACIE** (1580), cited in 3 Dyer, 291 b., n.; 73 E. R. 655.

Annotation:—Refd. *Doe d. Hamilton v. Chitt* (1841), 4 Per. & Dav. 579.

1364. May enter—& take profits.—**BROWN'S CASE**, No. 627, *ante*.

1365. ——**CLARKE v. PENNIFATHER**, No. 1961, *post*.

1366. ——**BULLOCK v. DIBLER**, No. 778, *ante*.

1367. May grant leases.—**BULLOCK v. DIBLER**, No. 778, *ante*.

1368. May surrender.—**JOYNER v. LAMBERT** (1604), Cro. Jac. 36; 79 E. R. 29.

1369. ——In copyholds the heir takes without actual admittance & may surrender & convey without it, which he could not do if he were not seised; but the lord is in that case entitled to the double fine on the surrender (*per cur.*)—**MORSE v. FAULKNER** (1792), 1 Anst. 11; 145 E. R. 784.

Annotations:—Consd. *R. v. Dullingham* (1838), 8 Ad. & El. 858. **Refd.** *West v. Borney* (1819), 1 Russ. & M. 431; *Right d. Taylor v. Banks* (1832), 3 B. & Ad. 664. **Mentd.** *Lyde v. Mynn* (1833), 1 My. & K. 683; *Doe d. Perry v. Wilson* (1836), 5 Ad. & El. 321.

1370. May accept enfranchisement.—**WILSON**

(1832), 3 B. & Ad. 664; 1 L. J. K. B. E. R. 242.

Annotations:—Consd. *Doe d. Winder v. Lawes* (1837), 7 Ad. & El. 196. **Folld.** *Doe d. Taylor v. Crisp* (1838), 1 Per. & Dav. 37. **Refd.** *Doe d. Perry v. Wilson* (1836), 5 Ad. & El. 321; *R. v. Pigott* (1838), 8 L. J. Q. B. 37; *Doe d. Dand v. Thompson* (1849), 13 L. T. O. S. 187. **Mentd.** *King v. Turner* (1833), Coop. temp. Brough. 64.

1372. ——**KING v. TURNER** (1833), Coop. temp. Brough. 64; 1 My. & K. 456; 2 L. J. Ch. 188 47 E. R. 23, L. C.; *revsq.* (1829), 2 Sim. 545.

Ad. & El. 196. **Consd.** *R. v. Dullingham* (1838), 8 Ad. & El. 858; *Seaman v. Woods* (1857), 27 L. J. Ch. 538.

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1373. ———.]—DOE d. PERRY v. WILSON (1836), 5 Ad. & El. 321; 6 Nev. & M. K. B. 809; 111 E. R. 1187.

Annotation:—Mentd. R. v. Plgott (1838), 8 L. J. Q. B. 37.

1374. ———.]—The following bequest in a codicil: "I give, demise, & bequeath to S., the wife of testator, all my copyhold in H." passes only a life estate in the copyhold property, the context not necessarily showing that such was not the intention of testator.

Where the reversion in fee of a copyhold, expectant on a life estate, vests by devise in the tenant for life, who has been admitted as tenant for life, the life estate is merged, & another admittance in respect of the estate devised is necessary.

An heir at law to a copyhold may devise his reversion without admittance.

P. seised in fee of a copyhold, devised it to S. for life & died, & the reversion descended on his son, who devised it to S. the tenant for life, who had been previously admitted to the life estate, but who was never admitted to the estate in fee. By her will, S. devised the estate in fee to A., B. & C., jointly, the two latter of whom were her heirs at law. The three devisees were admitted each to an undivided third of the copyhold, to the uses of the will of S.:—*Held*: the admittance of the tenant for life did not do away with the necessity for another admittance on the descent of the estate in fee, & therefore S. had not a devisable estate in the copyhold; but as B. & C. had been admitted to two-thirds of the copyhold, although admitted as devisees, yet as they were the heirs of P. the prior devisor, their admittance had relation to the will of the first devisor, & they were entitled to two-thirds of the estate.

The authorities are numerous & clear to show that the admission of the particular tenant is the admission of the remainderman also; & the principle on which that has been laid down applies equally to the reversioner (DENMAN, C.J.).—DOE d. WINDER v. LAWES (1837), 7 Ad. & El. 195; 2 Nev. & P. K. B. 195; Will. Woll. & Dav. 484; 7 L. J. Q. B. 97; 112 E. R. 445.

Annotations:—Refd. Scaman v. Woods (1857), 24 Beav. 372. Mentd. Doe d. Lean v. Lean (1841), 1 Q. R. 229.

1375. May bring action—Of trespass.]—BULLOCK v. DIBLER, No. 778, ante.

1376. ———.]—In trespass the case was that the heir of a copyholder before admittance made a lease for years & thereafter was admitted, & then the question was whether he might avoid his own lease:—*Held*: he could not provided the lord has not avoided the estate by taking advantage of the forfeiture.—ASHFEILD'S CASE (1626), Benl. 188; 73 E. R. 1046; *sub nom.* ASHFEILD v. ASHFEILD, W. Jo. 157; Godb. 364; Lat. 199.

Annotations:—Mentd. King v. Dilliston (1690), 1 Show. 83; Baylis v. Dineley (1815), 3 M. & S. 477; Williams v. Taperell (1892), 8 T. L. R. 241.

1377. ———.]—If a copyholder surrender to the use of a younger son & dies, the younger son cannot sue until admittance; but if the copyhold had descended to the heir he may have an action before admittance.—YORK v. ALLEIN (1607), Lane, 20; 145 E. R. 265.

See, also, No. 1382, post.

1378. ——— Of ejectment.]—DOE d. BAVERSTOCK v. ROLFE, No. 883, ante.

1379. ——— Though also devisee under devise defeasible on condition.]—T. seised of copyhold, devised it to his daughter-in-law for life, remainder in fee to her son A., T.'s grandson, in fee, "upon this express condition, & not otherwise" that

A. should, within three months next after T.'s decease, convey three specific leasehold messuages severally to A.'s three sisters; but, in case A. should "object or refuse to make such conveyances," "then, & in that case, & upon failure thereof," T. thereby revoked & made void the devise to A. & did thereby give, etc., immediately after the decease of the daughter-in-law, tenant for life, the copyhold to the three sisters, as tenants in fee in common; but, in case of any one or more dying under twenty-one, then to the survivors or survivor, in fee. The daughter-in-law, tenant for life, entered on T.'s death, & held for several years, till her death. She survived A. A. was heir at law to T.:—*Held*: (1) A.'s heir might recover in ejectment on this title, without showing a conveyance of the leaseholds, or tender, by A., it not being shown that A. had knowledge or notice of the will, or proviso, or had been requested to convey; (2) it made no difference that neither the tenant for life, nor A., nor his heir, had been admitted, & that the three sisters had been admitted, & had entered, & deft. claimed through them.—DOE d. TAYLOR v. CRISP (1838), 8 Ad. & El. 779; 1 Per. & Dav. 37; 1 Will. Woll. & H. 593; 8 L. J. Q. B. 41; 2 Jur. 943; 112 E. R. 1033; *subsequent proceedings* (1839), 2 Will. Woll. & H. 117.

Annotation:—Refd. Garland v. Mead (1871), L. R. 6 Q. B. 441.

1380. May defend title.]—JACKSON & HALL, No. 1349, ante.

1381. As against stranger admitted by lord—Heir not disseised.]—If a copyholder in fee dieth seised, & the lord admits a stranger to the land who entereth, he is but a tenant at will, & not a disseisor to the heir of the copyholder, who hath the land by descent, because he cometh in by the assent of the lord.—ANON. (1588), 3 Leon. 210; 74 E. R. 639.

1382. ——— May enter—& maintain trespass.]—In an action of trespass it appeared that the land was copyhold, the copyholder died, & the lord admitted a stranger:—*Held*: the heir may enter, & upon the re-entry maintain trespass without an admission by the lord.—SIMSON v. GILLION (1600), Noy, 172; 74 E. R. 1130.

See, also, Nos. 778, 1376, ante.

1383. Under reversionary estate—May enter.]—BULLEN v. GRANT, No. 1527, post.

SUB-SECT. 3.—AFTER ADMITTANCE.

1384. Entry relates back to time of right of entry—May maintain trespass against lord—For wrongful possession.]—The entry of an heir relates back to the time of the right of entry, so as to support an action against a wrongdoer for a trespass committed after the accrual of the right & before actual entry. Therefore, an infant copyholder after actual admission may maintain trespass against the lord for wrongfully retaining possession after payment of the fine due on admission, & demand of admission, & before actual admission.—BARNETT v. GUILDFORD (EARL) (1855), 11 Exch. 19; 24 L. J. Ex. 281; 25 L. T. O. S. 85; 1 Jur. N. S. 1142; 3 W. R. 406; 3 C. L. R. 1440; 156 E. R. 728.

Annotations:—Refd. Dunlop v. Macedo (1891), 8 T. L. R. 43; Ocean Accident & Guarantee Corp. v. Ilford Gas Co., [1905] 2 K. B. 493.

Heir also appointee—Whether second admittance necessary.]—See No. 1765, post.

SECT. 6.—DUTY OF HEIR TO APPLY FOR ADMITTANCE.

1385. Not during infancy.]—ANDERSON & HAYWARD'S CASE, No. 1356, *ante*.

1386. —.]—RUMNEY & EVES CASE, No. 1619, *post*

1387. Not bound to tender admittance at court—After refusal by steward out of court.]—A person claiming to be admitted as heir to a copyhold need not tender himself to be admitted at the lord's ct., if the steward upon application to him out of ct. has refused to admit him.—DOE d. BURRELL v. BELLAMY (1813), 2 M. & S. 87; 105 E. R. 314.

Annotations :—*Refd.* Doe d. Twining v. Muscott (1844), 12 M. & W. 832; Barnett v. Guildford (1855), 11 Exch. 19. *Mentd.* Doe d. Le Keux v. Harrison (1844), 6 Q. B. 631.

Effect of delay—Right of lord to seize *quousque*.]—*See post*.

SECT. 7.—SEIZURE BY LORD QUOUSQUE.

SUB-SECT. 1.—THE RIGHT TO SEIZE.

1388. Right not dependant on custom.]—In evidence to a jury in ejectment :—*Held* : (1) in copyholds the lord might not seize land, as being forfeited, on death of the holder because the heir had not come in to be admitted on proclamation unless there was a special custom to do it; (2) he might seize it till the heir came in without a custom; (3) proclamations whereby the lord claimed forfeiture ought to be proved *viva voce* & not only by the ct. rolls.—PATESON v. DANGES OR SALISBURIES (LORD) CASE (1662), 1 Keb. 287; 83 E. R. 950; *sub nom.* SALISBURY'S (EARL) CASE, 1 Lev. 63.

Annotations :—*As to* (2) *Refd.* Doe d. Bover v. Trueman (1831), 1 B. & Ad. 736; Dimes v. Grand Junction Canal Co. (1846), 9 Q. B. 469.

1389. Right to seize may have accrued to preceding lord—Though existing lord takes as devisee—Not as heir.]—DOE d. BOVER v. TRUEMAN, No. 1396, *post*.

1390. Where land devised—Not where one of several devisees offers to be admitted.]—ROE d. ASHTON v. HUTTON, No. 1694, *post*.

1391. — Not where customary heir tenders admittance.]—GARLAND v. MEAD, No. 1494, *post*.

See, also, No. 1346, *ante*.

1392. Not where lands in hands of receiver.]—In suits by creditors & legatees a receiver was appointed of the rents & profits of real estate, part of which was copyhold. The death of the last tenant having been duly presented at the ct. baron of the manor, proclamations were made for the next tenant to come in & be admitted, & no person appearing, the bailiff of the manor was ordered to seize the lands *quousque*. Declaration in ejectment at the suit of the lord was afterwards served on the *terre-tenant*. On the motion of the receiver :—*Held* : the lord was restrained by injunction from prosecuting the action.—EVELYN v. LEWIS (1844), 3 Hare, 472; 67 E. R. 467.

Annotation :—*Mentd.* Russell v. East Anglian Ry. (1850), 3 Mac. & G. 104.

1393. Seizure *pro defectu tenentis*—Though answered—Does not bar right to seizure until fine paid.]—Ejectment for three copyhold tenements by the lords of the manor of P. (who had a right to seize the copyhold *quousque pro defectu tenentis*), against a *feme covert* claiming to be entitled to the lands, with the view to enforce the payment of fines claimed to be due in respect thereof. The lords had, on the death of the former tenant, made the three proper proclamations, for the heir to

come in, & at the next ct. M., a *feme covert*, was admitted to the three tenements, described in the admittance as they had been in the old admittances, viz., one of them by the number of acres, & there was superadded a new description of the three tenements as containing 148 acres 3 roods 14 perches. There was no evidence of the title of M., but it was stated on the roll that M. came to the lord's ct. & was admitted by her attorney. There were three several fines assessed on the premises :—*Held* : the supposed acknowledgment on the ct. roll of deft.'s title being the only answer to the lord's title to seize *quousque*, must be taken altogether, & was evidence that the attorney was duly appointed for the purpose, & claimed to be admitted to the three tenements as described in the admittance : or assuming that the lord's right of entry could be defeated by the actual admittance of deft., the admittance must be taken to be such as would give her a legal title, & so that no objection could be taken either to the want of a due appointment of the attorney, or to the description of the tenements.

Where a fine arbitrary is imposed, it is due to the lord of common right, & the tenant must show that it is unreasonable.

Where the lord of a manor proceeds, in the first instance, on his right to enter & seize *quousque pro defectu tenentis*, & that is answered, he may, notwithstanding, recover on a right of entry & seizure *quousque* the fine is satisfied.

The Infants Property Act, 1830 (c. 65), s. 9, does not affect the right of entry *quousque*.—DOE d. TWINING v. MUSCOTT (1844), 12 M. & W. 832; 14 L. J. Ex. 185; 2 L. T. O. S. 349; 152 E. R. 1436.

Annotation :—*Consd.* Dimes v. Grand Junction Canal Co.

1394. When right accrues—On refusal of tenant to come in—After proclamation & notice.]—ECCLESIASTICAL COMRS. FOR ENGLAND v. PARR, No. 1761, *post*.

See, also, No. 1091, *ante*, No. 1397, *post*.

1395. Copyholds Act, 1722 (c. 29)—& Infants Property Act, 1830 (c. 65)—Apply.]—DIMES v. GRAND JUNCTION CANAL (PROPRIETORS), No. 1566, *post*.

Right of the lord to forfeit—By custom.]—*See* No. 1743, *post*.

Loss of right—By receipt of rent.]—*See* No. 1761, *post*.

SUB-SECT. 2.—CONDITIONS PRECEDENT.

1396. Three proclamations—At three successive courts.]—The lord may seize copyhold land *quousque*, in virtue of a right which accrued to the preceding lord, on default of the heir's coming in to be admitted, although he be the devisee, & not the heir of the preceding lord. But, to entitle the lord to make such seizure, there must be three proclamations made, at three consecutive cts.—DOE d. BOVER v. TRUEMAN (1831), 1 B. & Ad. 736; 9 L. J. O. S. K. B. 119; 109 E. R. 960.

Annotations :—*Consd.* Dimes v. Grand Junction Canal Co. (1846), 9 Q. B. 469; Eccl. Comrs. for England v. Parr, [1894] 2 Q. B. 420. *Refd.* Walters v. Webb (1869), L. R. 9 Eq. 83; *Re* Lidiard & Jackson's & Broadley's Contract (1889), 42 Ch. D. 254.

1397. — Refusal of tenant—To be admitted.]—The right of a lord of a manor to seize lands held of the manor does not arise until after three proclamations have been made or a special notice given requiring the successor of a deceased tenant to come in & be admitted, & he has refused to do so.

Where, therefore, only two proclamations have been made, & there has been no refusal by the

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successor to come in, the rights of the lord will not be barred by any Statute of Limitation; & in the absence of any presumption of enfranchisement, the lands will remain copyhold & descend according to the custom of the manor, although there has been no actual admission of a tenant upon the rolls for more than a hundred years.—**BEIGHTON v. BEIGHTON** (1895), 64 L. J. Ch. 796; 73 L. T. 86; 43 W. R. 685; 30 Sol. Jo. 638; 13 R. 743.

See, also, No. 1761, *post*.

SUB-SECT. 3.—OTHER CASES.

1398. Estate vested in co-heirs—Irregular seizure as to one interest—Whole seizure irregular.]—In an action of ejectment:—**Held**: (1) a lord of a manor could not seize a copyhold estate as forfeited, *pro defectu tenentis*, without a custom; (2) where, on the death of a copyholder of inheritance, the lord, after three proclamations for the heir to come in & be admitted, seized the estate into his hands, & afterwards granted it in fee to another it would be considered as an absolute seizure, & consequently irregular, there being no custom to warrant it; (3) being irregular as an absolute seizure, it could not afterwards be set up by the lord as a seizure *quousque*; (4) if one of several co-heirs of a copyholder was a *feme covert* at the time of the ancestor's death, & the lord seized the whole estate in default of the heir's not coming in to be admitted after three proclama-

tions without first appointing an attorney or guardian for the *feme covert*, according to the requisites of Copyholds Act, 1722 (c. 29), a seizure of the whole estate was irregular, though it was not known to the lord that one of the heirs was a *feme covert*; (5) a forfeiture by a copyholder levying a fine might be waived by the lord; (6) a forfeiture of a copyhold estate could only be taken advantage of by him who was lord at the time of the forfeiture, except in those cases where the act of forfeiture destroyed the estate; (7) a fine levied by a copyholder, who continued in possession was void as against the lord.—**DOE d. TARRANT v. HELLIER** (1789), 3 Term Rep. 162; 100 E. R. 511. **Annotations**:—**Consd.** **Doe d. Bover v. Trueman** (1831), 1 B. & Ad. 736. **Refd.** **Whitton v. Peacock** (1834), 3 My. & K. 325; **Doe d. Twining v. Muscott** (1844), 12 M. & W. 832; **Dimes v. Grand Junction Canal Co.** (1846), 9 Q. B. 469.

1399. Irregular absolute seizure—Cannot be set up as seizure *quousque*.]—**DOE d. TARRANT v. HELLIER**, No. 1398, *ante*.

1400. Exercise of right—By action of ejectment—Actual seizure need not be proved.]—In ejectment brought by the lord of a manor, upon the death of the tenant, to recover copyhold land *quousque*, proof of seizure of the land by the lord is not necessary. In this respect there is no difference whether the lord is proceeding for a forfeiture or only claims *quousque*.—**DOE d. PETRE (LORD) v. PRYME** (1849), 14 L. T. O. S. 173.

1401. — Lord barred from disputing title of last tenant.]—**DIMES v. GRAND JUNCTION CANAL (PROPRIETORS)**, No. 1566, *post*.

— **Lapse of time.]—**See No. 1362, *ante*.

Part XIII.—Sale of Copyholds.

SECT. 1.—THE CONTRACT FOR SALE.

1402. How enforced—Specific performance.]—A bill was brought to have an execution of articles of agreement for the sale of copyhold to pltf., on his payment of a certain sum to deft. R., one guinea being paid in part, & to compel the lord of the manor to admit him in fee, according to the agreement:—**Held**: there should be specific performance of the articles & the lord was ordered to admit pltf. accordingly.—**SAYLE v. REEVES** (1726), Gilb. Ch. 188; 25 E. R. 132, L. C.

1403. — By injunction restraining surrender to others.]—Injunction to restrain the vendor of copyhold premises, after delivery of possession & receipt of part of the purchase money, from surrendering them to persons other than the purchasers.—**SPILLER v. SPILLER** (1819), 3 Swan. 556; 36 E. R. 974, L. C.

Annotations:—**Mentd.** **G. W. Ry. v. Birmingham & Oxford Junction Ry.** (1848), 2 Ph. 597; **Shrewsbury & Chester Ry. v. Shrewsbury & Birmingham Ry.** (1851), 1 Sim. N. S. 410; **Hadley v. London Bank of Scotland** (1865), 3 De G. J. & Sm. 63; **London & County Banking Co. v. Lewis** (1882), 21 Ch. D. 490.

See, also, No. 1054, *ante*.

1404. Against whom specific performance decreed—Heir of vendor.]—A., a copyholder holding for his own & two other lives agreed by deed to surrender all his interest to B., but both A. & B. died before surrender made:—**Held**: the son & surviving exor. of B. was entitled to specific performance against the son of A. who had entered.—**GREENWOOD v. HARE** (1667), 1 Rep. Ch. 272; 21 E. R. 571.

1405. — Wife agreeing to join with husband—Though husband die before surrender.]—Where a *feme covert* agrees to join with her husband in

making a surrender, or levying a fine, & he dies before it is done, equity will compel her to perform the agreement.—**BAKER v. CHILD** (1688), 2 Vern. 61; 23 E. R. 648.

Annotation:—**Refd.** **Daniel v. Adams** (1764), Amb. 495.

1406. — Husband covenanting to procure wife to join in surrender.]—Where J. M. covenanted for himself & his wife, the latter consenting, within one month to surrender copyhold estates to the use of R. S. & others, their heirs etc.; upon trust to sell; & pay a debt due to them from J. M., & to pay the residue according to the appointment of J. M. & his wife or the survivor:—**Held**: there must be specific performance of the covenant by J. M. & he must procure his wife to join in a surrender of the copyhold estate.—**MORRIS v. STEPHENSON** (1802), 7 Ves. 474; 32 E. R. 191.

Annotations:—**Mentd.** **Howell v. George** (1815), 1 Madd. 1; **Murray v. Glaspe** (1854), 23 L. J. Ch. 126.

1407. Grounds for refusing specific performance—Tenant of land not specified in contract—Lands copyhold—Specific performance refused.]—A. articulated with B. for the purchase of an estate of £180 *per annum* for which he was to give 35 years' purchase, upon granting & conveying to him, & paid £50 in part; but discovering that £30 *per annum* of the lands were copyhold, refused to go on. On a bill by B.:—**Held**: equity would not decree a specific execution of this agreement, being unequitable, but would order the £50 to be paid back.—**HICK v. PHILLIPS** (1721), Prec. Ch. 575; 24 E. R. 258.

Annotations:—**Mentd.** **Adams v. Weare** (1784), 1 Bro. C. C. 567; **Davis v. Symonds** (1787), 1 Cox, Eq. Cas. 402.

1408. — Against infant heir of vendor—On ex parte procedure—Vendor's right to sell not proved.]—The ct. refused to direct an infant

customary heir to surrender copyhold premises to a purchaser which had been sold & conveyed to him by the deceased ancestor of the infant, for valuable consideration, & for which the ancestor had received the purchase money in his lifetime. On a motion made to confirm a report, which found those facts, & that the infant was a trustee within 7 Ann. c. 19, on the ground that it was an *ex p.* proceeding, & *non constat* that the ancestor was competent to sell:—*Held*: the infant would not be declared a trustee within the statute.—*Re JANAWAY* (1819), 7 Price, 679; 146 E. R. 1099, Ex. Ch.

1409. — Not notice that purchaser has contracted to surrender to another.]—If A., for valuable consideration, undertakes to surrender a copyhold to B., & B., on borrowing money from C., enters into a written agreement with C. that he, B., will surrender the same copyhold to C. by way of mortgage security, A. is not justified in refusing to surrender the copyhold to B., because he, A. has received notice from C. of the agreement between him & B. The surrender by A. to B. does not prejudice, but promotes, that agreement.—*v. WALFORD* (1828), 4 Russ. 372; 38 E. R. 845.

Annotation:—*Mentd.* *M'Cright v. Foster* (1870), 5 Ch. App. 604.

1410. — Contract after Copyhold Act, 1852 (c. 51)—Vendor agreeing to enfranchise—Enfranchisement reserving minerals to lord—Not a ground of refusal.]—The vendor of a copyhold estate enfranchised under the above Act, is not bound to show the lord's title.

After the passing of the Copyhold Act, 1841, & the above Act, but before the Copyhold Act, 1858, an agreement was entered into for the sale of a copyhold estate, together with the timber & all appurtenances to the same hereditaments belonging, as soon as the same should become freehold, under an agreement of the vendor to use his best endeavours to enfranchise. An enfranchisement was effected under the second Act, reserving the minerals to the lord:—*Held*: the contract had reference to the provisions in those Acts relative to minerals, etc., & the purchaser must complete, notwithstanding this reservation.—*KERR v. PAWSON* (1858), 25 Beav. 394; 27 L. J. Ch. 594; 31 L. T. O. S. 224; 22 J. P. 241; 4 Jur. N. S. 425; 6 W. R. 447; 53 E. R. 687.

Annotation:—*Mentd.* *Jenkins v. Green* (1859), 27 Beav. 440.

Defective title.]—*See* Sect. 4, *post*.

1411. Sale by assignees in bankruptcy—Of reversionary interest—Reversioner acting as trustee of settlement—Purchaser not entitled to surrender of legal reversion—As against tenant for life.]—A testator devised his copyhold estate to his wife for life, with remainder to his two sons as tenants in common in fee; the eldest son & customary heir was, by an arrangement between himself, his mother & brother, admitted to the copyhold in fee, & executed by deed a declaration of trust to the uses of his father's will. The brothers became bkpts., & their assignees sold their reversion to the pltf.:—*Held*: pltf., though as against the assignees a purchaser of a legal reversion, was not, as against the tenant for life, entitled to compel such a surrender as would give him the legal reversion.—*WHITE v. STOCK* (1822), 6 Madd. 327; 56 E. R. 1116.

1412. Contract for sale of freeholds & copyholds with timber—Boundaries indistinguishable—No right to cut timber on copyholds—Inability of purchaser to cut any timber no ground for abatement of price.]—Lands of copyhold & freehold tenure lying intermixed & undistinguishable were

sold with the timber standing on them. The conditions of sale stipulated that the vendor was not to be bound to distinguish the freeholds from the copyholds, & that the timber was to be taken at a valuation made for the purposes of that sale, the value of the timber on each lot being specified. The deposit was paid of £10 per cent. on the whole price of the land & timber. It was also stipulated, that in case of delay in the completion of the purchase, interest at £5 per cent. should be payable on the whole price of the land & timber:—*Held*: (1) the contract was an entire contract for the sale of land with timber on it—not two contracts, one for the sale of land & another for timber; (2) the purchaser was not entitled to any abatement, though he could not cut a single tree, not being able to distinguish any one tree as standing on freehold ground; (3) in the case of one lot sold under the same conditions & particulars of sale, & which consisted entirely of copyholds, the purchaser was equally bound to pay the stipulated price for the timber, although he could not cut any of it.—*CROSSE v. LAWRENCE* (1852), 9 Hare, 462; 21 L. J. Ch. 889; 18 L. T. O. S. 314; 16 Jur. 142; 68 E. R. 591.

1413. Breach of contract—Refusal to appoint attorney to surrender—Not breach of covenant to surrender.]—*SYMMS v. SMITH (LADY)* (1631), Cro. Car. 299; 79 E. R. 861.

Annotations:—*Reid.* *Turner v. Benny* (1670), 1 Mod. Rep. 61. *Mentd.* *Cornwallis v. Savery* (1759), 2 Burr. 772.

See, generally, SALE OF LAND.

SECT. 2.—PROOF OF TITLE AND COVENANTS FOR TITLE.

1414. Identity of parcels—With description on court rolls—Vendor need not show—Where long enjoyment proved.]—The generality & vagueness of descriptions of copyhold property on the ct. rolls are so well known, that a vendor is not bound to show how the description on the ct. roll is to be applied to the present state of the property, if he prove that the property has actually been enjoyed & passed under that description for upwards of sixty years.—*LONG v. COLLIER* (1828), 4 Russ. 267; 38 E. R. 806.

Annotations:—*Reid.* *Freer v. Hosse* (1853), 4 De G. M. & G. 495. *Mentd.* *Townsend v. Champenowne* (1839), 3 Y. & C. Ex. 505; *Abbott v. Swarder* (1852), 19 L. T. O. S. 311; *Wilkinson v. Hartley* (1852), 15 Beav. 183.

1415. Legal estate outstanding—In remainderman—Remainderman abroad—Specific performance refused.]—Motion against purchasers in the master's office to pay in their purchase money, refused, the estate sold being copyhold limited for life, & then in remainder, & the remainderman being abroad, he not having surrendered.—*NOEL v. WESTON* (1815), Coop. G. 138; 2 Ves. & B. 269; 35 E. R. 507, L. C.

Annotation:—*Consd.* *Morris v. Clarkson* (1819), 3 Swan. 558.

1416. — In surrenderor—Sale by mortgagee—Specific performance refused—Though covenant for title limited.]—T., the owner of copyhold property, mortgaged it, & by the indenture of mtge. covenanted to surrender into the hands of the dean & chapter of W., the lords of the manor, to the use of deft., who was to be a trustee to sell it, in the event of default being made in payment of the mortgage money. T. made no surrender, but died, after devising all his real property to certain trustees. Subsequently to the death of T., the lords of the manor, at the nomination of deft., granted the property to certain persons, upon the trusts etc. mentioned in the deed of mtge. T. surrendered other property to the lord

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of the manor by way of mtge. to C. in consideration of a loan of £100, & by an indenture of even date, covenanted, amongst other things, to repay the money borrowed, & also gave the mtgee. a power of sale, in case of default in payment. This indenture was stamped with an *ad valorem* stamp of 30s. Deft. sold the whole of the above property to pltf., under the following conditions of sale; that he should deduce a good title to the premises, for the lives by which they were held under the dean & chapter of W., but that no earlier or other title should be deduced, nor any deed or document produced anterior to the last copy of ct. roll, by which the premises were granted:—*Held*: (1) deft. showed no title in himself, as no surrender of the premises had been made to his use by T., & pltf., the vendee, was not precluded by the conditions of sale from making this objection to the title; (2) the stamp of 30s. was sufficient.—*SELLICK v. TREVOR* (1843), 11 M. & W. 722; 12 L. J. Ex. 401; 1 L. T. O. S. 289; 152 E. R. 995

Annotation:—*Mentd. Waddell v. Wolfe* (1874), L. R. 9 Q. B. 515.

1417. Legal estate vested in trustees—By statute—Subject to uses declared but not executed—Specific performance decreed.]—Trustees of copyholds under a private Act were admitted on surrenders by tenants for life, & sold under an order of ct., subject to certain leases of the property. The purchaser objected (a) they had not the legal estate, (b) the ct. had no jurisdiction, (c) the leases which had been granted were invalid.

On petition being presented, praying the payment into ct. by the purchaser of his purchase money:—*Held*: (1) as the Act vested the legal estate in the trustees, & then declared the uses thereof, those uses were not executed by the statute & therefore the trustees had the legal estate in them; (2) as to the jurisdiction of the ct., the purchaser was entitled to take this objection; but, as the property was ordered to be sold, to raise some costs incurred in passing the Act, which costs were by the Act charged on *the corpus*, the ct. had jurisdiction to direct a sale, & the purchaser could not object to the amount to be raised thereby for the payment of the costs. (3) In such a case as this, the remainderman expectant on estates for years, or estates tail, could not object to the validity of leases, subject to which the estate had been sold. The only person who could object was the owner of the reversion.—*DIXON v. WILKINSON* (1853), 1 Eq. Rep. 556; 22 L. J. Ch. 981; 21 L. T. O. S. 297; 1 W. R. 513.

1418. Right to admittance outstanding in trustees—Purchaser entitled to release—Though good title shown to legal & equitable estate.]—*STEELE v. WALLER*, No. 1504, *post*.

1419. Recital in surrender—That surrender made for tenant by assignees in bankruptcy—No proof of bankruptcy of tenant—Or of authority of assignees to surrender.]—*DOE d. SHELTON v. SHELTON*, No. 1589, *post*.

1420. Recitals made evidence by contract—Recital of admittance as tenant in tail according to custom of manor—Recital evidence of admittance—Not of custom of manor.]—*GOOLD v. WHITE*, No. 734, *ante*.

1421. Contract to give such title as they possessed—To extend over twenty years—Vendors assignees of unadmitted devisee—Purchaser entitled to legal estate.]—In an agreement for sale of certain copyhold property the vendors contracted to give such title as they possessed at the time of the

agreement to extend over twenty years. The vendors were assignees of an unadmitted devisee, & had a complete equitable title, but refused to get in the legal estate on the ground that they were not bound to do so under the above contract. A second term of the agreement was that the purchaser was to prepare his own conveyance & surrender at his own expense:—*Held*: purchaser was entitled to a surrender of the legal estate, & vendors must pay all fines necessary to enable them to make such a surrender.—*WHITELEY v. TAYLOR* (1876), 35 L. T. 187, C. A.

1422. Condition barring purchaser from requiring proof of discharge of incumbrances beyond certain date—Entry on court rolls of conditional surrender by way of mortgage—Mortgagee not admitted—Purchaser cannot require conditional surrender to be vacated.]—Copyholds were sold with a condition that no evidence should be required of the payment or discharge of any legacy or sum of money charged on the property which became payable twelve years or upwards prior to the day of sale. The ct. rolls contained an entry of a conditional surrender by way of mtge. made in 1865 by the predecessor in title of the vendors. The mtgee. had not been admitted, & no payment or acknowledgment in respect of either principal or interest had been made for more than twelve years prior to the day of sale:—*Held*: the condition precluded the purchaser from requiring the conditional surrender to be vacated by satisfaction being entered on the ct. rolls in the usual way.—*HOPKINSON v. CHAMBERLAIN*, [1908] 1 Ch. 853; 77 L. J. Ch. 567; 98 L. T. 835.

1423. Vendor's covenants—Enforceable by purchaser from original purchaser—Though first purchaser covenanted against own acts only.]—A. sold & covenanted to surrender copyholds to B., & covenanted for the title in the usual manner. On the next day the surrender was made. Some time afterwards B. sold & covenanted to surrender the copyholds to C. & covenanted for the title as against his own acts only; & B. afterwards surrendered to C.:—*Held*: the original covenants were capable of being enforced against A. for that either they ran with the land, or C. was entitled to sue on them in B.'s name.—*RIDDELL v. RIDDELL* (1835), 7 Sim. 529; 5 L. J. Ch. 102; 58 E. R. 940.

Annotation:—*Mentd. Haywood v. Brunswick Permanent Benefit Bldg. Soc.* (1881), 51 L. J. Q. B. 73.

1424. Slander of title—Statement by steward that copyholds forfeited—Copyholder entitled to declaration that copyholds not forfeited.]—*PAWLEY v. SCRATTON* (1886), 3 T. L. R. 146.

Whether lord can insist on admittance—Of unadmitted vendors.]—*See* No. 1074, *ante*; Nos. 1685, 1687, 1688, 1689, *post*.

Sale of enfranchised copyholds.]—*See* No. 1554, *post*.

See, generally, SALE OF LAND.

SECT. 3.—COMPLETION.

1425. Contract to surrender to purchaser—Satisfied by surrender to two copyholders to use of purchaser.]—*BEANY v. TURNER* (1870), 1 Lev. 293; 83 E. R. 413; *sub nom.* *TURNOR v. BENSON*, 2 Keb. 666; 1 Mod. Rep. 61.

Annotation:—*Mentd. Martindale v. Fisher* (1745), 1 Wils. 88.

1426. ———.]—*PAGE v. SMITH*, No. 564, *ante*.

1427. ——— Purchaser not bound to accept surrender by attorney.]—Purchaser of copyhold not obliged to accept of surrender by letter of attorney.

A custom, that it must be in person, is not contrary to law.—*MITCHEL v. NEALE* (1755), 2 Ves. Sen. 679; 28 E. R. 433, L. C.

1428. — & to do all things necessary to assure to purchaser—At costs of vendor—Not broken by non-payment by vendor of fine on admittance of purchaser.]—*GRAHAM v. SIME*, No. 1049, *ante*.

1429. Under award—Directing vendor to surrender—Vendor prepares surrender.]—Where the award directs that A. shall pay B. a certain sum for copyhold land; & B., in consideration of that sum, shall at the cost of A. surrender the lands to A.'s use; & upon surrender being made & delivered to A. he shall pay B. the money; it rests with B. to prepare & execute the surrender; & it is a non-performance of the award if B. omits, on request, to make the surrender, or does not at least give notice to A. that he will attend at a certain time before the steward of the manor.—*DOE d. CLARKE v. STILLWELL* (1838), 8 Ad. & El. 645; 3 Nev. & P. K. B. 701; 1 Will. Woll. & H. 532; 2 Jur. 591; 112 E. R. 983; *subsequent proceedings* (1842), 7 Jur. 154.

Annotations :—*Distd. Re Andrewes* (1845), 5 L. T. O. S. 202. *Mentd. Wynne v. Wynne* (1841), 2 Scott, N. R. 615.

1430. By vesting order—Under Trustee Act, 1850 (c. 60)—Refusal of tenant to surrender—Sale under order of court.]—A copyhold was vested in a married woman. It was sold under a decree, which ordered all proper parties to join. She stated in writing that she never would surrender :—*Held* : that the case came within the above Act, & a vesting order was made.—*ROWLEY v. ADAMS* (1851), 14 Beav. 130; 20 L. J. Ch. 436; 17 L. T. O. S. 207; 15 Jur. 1002; 51 E. R. 236.

1431. — To discharge contingent rights of unborn issue—Of infant tenant in tail—On sale by order of court.]—Where copyholds devised to an infant for life, remainder to his first & other sons in tail, were decreed to be sold to pay the debts of testator, & an order was made in the cause under 1 Will. 4, c. 47, ss. 11, 12, that the guardian of the infant should surrender them to the purchaser :—*Held* : the purchaser was entitled to require that an order should be made discharging the contingent rights of the unborn issue of the infant under Trustee Act, 1850 (c. 60), s. 29.

An order under the Trustee Act, 1850, may be made in a cause without petition.—*WOOD v. BEETLESTONE* (1854), 1 K. & J. 213; 3 Eq. Rep. 238; 69 E. R. 434.

1432. — Vesting benefit of covenant to surrender in purchaser—Covenant to surrender to limited company—Sale by receiver on debenture holder's petition.]—*Re MILLS (RICHARD) & Co. (BRIERLY HILL) LTD., SMITH v. MILLS (RICHARD) & Co. (BRIERLY HILL) LTD.*, [1905] W. N. 36.

Annotation :—*Reid. Re No. 9, Bomoro Road*, [1906] 1 Ch. 359.

See, also, No. 1435, *post*.

1433. By order to trustee—To surrender legal estate—Though *cestui que trust* refuses.]—Where the legal interest of a copyhold is in one, & the equitable in another, the ct. can order the trustee to surrender, though *cestui que trust* refuses.—*Ex p. BUTLER* (1749), 1 Atk. 215; 26 E. R. 139, L. C.

By appointment of person to convey.]—*See* Nos. 1436, 1437, *post*.

1434. Death of surrenderor before completion—Heir an infant—Heir must surrender at full age.]—Under a contract for sale of copyholds, the purchase money was paid, but the vendor died before surrender :—*Held* : the vendor's heir must surrender when he came of age, & the lord of the manor must

admit the purchaser presently.—*BARKER v. HILL* (1682), 2 Rep. Ch. 218; 21 E. R. 662.

1435. — Order vesting heir's estate in purchaser.]—*Re BEAUFORT'S WILL*, [1898] W. N. 148.

See, also, No. 1437, *post*.

1436. — Heir a lunatic—Person appointed to convey—Under Trustee Act, 1850 (c. 60).]—A vendor covenanted in the usual way to surrender copyholds to the purchaser, & the purchase-money was paid. The vendor died before surrender. His customary heir was of unsound mind. The covenant contained no declaration that the vendor & his heir would until surrender hold the premises in trust for the purchaser :—*Held* : a person might be appointed under the Trustee Act, 1850, to convey to the purchaser, without a suit being instituted to have the heir declared a trustee.—*Re CUMING* (1869), 5 Ch. App. 72; 21 L. T. 739; 18 W. R. 157, L. J.

Annotations :—*Folld. Re Bradley's S. E.* (1885), 54 L. T. 43. *Consd. Re Colling* (1886), 32 Ch. D. 333. *Mentd. Sands to Thompson* (1883), 22 Ch. D. 614; *Re Martin's Trusts, Land, Building & Cottage Improvement Co. v. Martin, Re Martin* (1887), 34 Ch. D. 618; *Re Norwich Town Close Estate Charity* (1888), 40 Ch. D. 298.

1437. Contract by administrator of surrenderee upon trust for sale—Heir of surrenderee an infant—Petition for appointment of person to convey—Representatives of surrenderor need not be served.]—A surrendered copyhold estate to the use of C. upon trust at any time to sell, & after payment of expenses, to retain £200 & interest then due from A. to C.; the receipts of C., his exors., administrators, & assigns, to be good discharges to purchasers. C. died intestate, & his administrator contracted to sell the estate to E. for £100. The heir-at-law of C. was an infant, & the administrator & E. petitioned, for the appointment of a person to convey to E. in the place of the infant. A. had died intestate :—*Held* : under the circumstances it was not necessary to serve the representatives of A. with the petition.—*Re WISE, Ex p. WISE* (1852), 5 De G. & Sm. 415; 19 L. T. O. S. 44; 64 E. R. 1178.

1438. Sale by mortgagee under power—Mortgagee unadmitted—Delay in obtaining admission—Amounts to wilful default.]—*Re WILSON'S & STEVENS' CONTRACT*, [1894] 3 Ch. 546; 63 L. J. Ch. 863; 71 L. T. 388; 43 W. R. 23; 38 Sol. Jo. 682; 8 R. 640.

Annotation :—*Reid. Bennett v. Stone*, [1902] 1 Ch. 226.

1439. Costs of completion—Surrender under Trustee Act, 1850 (c. 60)—Payable by vendor—Though costs of surrender payable by purchaser.]—A vendor agreed to surrender or procure some person to surrender, & the costs of the surrender were to be paid by the purchaser. It was found necessary to procure a surrender under the above Act :—*Held* : the costs of the proceedings ought to be paid by the vendor.—*BRADLEY v. MUNTUN* (1852), 16 Beav. 294; 51 E. R. 791.

1440. — Purchase-money payable in instalments by agreement—Vendor becoming lunatic before completion—Bill for specific performance rendered necessary—Costs up to hearing borne by each party.]—Several owners of shares in a copyhold estate agreed to sell it. The purchase-money was made payable by instalments, & the surrender of the premises by the vendors was, by arrangement delayed until the whole should have been paid. Before the last instalment was payable, one of the vendors became of unsound mind, but was not found lunatic by inquisition. Hereupon a bill for specific performance of the contract became necessary :—*Held* : as the delay of the surrender had been for the convenience of both

Sect. 3.—Completion. Sect. 4. Part XIV. Sects. 1, 2, 3 & 4.]

parties, there ought to be no costs given on either side up to the hearing.—*CRESSWELL v. HAINES* (1861), 31 L. J. Ch. 237; 8 Jur. N. S. 208; 10 W. R. 121.

Annotation :—*Mentd.* *Lysaght v. Edwards* (1876), 24 W. R. 778.

Fine on admittance—Whether vendor or purchaser liable.]—See Part XI., Sect. 1, sub-sect. 5, B., ante.

See, generally, SALE OF LAND.

4.—GROUNDS FOR RESCISSION.

1441. Copyhold represented as freehold.]—TURNER v. WEST BROMWICH UNION GUARDIANS, No. 2002, post.

1442. —.]—A vendor sold land as freehold,

received the purchase-money, & conveyed the land as freehold. Afterwards the purchaser, for the first time, discovered that the property was really copyhold. The vendor alleged that he made the representation believing it to be true:—*Held*: assuming the vendor had made the representation *bonâ fide*, he had committed a legal fraud; the sale must be set aside & the purchase-money repaid with interest; & the vendor must pay all the expenses which the purchaser had incurred in consequence of the purchase.—*HART v. SWAINE* (1877), 7 Ch. D. 42; 47 L. J. Ch. 5; 37 L. T. 376;

Annotations :—*Distd.* *Brett v. Clowser* (1880), 5 C. P. D. 376. *Consd.* *Brownlie v. Campbell* (1880), 5 App. Cas. 925; *Jolliffe v. Baker* (1883), 11 Q. B. D. 255. *Distd.* *Palmer v. Johnson* (1884), 13 Q. B. D. 351. *Expld.* *Soper v. Arnold* (1887), 37 Ch. D. 96. *Refd.* *Manson v. Thacker* (1878), 7 Ch. D. 620. *Mentd.* *Mathias v. Yetts* (1882), 46 L. T. 497; *Nash v. Wooderson* (1884), 52 L. T. 49; *Lagunas Nitrate Co. v. Lagunas Syndicate*, [1899] 2 Ch. 392.

See, generally, SALE OF LAND.

Part XIV.—Mortgage of Copyholds.

SECT. 1.—WHAT AMOUNTS TO MORTGAGE.

1443. Mortgage of freeholds—Covenant to surrender copyholds—& to stand seised in trust for mortgagees—Primary mortgage of both estates.]—Mtge. of freehold estate, with a covenant, for better securing the payment, to procure admission, & to surrender a copyhold estate, & in the mean time to stand seised in trust for the mtgee. A primary mtge. of both estates; & the freehold not first applicable.—*ALDRICH v. COOPER* (1803), 8 Ves. 382; 32 E. R. 402, L. C.

Annotations :—*Folld.* *Gwynne v. Edwards* (1825), 2 Russ. 289, n. *Consd.* *Beigden v. Bignold* (1843), 2 Y. & C. Ch. Cas. 377. *Refd.* *Re Athill, Athill v. Athill* (1880), 16 Ch. D. 211. *Mentd.* *Bute v. Cunynghame* (1827), 2 Russ. 275; *Re Tristram, Ex p. Hartley* (1835), 1 Deac. 288; *Thompson v. Prior, Sproule v. Prior* (1836), 6 L. J. Ch. 1; *Mirehouse v. Scalfie* (1837), 2 My. & Cr. 695; *Barnes v. Racster* (1842), 1 Y. & C. Ch. Cas. 401; *Tombs v. Roch* (1846), 2 Coll. 490; *Re Stephenson, Ex p. Stephenson* (1847), De G. 586; *Paterson v. Scott* (1852), 1 De G. M. & G. 531; *Yonge v. Reynell* (1852), 9 Haro. 809; *Tidd v. Lister* (1853), 3 De G. M. & G. 857; *Gibson v. Seagrim* (1855), 20 Beav. 614; *Dolphin v. Aylward* (1870), L. R. 4 H. L. 486; *Duncan, Fox v. North & South Wales Bank* (1880), 6 App. Cas. 1; *Webb v. Smith* (1885), 30 Ch. D. 192; *Re Stokes, Parsons v. Miller* (1892), 67 L. T. 223; *Re Butler, Le Bas v. Herbert* (1894), 63 L. J. Ch. 662; *The Chioggia*, [1898] P. 1.

1444. — Small strip of copyhold included by description in mortgage—Copyhold passes.]—EARLY v. RATHBONE, No. 1774, post.

1445. Surrender subject to a condition—Payment of interest—& other circumstances implying mortgage.]—Where a sum of money has been advanced, upon the surrender of copyhold property to the use of the party making that advance, on condition that such surrender shall become void, if payment with interest be made at a particular time, otherwise to be of full force & virtue; & interest has been paid from time to time, subsequent to the day appointed for re-payment; & where other circumstances in the conduct of the party to whom the advance was made, show that it was considered as money borrowed:—*Held*: this transaction would not be treated as a conditional purchase, but as a loan for which the surrender is a collateral security; & the administrator of the lender might recover principal & interest in arrear, in an action of *assumpsit*.—*ALLENBY v. DALTON* (1827), 5 L. J. O. S. K. B. 312.

Annotation :—*Mentd.* *Price v. Moulton* (1851), 10 C. B. 561.

1446. Surrender referring to deed—Deed one of mortgage on its face.]—Where a surrender is made referring to a deed, & the deed states on the face of it, that the surrender was made as a security for money, & provides, that, after twelve months more, the surrenderee may sell, & pay himself:—*Held*: such deed & surrender was a mtge., & the lord of the manor ordered, upon the death of the surrenderor, to admit his heirs on payment of the fines, according to the custom of the manor.—*WEAVER v. KINGLAKE* (1830), 9 L. J. O. S. Ch. 20.

See, generally, MORTGAGE.

SECT. 2.—THE MORTGAGOR'S ESTATE.

1447. Legal estate—Remains in mortgagor—Until admittance of mortgagee.]—FLOYD v. ALDRIDGE & WILLIS, No. 1627, post.

1448. — — — —.]—DOE d. SHEWEN v. WROOT, No. 1628, post.

See, also, No. 1646, post & generally, Part XVIII., Sect. 2, sub-sect. 1, F. (c), post.

1449. Equity of redemption—Passes by devise.]—If a man deviseth lands that are in mtge., the equity of redemption will pass to the devisee; & so if copyholds that are in mtge. are devised, the equity of redemption shall pass to the devisee.—*ANON.* (1681), *Freem. Ch.* 65; 22 E. R. 1061.

1450. — — — —.]—An equity of redemption of a copyhold may be devised without being surrendered to the use of the will. Every mtge., though no covenant or bond to pay the money, implies a loan, & every loan implies a debt: therefore an heir of a mtgor. shall compel an application of the personal estate to pay off a mtge., notwithstanding there was no covenant, etc., from the mtgor.—*KING v. KING & ENNIS* (1735), 3 P. Wms. 358; 24 E. R. 1100, L. C.

Annotations :—*Refd.* *Wainwright v. Elwell* (1816), 1 Madd. 627. *Mentd.* *Bagot v. Chapman*, [1907] 2 Ch. 222.

1451. — Follows customary descent.]—Particular customs of a manor as to mtges. Equity of redemption will follow the custom attaching on the legal estate. Not absolutely determined, whether trust estates or equities of redemption in copyholds, escheat to the lord.—*FAWCER v.*

LOWTHER (1751), 2 Ves. Sen. 300; 28 E. R. 193, L. C.

Annotations:—*Reid*. *Re Hudson, Cassels v. Hudson*, [1908] 1 Ch. 655. *Mentd.* *Burgess v. Wheate, A.-G. v. Wheate* (1759), 1 Eden, 177.

1452. — Descends to heir.]—DOE d. SHEWEN v. WROOT, No. 1628, *post*.

1453. — Surrender by two owners of the equity—To such uses as one of them should appoint—Effects a transfer of equity.]—(1) A surrender by a husband & wife of the wife's copyhold estate was taken out of ct. by a deputy steward who was under age & by whom the wife was separately examined:—*Held*: valid, the infancy of the deputy steward forming no ground of objection.

A surrender made as above mentioned was expressed to be to such uses in favour or for the benefit of the husband his heirs & assigns, & with such powers of sale & other powers & provisoes, & chargeable with such sums as a mtgee., to whom a conditional surrender had some time previously been made to secure £50, should, at the request & by the direction of the husband appoint, & subject thereto to the use of the mtgee. & his heirs, with a proviso for making the surrender void on payment of the sum of £100 then advanced by the mtgee. to the husband:—*Held*: (2) the destination of the equity of redemption was completely changed by the last-mentioned surrender, & was not merely affected to the extent required for the purposes of the security thereby created; (3) the lord having accepted a surrender in the above form was bound by it.

Semble: he could not have been compelled to accept it.—EDDLESTON v. COLLINS (1853), 3 De G. M. & G. 1; 20 L. T. O. S. 298; 17 Jur. 331; 1 W. R. 169; 43 E. R. 1, L. C. & L. JJ.; *sub nom.* EDLESTON v. COLLINS, 22 L. J. Ch. 480

Annotations:—*Generally*, *Reid*. *Flack v. Downing College* (1853), 13 C. B. 945. *Mentd.* *Re Betton's Trust Estates* (1871), L. R. 12 Eq. 553

See, also, No. 1455, *post*.

1454. — Testator dying before January, 1870—Legal assets under Administration of Estates Act, 1833 (c. 104).]—*Re BURRELL, BURRELL v. SMITH* (1870), L. R. 9 Eq. 443; 39 L. J. Ch. 544; 22 L. T. 263.

Annotation:—*Mentd.* *Re Richardson, Richardson v. Richardson* (1880), 14 Ch. D. 611.

See, generally, EXECUTORS & ADMINISTRATORS.

1455. Surrender by owner in fee—To ultimate use of wife in fee—Defeasible on payment of sum secured—Heir cannot redeem as against purchaser from wife.]—A. seised of a copyhold in fee on his marriage surrendered it to the use of himself & his wife in special tail, remainder to the wife in fee, on condition that if he paid £50 at such a day to a daughter of the wife, the whole surrender should be void; the day elapsed & the £50 was not paid. The husband died without issue:—*Held*: his heir was not entitled to redeem against a purchaser from the widow for value.—KING v. BROMLEY (1709), 2 Eq. Cas. Abr. 595; 22 E. R. 500, L. C.

See, also, 1453.

SECT. 3.—THE MORTGAGEE'S ESTATE.

1456. Mortgagee has no legal estate—Until admittance—Cannot bring ejectment.]—RAYSON v. ADCOCK, No. 1646, *post*.

See, also, Nos. 1627, 1628, *post*.

1457. After admission of mortgagee—Descends to heir at law—Not to administrator.]—Mtge. of copyholds by surrender with proviso that the

mtge. should be void on payment of the mtge. money to the mtgee., her exors. & assigns, on a fixed date; no covenant for payment to the exor. or administrator; on default in payment, the mtgee. was admitted & then her heir, & the heir's heir:—*Held*: the heir's heir, & not the administrator of the mtgee., was entitled to the lands.—TURNER v. CRANE (1683), 2 Rep. (h. 242; 21 E. R. 668.

1458. — Descends to devisee of heir—Not to heir of heir.]—A mtge. was made of a copyhold estate in fee to P. & her heirs, in 1691, the mtgee. being in possession. T. her heir entered, but never was admitted. In 1693 T. died, & made pltf. his exor., & devised to him all his copyhold estates, & pltf. likewise is administrator, *de bonis non* of the mtgee. Deft. is heir-at-law to T. & to the mtgee. On a question, whether, this mtge. in fee being forfeited, & the mtgee. dying in possession, & T. her heir enjoying it during his life, & dying seised, pltf. as administrator *de bonis non*, there being no want of assets; or deft., who was heir-at-law, should have it, for pltf.'s bill was to compel deft. to convey, & likewise to foreclose the mtgor., another deft.:—*Held*: deft., the heir, should convey, & the mtgor. should be foreclosed, *nisi* etc.—TABER v. GROVER (1698), Freem. Ch. 227; 22 E. R. 1176; *affd. sub nom.* TABOR v. GROVER (1699), 2 Vern. 367; 1 Eq. Cas. Abr. 273, pl. 1.

1459. — Devise of all real & personal estate—To beneficiaries—Legal estate outstanding in heir.]—*Re FRANKLYNS' MORTGAGES*, [1888] W. N. 217.

SECT. 4.—ENFORCEMENT OF COVENANT TO SURRENDER.

1460. Surrender ordered—Though property subsequently sold to purchaser for value.]—A mtgor. promises to surrender the reversion in copyholds to the mtgee., but dies before the mtgee. is admitted; the heir promises to surrender, but sells to a purchaser for value:—*Held*: the heir must surrender to the mtgee.—PERRIMAN v. GORGES (1628), Nels. 3; 21 E. R. 774.

1461. —.]—KEEN v. SPARROW (1677), Cas. temp. Finch. 331; 23 E. R. 182.

1462. Death of mortgagor—Before surrender—Subsequent promise to surrender by heir—Enforced.]—PERRIMAN v. GORGES, No. 1460, *ante*.

1463. — — — Enforced against heir when of age.]—PATTESON v. THOMPSON (1676), Cas. temp. Finch 272; 23 E. R. 149.

1464. — — —.]—Copyhold lands mortgaged in fee by lease & release as freehold: the customary heir is bound by a covenant for farther assurance: but during his infancy the ct. refused to foreclose; & would go no farther than directing the account, & that in default of payment pltf. should be let into possession, & hold & enjoy, till the heir should attain twenty-one, at which time he should surrender; & a day was given to show cause against the decree.—SPENCER v. BOYES (1798), 4 Ves. 370; 31 E. R. 188.

Annotation:—*Reid*. *Price v. Carver* (1837), 3 My. & Cr. 157.

1465. Foreclosure—Surrender decreed—At expense of mortgagee.]—HILL v. PRICE (1761), Dick. 344; 21 E. R. 301.

Annotation:—*Consd.* *Pryce v. Bury* (1854), 23 L. J. Ch. 676.

1466. — — — Against infant heir when of age—Mortgagee let into possession.]—SPENCER v. BOYES, No. 1464, *ante*.

SECT. 5.—ENFORCEMENT OF EQUITY OF REDEMPTION.

1467. Not lost—Though surrender unconditional.]—Surrender of a copyhold to deft. & his heirs, without any condition, but it appearing that it was only to secure the payment of money, a redemption was decreed.—*CLENCH v. WITHERLY* (1678), Cas. temp. Finch. 376; 23 E. R. 206.

See, generally, MORTGAGE.

1468. Mortgagee's judgment—For another debt—Not tacked.]—Bill by the heir of the mtgor. to redeem a mtge. of copyhold lands upon payment of principal & interest. Deft. insisted upon having a judgment, which he had assigned to him, first satisfied before pltf. should redeem:—*Held*: copyhold lands were not liable to an execution upon a judgment; *ergo* the judgment should not be tacked to the mtge. in this case, but pltf. should redeem upon payment of principal, etc., without satisfying the judgment.—*CANNON (HEIR) & PACK* (1714), 2 Eq. Cas. Abr. 226; 22 E. R. 192, L. C.

See, generally, MORTGAGE.

1469. In favour of widow—Whose husband had released his equity—In her copyholds—Mortgaged by both.]—Husband & wife mortgaged the wife's freeholds for 1000 years, reserving the power to redeem to them, or either of them, & covenanted to levy a fine to the mtgee. for the term, & subject thereto, to the husband in fee: they also surrendered the wife's copyholds to the mtgee. in fee, reserving the power to redeem to the husband & his heirs; the husband afterwards released his equity of redemption, as to both estates to the mtgee. in fee: the mtgee. entered into possession & the husband afterwards died:—*Held*: the wife was entitled to redeem the copyholds, but not the freeholds.—*REEVE v. HICKS* (1825), 2 Sim. & St. 403; 4 L. J. O. S. Ch. 85; 57 E. R. 400.

Annotation:—*Reff. Raffety v. King* (1836), 1 Keen, 601.

1470. By vesting order—Mortgagees co-heirs infants.]—Upon petition under the Trustee Act, 1850, by some of a number of persons interested in the equity of redemption of copyhold lands vested in the co-heirs of a mtgee., two of whom were infants, for a reconveyance:—*Held*: the ct. had power to make an order for the reconveyance, as prayed by such petition, under 15 & 16 Vict. c. 86, s. 51.—*Re SHARPLEY'S TRUSTS* (1853), 1 Eq. Rep. 40; 21 L. T. O. S. 71; 1 W. R. 271.

SECT. 6.—ENFORCEMENT OF SECURITY.

1471. By sale—Premises surrendered to trustee to use of mortgagee—Consent of mortgagee necessary.]—In trespass *quare clausum fregit*, defts. pleaded that pltf., being seised in fee, surrendered the premises, which were copyhold, to the use of A., upon the trusts declared by a certain deed, for securing the repayment of principal & interest to W.; & that by the deed, to which pltf. was party, it was covenanted that A. should stand seised in trust to resurrender to the use of pltf. on payment of the principal & interest; but in case of default, upon trust that A. should at any time thereafter, when W. should think proper, sell the premises & surrender them to the use of the purchaser: & the plea averred that it was further covenanted that the premises should at all times remain & be to the use of A., but nevertheless upon & for the trusts, intents, & purposes before declared, & should & might accordingly be peaceably & quietly enjoyed, & the rents & profits received & retained accordingly without let, etc. The plea then alleged that pltf. had not

paid the principal money, wherefore defts., as the servants & by the command of A., under & by virtue of the indenture, broke & entered, etc., in order that A. might take, hold, & enjoy possession of the premises. On special demurrer:—*Held*: (1) the power given by the deed, & the covenant for quiet enjoyment, were subject to the condition that W., the *cestui que trust*, should think proper to have the premises sold. & assuming that the deed could operate as a licence to A. to enter although he had not been admitted tenant, that the plea was bad in not stating that W. had thought proper to enforce the power of sale, or that the defts. entered for the purposes of the deed; although the demurrer did not raise these objections; (2) the power to sell, & covenant for quiet enjoyment, did not imply a power to entry.—*WATSON v. WALTHAM* (1835), 2 Ad. & El. 485; 1 Har. & W. 24; 4 Nev. & M. K. B. 537; 4 L. J. K. B. 98; 111 E. R. 188.

1472. — Customary heir of mortgagee infant—Vesting order to purchaser—Customary heir & representatives of debtors need not be served.]—Copyhold premises were surrendered in 1829, by a debtor, to the use of his creditor, his heirs & assigns, upon trust that he, his heirs, exors., administrators or assigns, should sell the same, & out of the proceeds should pay to himself, his exors. or administrators, £200 then due, & interest. The creditor died in 1831. In 1851 his personal representative contracted to sell the copyhold premises for £100. The customary heir of the creditor was an infant. On the petition of the personal representative of the creditor, it appeared that the creditor had died intestate, that there was no personal representative, & that proof of the title of the customary heir would be very expensive:—*Held*: an order should be made vesting the legal estate in the copyhold premises in the purchaser, without any service either on the customary heir or on the personal representative of the debtor.—*Re WISE, Ex p. WISE* (1852), 5 De G. & Sm. 415; 19 L. T. O. S. 44; 64 E. R. 1178.

1473. Sale by order of the court—In action between equitable mortgagee & unadmitted infant heir—Consent of lord necessary—To order vesting in purchaser.]—Where copyholds of inheritance had been sold by order of the ct. in a suit by an equitable mtgee. against the infant customary heir, who had not been admitted, & the personal representative of the deceased mtgor., the consent of the lord of the manor evidenced either by his appearing & consenting, or by a verified certificate of his consent, was held to be a necessary preliminary to the drawing up of a vesting order under the Trustee Act, 1850 (c. 60) made upon the petition of the purchaser, the infant heir, & the personal representative of the mtgor.—*COOPER v. JONES* (1855), 25 L. J. Ch. 240; 26 L. T. O. S. 116; 2 Jur. N. S. 59.

1474. Where landlord's remedies given by deed—Eviction without notice.]—*DOE d. GARROD v. OLLEY*, No. 1659, *post*.

1475. — Admittance of mortgagee—Limits power of distress—To goods of mortgagor on premises at time of distress.]—To trespass *de bonis asportatis* by the assignees of L., a bkpt., defts. pleaded, that L., before his bkptcy, being seised in fee of certain copyhold tenements in consideration of £1400, covenanted to surrender them to the use of defts., subject to a proviso for redemption; & for better payment of the interest of the said sum of £1400, L. granted to defts., that as often as the interest should be in arrear for a certain time, it should be lawful for defts. to enter &

distrain for the same. The plea then averred the surrender & admittance of debts, & justified the seizure of the goods on the premises whilst in possession of L., as a distress for the interest in arrear:—*Held*: after verdict, plffs. were entitled to judgment *non obstante veredicto*, for, assuming the grant to operate as a rentcharge, it ceased to be so upon the admittance of the mtgees.; & afterwards it could only take effect as a covenant, binding such goods of the bkpt., as might happen to be on the premises at the time of the distress.—*FREEMAN v. EDWARDS* (1848), 2 Exch. 732; 17 L. J. Ex. 258; 11 L. T. O. S. 271; 154 E. R. 685.

Annotations:—*Consd.* Jolly v. Arbuthnot (1858), 28 L. J. Ch. 274. *Refd.* Jolly v. Arbuthnot (1859), 4 De G. & J. 224.

1476. Surplus rent to be applied in reduction of capital—Mortgagor allowed to receive rent—Mortgagee only liable for sums actually received.—Copyhold estates were covenanted to be surrendered to A., upon trust, out of the rents to pay the interest of a sum of £1,000 lent by A., & to apply the surplus of the rents in reduction of the principal for ten years, & then upon trust to sell & pay off the residue of the mtge. debt, & invest the surplus, upon trust, for the wife of the mtgor. & her children. The rents of the mtged. estates were more than sufficient to pay the interest of the mtge. debt, but the mtgor. was allowed to continue to receive them, & after more than twenty-one years, the representatives of the mtgee. filed a bill for an account & sale:—*Held*: as no cross bill had been filed by the wife & children to have the benefit of the trusts of the mtge. deed, the representatives of A. were only liable to account for what they had actually received, & not for what they or the mtgee. might have received without wilful default, while the mtgor. continued to receive the rents.—*BEARE v. PRIOR* (1843), 6 Beav. 183; 12 L. J. Ch. 262; 49 E. R. 795.

1477. By vesting order—On refusal of mortgagor to surrender.—Where a mtgor., who has covenanted to surrender copyholds to his mtgee., has neglected to make such surrender within 28 days after demand & tender of engrossment by the mtgee., the ct. will, on petition of the mtgee., make a vesting order under the Trustee Act, 1852 (c. 55), s. 2, without requiring service of the petition on the mtgor.—*Re CROWE'S MORTGAGE* (1871), L. R. 13 Eq. 26; 41 L. J. Ch. 32.

Annotations:—*Consd.* *Re Mills' Trusts* (1887), 37 Ch. D. 312. *Fold.* *Re Jones' Mortgage* (1888), 59 L. T. 859.

See, also, *BANKRUPTCY & INSOLVENCY*, Vol. V., p. 1007, No. 8209.

By ejectment.—See No. 1646, *ante*.

By foreclosure.—See No. 1464, *ante*; No. 1482, *post*.

SECT. 7.—EQUITABLE MORTGAGES.

1478. By deposit of copy of court roll.—Petitioners were bankers with whom bkpt. had deposited the copies of the ct. rolls of copyhold premises, as a security for money, which they were to advance to him by occasional discount. At the time of the bkptcy. they had advanced a considerable sum. They prayed a sale of the premises before the comrs., & a direction that the proceeds be applied in discharge of their debt & the costs of the application:—*Held*: an order should be made, subject to an inquiry as to the amount of the debt.—*Re COOKE, Ex p. WARNER* (1812), 1 Rose, 286; 19 Ves. 202; 34 E. R. 493, L. C.

Annotations:—*Consd.* *Goodwin v. Waghorn* (1835), 4 L. J. Ch. 172; *Whitbread v. Jordan* (1835), 1 Y. & C. Ex. 303.

1479. —.]—*LEWIS v. JOHN* (1838), Coop. Pr. Cas. 8; 9 Sim. 366; 7 L. J. Ch. 242; 47 E. R. 375.

Annotation:—*Mentd.* *National Provincial Bank of England v. Games* (1886), 31 Ch. D. 582.

1480. — Subsequent legal mortgage—Duty of second incumbrancer—To require production of copy of admission.]—An equitable mtge. may be created of copyholds, by the mere deposit of the copy of ct. roll. It is therefore not sufficient for the protection of a purchaser or mtgee. of copyholds, that he should search the ct. rolls for incumbrances; he ought to require the vendor or mtgor. to produce an abstract of his title & the copy of his admission to the copyhold premises; & if the latter document is not forthcoming, its non-production must be reasonably accounted for.

Where the creditor of a publican in London took from the latter a legal mtge. of copyhold premises as a security for an antecedent debt, & at the time of taking this security, knew that the publican was indebted to his brewers, & likewise was aware of the ordinary practice in London of publicans depositing their leases with their brewers by way of mtge.:—*Held*: the creditor had such notice of the transactions between his debtor & the brewers, as would have put a prudent man on further inquiry; & having omitted to make such further inquiry, the equitable security of the brewers had priority over his legal security.—*WHITBREAD v. JORDAN* (1835), 1 Y. & C. Ex. 303; 4 L. J. Ex. Eq. 38; 160 E. R. 123.

Annotations:—*Distd.* *Jones v. Smith* (1843), 1 Ph. 244. *Mentd.* *Re Mount Morgan (West) Gold Mine, Ex p. West* (1887), 56 L. T. 622.

1481. — Subsequent equitable mortgage—Second mortgagee with constructive notice—First mortgagee has priority.]—The question was between two equitable incumbrancers which had the priority. The bill was filed by T., brewers. The father of debt., E. having a copyhold estate, procured a loan from plffs., upon his note, & upon an agreement to purchase all his beer from plffs., & as a more perfect security, he bound himself, his heirs, etc. to place in the hands of their agent the deeds, etc. In 1832, he made this deposit with a further memorandum, that the documents were security for the £150 & interest, & that plffs. were duly authorized to hold them until paid. He died in 1833 intestate. B., solr. for debt., & debt. were aware of the lien of the plffs. Express notice was given of the lien to E. Subsequently, a contract, through B., was made to sell the estate for £220, to debt. W., who mortgaged to the debt. L., & E. surrendered to the use of W. who afterwards surrendered to L.:—*Held*: plffs. were entitled to priority, & decree of foreclosure made with costs.—*TYLEE v. WEBB* (1843), 6 Beav. 552; 1 L. T. O. S. 408; 49 E. R. 939.

Annotation:—*Consd.* *Hewitt v. Loosemore* (1851), 9 Hare, 449.

See, also, Sect. 8, *post*.

1482. — By one tenant in common—With consent of the others—Extent of charge created.]—A. & B. were tenants in common in tail of a copyhold estate, with cross-remainders between them. A. deposited the deeds with C., as a security for money advanced to him, & by a memorandum of deposit engaged to surrender his interest when required. At the foot of the memorandum B. wrote, "I join in the deposit." A. died without issue, & B. thereupon became entitled, as remainderman, to the entirety. On a bill by C. for a foreclosure:—*Held*: the charge affected the moiety of A. only; & B. was bound to surrender such moiety to the plff., & to bear the expenses of

Sect. 7.—Equitable mortgages. Sects. 8 & 9.
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such surrender.—*PRYCE v. BURY* (1854), L. R. 16 Eq. 153, n; 23 L. J. Ch. 676; 22 L. T. O. S. 324; 18 Jur. 967; 2 W. R. 216, L. C. & L. JJ.

Annotations:—*Appl. James v. James* (1873), L. R. 16 Eq. 153. *Consd. Backhouse v. Charlton* (1878), 8 Ch. D. 444; *National Provincial Bank of England v. Games* (1885), 53 L. T. 955.

SECT. 8.—PRIORITIES.

See, generally, EQUITY; MORTGAGE.

1483. Steward third mortgagee—Subsequently purchases first mortgage—No tacking.]—A. being a copyholder in fee, mortgages his copyhold by surrender to B. who is admitted by J. S., steward of the manor; afterwards A. mortgages his copyhold to D. in the same manner, who is admitted by J. S.; & afterwards this copyhold comes to be mortgaged to J. S. himself, who then purchases in the first mtge.:—*Held*: J. S. the steward, by the purchase in of the first incumbrance, should not postpone the middle mtgee.; but should be satisfied in order of priority after the first mtge. discharged; since J. S. must have had notice of this mesne mtge., at the time of the mtge. made to him, he being steward of the manor, when D. was admitted.—*BROTHERS & BENCE* (1730), Fitz-G. 118; 94 E. R. 680, L. C.

1484. Prior surrenderee unadmitted—Good against subsequent voluntary disposition.]—MARTIN v. SEAMORE (1670), 1 Cas. in Ch. 170; 22 E. R. 746.

Annotation:—*Reid. Doe d. Richards v. Lewis* (1852), 11 C. B. 1035.

1485. Prior surrenderee unadmitted—When subsequent surrenderee admitted—Prior surrenderee not postponed—Where no custom requiring presentment in given time.]—HORLOCK v. PRIESTLEY, No. 1742, *post*.

1486. ——— Subsequent surrender by way of sale.]—A tenant of a copyhold has a complete title before admission as against every one but the lord.

A., the owner of a copyhold, made a conditional surrender of it, in 1826, to W., to secure money lent. In 1832 A. sold the copyhold to G., & made a surrender of it to him absolutely. In 1833 G. was admitted tenant; & in 1834, W. was also admitted tenant:—*Held*: on ejectment brought by W., he was entitled to recover.—*DOE d. WHEELER v. GIBBONS* (1835), 7 C. & P. 161, N. P.

1487. Mortgage of freeholds & copyholds—Subsequent mortgage of freeholds alone—Subsequent mortgage of copyholds alone—Copyholds not primarily liable to first charge.]—(1) A. being seised in fee of a freehold & copyhold estate, borrowed various sums of money of B., amounting in the whole to £4,000 upon mtge. of the freehold estate alone. A. afterwards in 1832 borrowed £500 more of B., on the security of both the freehold & copyhold estates. This mtge. was effected by distinct

instruments relating to each property respectively, neither of them referring to the other. In 1838 A. borrowed a sum of £400 of C., on mtge. of the freehold estate alone, subject to B.'s incumbrances thereon. Again in 1838 A., being indebted to D., in £600 executed to him a mtge. for that sum of the copyhold estate alone without notice of the £500 incumbrance. In 1837 B. had notice of C.'s security, & in 1838, after having sold both the estates under power of sale, & received the purchase-money, he had notice of D.'s security. The produce of the freehold estate being insufficient to pay B. & C. in full but that of the freehold & copyhold being sufficient for that purpose, C. claimed to have the whole of the £500 charge thrown upon the produce of the copyhold estate in order that he might receive payment out of that of the freehold, on the other hand, D. claimed to be paid the whole of his debt out of the produce of the copyhold estate in priority to C.:—*Held*: the claim of neither party could prevail to the fullest extent, but the £500 being by the security of 1832 charged on the freehold & copyhold estates ratably, that was to say, in proportion to their respective net values, & without preference, C., had an equity of the nature claimed by him to the extent of that proportion of the £500 which was charged upon the copyhold estate, while, in other respects in relation to that estate D. had priority over

(2) The ct. rolls of a manor are not constructive notice of prior incumbrances to a purchaser of copyholds holden of the manor.—*BUGDEN v. BIGNOLD* (1843), 2 Y. & C. Ch. Cas. 377; 63 E. R. 167.

Annotations:—*As to* (1) *Consd. Bowker v. Bull* (1850), 1 Sim. N. S. 29. *Reid. Rooper v. Harrison* (1855), 2 K. & J. 86; *Flint v. Howard*, [1893] 2 Ch. 54; *Wood v. West* (1895), 40 Sol. Jo. 114.

1488. ——— Copyholds primarily liable to first charge.]—A married woman concurred with her husband in charging her life interest in freehold & copyhold estates, with an annuity to P.; & she also concurred with her husband in creating a further charge upon the freeholds in favour of B.:—*Held*: B. was entitled to have P.'s annuity paid out of the copyholds, so far as they would extend.—*TIDD v. LISTER* (1853), 3 De G. M. & G. 857; 23 L. J. Ch. 249; 23 L. T. O. S. 101; 18 Jur. 543; 2 W. R. 184; 43 E. R. 336, L. C.; *subsequent proceedings*, 3 De G. M. & G. 874.

Annotations:—*Reid. Hudson v. Carmichael* (1854), Kay, 613. *Mentd. Re Duffy's Trust* (1860), 28 Beav. 386; *Life Assocn. of Scotland v. Siddal* (1861), 3 De G. F. & J. 271; *Knox v. Wells* (1864), 2 Hem. & M. 674; *Re Carr's Trusts* (1871), L. R. 12 Eq. 609; *Taunton v. Morris* (1879), 11 Ch. D. 779.

Defective surrender—When supported in equity.]—See Part XVIII., Sect. 2, sub-sect. 1, H., *post*.

SECT. 9.—MORTGAGES COMPRISING CHATELS.

See BILLS OF SALE, Vol. VII., p. 39, No. 202.

Part XV.—Devise of Copyholds.

Wills Act, 1837 (c. 26), s. 3, abolished the necessity of a surrender of copyholds to the use of a will. By s. 26 Copyholds pass under a general devise of testator's lands unless a contrary intention is expressed. Cases decided upon wills made before Jan. 1, 1838, have, therefore, been omitted, unless they appear to contain matter which is still of value.

SECT. 1.—VALIDITY OF DEVISE.

1489. Testamentary power limited by custom—Life estate with void remainder over—Life estate good.]—WEBSTER v. ALLEN, No. 771, ante.

1490. — Customary life estate with power of appointing successor—Successive equitable interests in equitable inheritance valid.]—ALLEN v. BEWSEY, No. 775, ante.

SECT. 2.—ESTATE OF DEVISEE.

1491. Devisee also customary heir—Takes by descent.]—On a case stated:—Held: if a mother devised a copyhold estate in fee to her daughter & heiress, but died without surrendering it to the use of her will yet the daughter should take the estate by descent.—SMITH v. TRIGG (1721), 8 Mod. Rep. 23; 11 Mod. Rep. 358; 1 Stra. 487; 88 E. R. 17.

*Annotations:—*Consd. King v. Turner (1833), 1 My. & K. 456. *Reid.* Wainwright v. Elwell (1816), 1 Madd. 627; Right d. Taylor v. Banks & Hewitt (1832), 3 B. & Ad. 664; Doe d. Winder v. Lawes (1837), 7 Ad. & El. 195.

1492. Before entry—Cannot surrender.]—CLERK v. HOW (1698), 1 Ld. Raym. 726; 91 E. R. 1385, N. P.

1493. Before admittance—Estate in customary heir—Devisee's title not liable to forfeiture.]—ROE d. JEFFEREYS v. HICKS, No. 1632, post.

See, generally, Part XVIII., Sect. 2, sub-sect. 1, F. (b).

1494. — Estate devised to trustees—Infant customary heir tendered for admittance—Lord cannot seize quousque on refusal to admit.]—The effect of the Wills Act, 1837 (c. 26), s. 3 is to enable a copyholder to devise his estate in every case, dispensing with a surrender to the use of the will, but leaving the estate in the customary heir till the admittance of the devisee. Where, therefore, a copyholder devised his estate to two trustees, appointing them guardians of his customary heir who was an infant, & the devise, was entered on the ct. rolls, & after proclamations the trustees, who had not disclaimed the devise, did not come in to be admitted, but tendered the infant heir for admittance, & the lord refused to admit him on the ground of the devise:—Held: the lord could not seize quousque for want of a tenant.—GARLAND v. MEAD (1871), L. R. 6 Q. B. 441; 40 L. J. Q. B. 170; 24 L. T. 421; 19 W. R. 1156.

*Annotation:—*Consd. Everingham v. Ivatt (1873), L. R. 8 Q. B. 388.

1495. — With power of sale—Trustees can make title without admittance.]—Testator devised copyholds to such uses as A. & B. or the survivor of them his exors. or administrators should appoint, & subject thereto, to the use of A. & B. their heirs & assigns for ever upon certain trusts, & he directed his trustees to sell the copyholds as soon as conveniently might be:—Held:

the trustees could make a good title to a purchaser without being admitted.—GLASS v. RICHARDSON (1852), 2 De G. M. & G. 658; 9 Hare, 698; 22 L. J. Ch. 105; 17 Jur. 926; 42 E. R. 1029, L. J. J. *Annotations:—*Consd. Flack v. Downing College (1863), 13 C. B. 945; Garland v. Mead (1871), L. R. 6 Q. B. 441; Re Heathcote & Rawson's Contract (1913), 108 L. T. 185. *Reid.* Eddleston v. Collins (1853), 3 De G. M. & G. 1; Everingham v. Ivatt (1873), L. R. 8 Q. B. 388; Hall v. Bromley (1887), 35 Ch. D. 642; Re Townsend's Contract, [1895] 1 Ch. 716; Sissons v. Chichester-Constable, [1916] 2 Ch. 75.

1496. — — — — —.]—SISSONS v. CHICHESTER-CONSTABLE, No. 1688, post.

See, also, Sect. 1, & No. 1074, ante, No. 1685, post.

1497. — Cannot devise—Unless interest equitable only.]—Testator at the making of his will had the legal seisin of a copyhold & devised it, but the devisee was not admitted:—Held: (1) nothing passed by the will of the devisee, & an admittance of the devisee subsequent to his will would not alter the case; (2) where testator had only an equitable interest in a copyhold & devised it the equitable interests would pass to the devisee, & the devisee, though never admitted, might devise such equitable interest.—PHILLIPS v. PHILLIPS (1832), 1 My. & K. 649; 1 L. J. Ch. 214; 39 E. R. 826.

*Annotations:—*As to (2) Consd. Seaman v. Woods (1857), 24 Beav. 372. *Generally, Consd.* Cogan v. Stephens (1835), 5 L. J. Ch. 17. *Reid.* Broom v. Broom (1834), 3 My. & K. 443; Custance v. Bradshaw (1845), 4 Hare, 315. *Mentd.* Randall v. Randall (1835), 7 Sim. 271; Williams v. Williams, Williams v. Kershaw (1835), 5 L. J. Ch. 84; Houghton v. Houghton (1841), 11 Sim. 491; Fitch v. Weber (1848), 6 Hare, 145; Taylor v. Taylor (1853), 3 De G. M. & G. 190; Darby v. Darby (1856), 3 Drew. 495; Holroyd v. Holroyd (1859), 28 L. J. Ch. 902.

See, now, Wills Act, 1837 (c. 26), s. 3.

1498. — Has no title.]—Copyhold lands were devised to plffs. in trust for F. for life, but they were never admitted to the copyhold. At the time of the death of testator the lands were in the possession of deft., to whom F., with the assent of one of plffs., afterwards re-let them in her own name. Plffs. then gave notice to deft. to pay the rent to them:—Held: an action for use & occupation would not lie by plffs. against deft. because no contract could be implied between them, there having been an existing contract between deft. & F., & the occupation having been by permission of F.

Plffs., as devisees of a copyhold, before admittance, have no title, & there is no contract between them & deft. by which he is estopped (WATSON, B.). —CHURCHWARD v. FORD (1857), 2 H. & N. 446; 26 L. J. Ex. 354; 5 W. R. 831; 157 E. R. 184.

*Annotations:—*Mentd. Howe v. Scarrott (1859), 4 H. & N. 723; Sloper v. Saunders (1860), 29 L. J. Ex. 275; Phillips v. Homfray (1883), 24 Ch. D. 439; A.-G. v. De Keyser's Royal Hotel, [1920] A. C. 508.

1499. — — — — —.]—Upon application for a mandamus to the lord of a manor to admit the infant heir of a deceased copyholder, it appeared that deceased having been admitted to his tenements died seised of them, & by his will devised them to trustees for the benefit of his family. The trustees were by the will appointed guardians of the infant heir. The trustees proved the will, but did not ask for admittance as devisees. They, however, as guardians, demanded admittance on behalf of the heir, but the lord refused to admit him on account of the devise in the will:—Held: the ct., in the exercise of its discretion, could not grant the mandamus, as it would enable the devisees to avoid the performance of their duty

Sect. 2.—Estate of devisee. Sects. 3 & 4.]

as trustees, & as it was clear that the application was not made *bona fide* on the part of the heir, but merely for the purpose of reducing the amount of the fine which would otherwise be payable on admission.

Semhle: that the effect of the Wills Act, 1837 (c. 26), s. 3, in devises of copyhold estate is merely to dispense with a surrender, & not to convey an estate to the devisee before admission (COCKBURN, C.J. & MELLOR, J.).—*R. v. GARLAND* (1870), L. R. 5 Q. B. 269; 39 L. J. Q. B. 86; 22 L. T. 160; 18 W. R. 429.

Annotations:—*Consd.* *R. v. Sarum*, [1916] 1 K. B. 466. *Reid.* *Garland v. Mead* (1871), L. R. 6 Q. B. 441; *Ecol. Comrs. for England v. Parr* (1894), 71 L. T. 65; *A.-G. v. Sandover* (1904), 73 L. J. K. B. 478; *Re Heathcote & Rawson's Contract* (1913), 108 L. T. 185; *Sissons v. Chichester-Constable*, [1916] 2 Ch. 75.

1500. After admittance—Devise to trustees—Estate to be transferred to cestui que trust on given event—Transfer unnecessary to pass estate at given event.]—DOE d. PLAYER v. NICHOLLS, No. 983, *ante*.

1501. Disclaimer by devisee—Estate in customary heir.]—R. v. WILSON, No. 1346, *ante*.

1502. — Where one of several executors—Other executors may exercise power of sale.]—Testator devised his freehold estates to A. B. C. & D. & their heirs, on the usual trusts for sale. He then ordered & directed that A. B. C. & D. the exors. of his will, or the survivors or survivor of them, or the exors. or administrators of such survivor should sell his copyhold estates. He then gave all his personal estate to the same persons & declared the trusts of all the monies to arise from his real & personal estate. A. died in the lifetime of testator. Testator died in 1830. B. & C. sold the copyhold estates in 1832. In 1851 D. executed the usual deed of disclaimer. There was no evidence that D. had refused to accept the executorship before the sale in 1832:—*Held*: (1) copyholds were within the Execution Relief Act, 1529 (c. 4); (2) under that act the sale of the copyholds had been made by B. & C.—*PEPPERCORN v. WAYMAN* (1852), 5 De G. & Sm. 230; 21 L. J. Ch. 827; 16 Jur. 794; 64 E. R. 1094.

See EXECUTORS & ADMINISTRATORS.

1503. Testator unadmitted—No estate passes.]—*PHILLIPS v. PHILLIPS*, No. 1497, *ante*.

1504. In whom legal estate vested—Devise to trustees—Subsequent covenant to surrender upon same trusts as declared by will—With declaration of trust until surrender—Legal estate passes to trustees.]—A. devised certain copyholds to trustees in fee, upon certain trusts in the will mentioned. A. afterwards executed a voluntary conveyance of the same lands to the same trustees, upon similar trusts to those declared by the will, & covenanted to surrender the copyholds to the same trustees, on the trusts declared by the deed, & that, until such surrender & the trustees should be admitted to the copyholds covenanted to be surrendered, A. & her heirs would hold the lands in trust for the trustees their heirs & assigns, & dispose of the same as they should direct & appoint. A. died without having executed any surrender. After A.'s death the trustees sold the copyholds, & the purchaser was admitted on the surrender of the customary heir:—*Held*: (1) the legal estate in the lands was in the devisees in trust under the will & not in A.'s customary heir; (2) although the purchaser had obtained both the legal & equitable title still, to make a good title, there must have been a release from the trustees of

their bare right to be admitted.—*STEELE v. WALLER* (1860), 28 Beav. 466; 3 L. T. 74; 6 Jur. N. S. 1004; 54 E. R. 445.

Annotation:—*Generally.* *Reid.* *Garland v. Mead* (1871), L. R. 6 Q. B. 441.

1505. — — — — — To pay to or permit beneficiary to receive rents—Remains in trustees.]—Devise of copyholds & freeholds to trustees to hold unto them & their heirs on trust to pay unto or permit pltf. to receive the rents during his life, & after his death to the use of the heirs of his body, with a gift over in case he died without leaving issue:—*Held*: the trustees took a legal estate in both freeholds & copyholds for the life of pltf. on trust for him with a legal remainder to the heirs of his body.—*BAKER v. PARSON* (1872), 42 L. J. Ch. 228. *Annotations*:—*Consd.* *Baker v. White* (1875), L. R. 20 Eq. 166; *Re Allsop & Joy's Contract* (1889), 61 L. T. 213.

1506. — — — — —]—Devise of freeholds & copyholds to A. & B., to hold the same to A. & B., their heirs, exors. administrators & assigns, upon trust, during the life of J., to receive the rents thereof & pay the same to J. for life, or otherwise to permit J. to receive them, followed by a devise, after J.'s decease, to the use of the heirs of his body. Testator appointed A. B. & J. exors. of his will, & declared that the receipts of his trustees & exors. for any money payable under the will should be a sufficient discharge to any person paying the same:—*Held*: J. took a legal estate tail in the freeholds, & an equitable estate for life in the copyholds, & there was legal estate in the trustees & their heirs during the life of J. in the copyholds, & after his death the legal estate to the use of the heirs of his body.—*BAKER v. WHITE* (1875), L. R. 20 Eq. 166; 44 L. J. Ch. 651; 33 L. T. 347; 23 W. R. 670.

Annotations:—*Consd.* *Allen v. Bewsey* (1877), 7 Ch. D. 453; *Re Townsend's Contract*, [1895] 1 Ch. 716. *Reid.* *Re Allsop & Joy's Contract* (1889), 61 L. T. 213. *Mentd.* *Re Brooke, Brooke v. Brooke*, [1894] 1 Ch. 43.

1507. — — — — — To use of beneficiary for life—With remainders over—Remains in trustees.]—*ALLEN v. BEWSEY*, No. 775, *ante*.

1508. — — — — — Remainder as life tenant should appoint—Remains in trustee after death of life tenant.]—W. by his will gave to three persons their heirs & assigns all his freehold & copyhold estates to hold to them their heirs & assigns for ever, upon trust to pay the rents & profits thereof to T. during her life for her separate use, & from & after the decease of T. the testator directed his trustees to stand seised of the estates in trust for such person or persons & for such purposes as T. should by will direct limit or appoint, & in default of & subject to any such appointment testator devised the same estates unto & to the use of T. her heirs & assigns, for ever. T. by her will directed her trustees to sell after her decease all her copyhold land & cottages, & to assure the same to the purchaser thereof his heirs or assigns. The trustees of the will of W. had been admitted tenants of the copyholds, & were now all dead. The trustees of the will of T. sold the copyholds:—*Held*: (1) the will of W. made a devise to the trustees of an estate of inheritance, & not one limited to the life of T., or so far as she should appoint, with an executory devise of the legal estate to her in default of appointment; (2) the will of T. was an exercise of the power of appointment given to her by the will of W., & the legal estate was in the trustees of the will of W., & must be traced through them.—*Re TOWNSEND'S CONTRACT*, [1895] 1 Ch. 716; 64 L. J. Ch. 334; 72 L. T. 321; 43 W. R. 392; 39 Sol. Jo. 315; 13 R. 328.

Equitable interest.]—See No. 1497, ante.

1509. Custom forbidding joint tenants—One trustee admitted—Death of admitted trustee—Lord entitled to have another trustee admitted.]—There was a custom in a certain manor whereby joint tenancies were excluded from the ct. rolls of the manor:—*Held*: (1) the custom was not overruled by the Wills Act, 1837 (c. 26), s. 3, & therefore, when only one trustee of the will of a testator who had devised copyholds to several trustees was admitted to hold according to the tenor of the will & died, the lord of the manor was held entitled to call upon another trustee to be admitted & pay a fine; (2) the special custom of the manor by which only one of several joint tenants of copyholds could be admitted & only one fine was payable on such admittance was a special circumstance which excluded the general rule that the admittance of one joint tenant operates as the admittance of all.—*HOWARD v. GWYNN* (1901), 84 L. T. 505; 65 J. P. 327; 17 T. L. R. 455.

Fines payable on admission of devisee.]—See Part XI., Sect. 1, sub-sect. 2, B. (c), ii., *ante*.

SECT. 3.—WHAT WORDS WILL PASS.

1510. Residuary personal bequest—Estate for lives does not pass.]—RUMBOLL v. RUMBOLL, No. 813, *ante*.

1511. — Customary estate distributable as personalty on intestacy—Passes.]—An estate was held by copy of ct. roll according to the custom of the manor, but in case of intestacy was distributable as personal estate, & in other respects differed from copyhold:—*Held*: it passed under a residuary bequest of the personal estate, not with copyhold estates under a general devise of all freehold & copyhold messuages, lands, etc., with limitations in strict settlement, upon the whole will & the circumstances.—*WATKINS v. LEA* (1802), 6 Ves. 633; 31 E. R. 1232, L. C.

Annotation:—*Mentd.* *Fitzroy v. Howard* (1828), 3 Russ. 225.

1512. — Copyholds do not pass.]—Testator by his will declared his daughter A. to be the sole residuary legatee of his will, & at his death had certain copyhold estates which were not specifically mentioned in his will:—*Held*: the copyholds did not pass to A.—*LEA v. GRUNDY* (1855), 24 L. T. O. S. 287; 1 Jur. N. S. 951.

1513. “Moneys, properties, & effects”—Context of will—Copyholds pass.]—Testatrix gave & bequeathed her “moneys, property & effects” to her daughters, with an ultimate limitation to her own next of kin. The disposition pointed to personal estate, there was a direction to invest, the words “devise” & “heirs” were not used, & the expressions “legacy,” “capital & principal” were applied to the gift. There being a trust for conversion:—*Held*: copyholds passed under the gift to the children.—*STREATFIELD v. COOPER* (1859), 27 Beav. 338; 54 E. R. 132.

1514. General devise of residue—Carries balance of proceeds of sale—Of specific copyholds—Charged with legacies & debts.]—Testator after devising a freehold house to his wife & her heirs, devised the residue of his freehold estates situate in four specified parishes or elsewhere in the county of C. to two trustees & their heirs upon trust that they should sell his several copyholds in the parishes, & after satisfying the costs of the sale out of the monies thence arising, should pay the residue to his exor. for the purpose of satisfying certain legacies. He then devised the residue of his real & personal estate to B. Testator, besides free-

holds & copyholds situate in the four parishes, had freeholds not situate in the county of C. & copyholds not situate within the four parishes, & all the copyholds had been surrendered to the use of his will:—*Held*: (1) the legacies were a charge only on the copyholds situate in the four parishes, & no estate in those copyholds passed to the trustees, but only a power to sell; (2) any surplus of the monies arising from the sale which might remain after satisfying the legacies passed by the residuary clause; (3) the copyholds not situate within the four parishes passed to the residuary devisee.—*WHITE v. VITTY* (1826), 2 Russ. 484; 38 E. R. 417, L. C.

1515. General mixed devise—To trustees—Copyholds not included in trusts.]—Devise & bequest of freeholds leaseholds copyholds & £1,000 stock to A. B. & C. to hold the freeholds leaseholds & £1,000 upon trust for A.:—*Held*: A. was not interested in the copyholds, which descended to the customary heir.—*JACKSON v. NOBLE* (1838), 2 Keen, 590; 7 L. J. Ch. 133; 2 Jur. 251; 48 E. R. 755.

Annotations:—*Mentd.* *Robinson v. Wood* (1858), 27 L. J. Ch. 726; *Gatenby v. Morgan* (1876), 1 Q. B. D. 685; *Jones v. Davies* (1880), 28 W. R. 455; *Hurst v. Hurst* (1882), 21 Ch. D. 278; *Re Deacon's Trust, Deacon v. Deacon, Hagger v. Heath* (1906), 95 L. T. 701; *Re Jones, Last v. Dobson*, [1915] 1 Ch. 246.

Copyholds pass.]—Testator gave all the residue of his property freehold or personal wheresoever situate to his wife her heirs & assigns for ever:—*Held*: his copyhold property passed under the terms of the devise.—*REEVES v. BAKER* (1854), 18 Beav. 372; 2 Eq. Rep. 476; 23 L. J. Ch. 599; 23 L. T. O. S. 54; 18 Jur. 588; 2 W. R. 354; 52 E. R. 147.

Annotation:—*Mentd.* *Lambe v. Eames* (1870), L. R. 10 Eq. 267.

1517. General devise of freeholds—Copyholds do not pass—Though partly intermixed.]—Devise of “all & every my freehold hereditaments & estate in the county of S.” Testator's freeholds & copyholds were to some extent intermixed, & were usually let together:—*Held*: the copyholds did not pass.—*QUENNEL v. TURNER* (1851), 13 Beav. 240; 20 L. J. Ch. 237; 17 L. T. O. S. 101; 15 Jur. 457; 51 E. R. 92.

SECT. 4.—CHARGE OF DEBTS AND LEGACIES.

Sec. generally, EXECUTORS & ADMINISTRATORS; WILLS.

1518. Charge of debts—On copyholds—Conditional on rest of estate being insufficient—Power of sale in trustees.]—There was a proviso in the will of B. that if his personal estate & house & lands at W. should not pay his debts his exors. should raise the same out of his copyhold premises:—*Held*: the rents not being sufficient to discharge testator's debts those words would give the trustee a power to sell the copyhold lands to satisfy his intention of paying his debts.—*BATEMAN v. BATEMAN* (1739), 1 Atk. 421; 26 E. R. 268, L. C.

Annotation:—*Consd.* *White v. Vitty* (1826), 2 Russ. 484.

General direction for payment of Copyholds liable.]—Testator provided that all his debts should be first paid & satisfied:—*Held*: a customary estate surrendered in trust for several persons & for the use of such as testator should appoint was subject to testator's debts, the first disposition running over all.—*GODOLPHIN (EARL) v. PENNECK* (1754), 2 Ves. Sen. 271; 28 E. R. 175, L. C.

Annotations:—*Reid.* *Graves v. Graves* (1836), 8 Sim. 43. *Mentd.* *Williams v. Chitty* (1797), 3 Ves. 545; *Price v. North* (1841), 11 L. J. Ch. 68.

Sect. 4.—Charge of debts and legacies. Sects. 5,

1520. — — — — —.]—Introductory words were inserted in a will referable to all testator's worldly estate & amounted to a charge of simple contract debts:—*Held*: (1) under such a charge copyhold lands were liable as well as freehold; (2) a copyhold which had not been surrendered was also liable.—*COOMBS v. GIBSON* (1783), 1 Bro. C. C. 273; 28 E. R. 1124.

Annotations:—As to (1) *Folld. Growcock v. Smith* (1794), 2 Cox, Eq. Cas. 397. *Consd. Judd v. Pratt* (1806), 13 Ves. 168. As to (2) *Consd. Growcock v. Smith* (1794), 2 Cox, Eq. Cas. 397.

1521. — — — — —.]—There was a general charge by introductory words upon lands for payment of debts. Testator had freeholds & copyholds:—*Held*: the copyholds were liable.—*KENTISH v. KENTISH* (1791), 3 Bro. C. C. 257; 29 E. R. 522.

Annotation:—*Folld. Growcock v. Smith* (1794), 2 Cox, Eq. Cas. 397.

1522. — — — — — Though specifically devised.]—Testator, having first directed all his debts to be paid, bequeathed all his copyhold estates & all his property whatsoever to his wife during her life & after her decease to his surviving children, & appointed A. & B. his exors.:—*Held*: the debts were charged on the copyhold estate.—*RONALDS v. FELTHAM* (1823), Turn. & R. 418; 37 E. R. 1162.

1523. — — — — — By executor—Devise of copyholds to executor—Executor takes subject to debts.]—There was a direction by testator that all his debts & funeral expenses & the charge of proving his will should be fully discharged by his exor., followed by a devise of his copyhold estates to his son without words of inheritance, & the appointment of his son as his sole exor. & residuary legatee:—*Held*: the debts were charged upon the devisee, & he took the fee in the copyholds.—*DOVER v. GREGORY* (1839), 10 Sim. 393; 9 L. J. Ch. 81; 59 E. R. 667.

Annotations:—*Consd. Harris v. Watkins* (1854), Kay, 438. *Reid. Symons v. James* (1843), 2 Y. & C. Ch. Cas. 301; *Farnam v. Wiggins* (1847), 9 L. T. O. S. 243.

1524. — — — — — Devise of copyholds to trustees—Trustees also executors.]—*CREATON v. CREATON*, No. 986, *ante*.

1525. — — — — — Created by Debts Recovery Act, 1830 (c. 47)—Has prospective effect.]—S. 12 of the above Act enabled a tenant for life under a will to sell lands for payment of the debts of any testator whose estate by law should be liable to the payment of any of his debts:—*Held*: this sect. was prospective, & extended to copyholds although they were not liable to the payment of debts when the Act was passed.—*BRANCH v. BROWNE* (1848), 2 De G. & Sm. 299; 17 L. J. Ch. 435; 11 L. T. O. S. 432; 12 Jur. 768; 64 E. R. 134.

1526. Charge of debts & legacies—Copyholds specifically devised—Liable.]—Testatrix charged & made chargeable the whole of her real & personal estate with the payment of her just debts & funeral & testamentary expenses, & also of the legacies thereafter given by her. She made a specific devise of certain copyholds, & then gave several pecuniary & specific legacies:—*Held*: the pecuniary legacies were charged on the specifically devised copyholds.—*Re EMMERTON'S ESTATE, MASKELL v. FARRINGTON* (1862), 3 De G. J. & Sm. 338; 1 New Rep. 37; 7 L. T. 301; 8 Jur. N. S. 1198; 11 W. R. 127; 46 E. R. 666, L. C.

Annotation:—*Consd. Mannox v. Greener* (1872), L. R. 14 Eq. 456.

Application of Real Estates Charges Act, 1854 (c. 113).]—See No. 625, *ante*.

SECT. 5.—CONSTRUCTION OF SPECIFIC DEVISES.

See, generally, WILLS.

1527. When whole fee not devised—Reversion passes to customary heir.]—If a copyholder surrenders to the use of his will, & devises for life or in tail, the reversion will descend to his heir, who may enter before admittance.—*BULLEN v. GRANT* (1589), Cro. Eliz. 148; 78 E. R. 406.

1528. "All copyhold estates to which I became entitled on death of my father"—Estates surrendered to testator prior to decease—Do not pass—Though possession retained by testator's father.]—Devise of "all my copyhold estates situate in A. & which I became entitled to on the decease of my father":—*Held*: copyhold estates did not pass which the devisor's father had surrendered to him in his lifetime, though the father retained the possession of them to the time of his death, which happened prior to the will made by the son, there being other copyhold of the son answering the description in the will.—*DOE d. RYALL v. BELL* (1800), 8 Term Rep. 579; 101 E. R. 1557.

Annotation:—*Mentd. Doe d. Hubbard v. Hubbard* (1850), 15 Q. B. 227.

1529. Devise of manor—Includes copyholds—Copyhold allotments under Inclosure Act—Whether allotted to or purchased by lord.]—*HICKS v. SALLITT*, No. 84, *ante*.

1530. — — — — — Includes copyholds merging in manor—Between date of will & death of devisor.]—*HICKS v. SALLITT*, No. 84, *ante*.

1531. Devise of specified house—Described as leasehold—Partly leasehold & partly copyhold—House passes.]—*BUSH v. CULLOWAY* (1859), 7 W. R. 638.

1532. Devise under power of appointment specifying formalities—Defective exercise—May operate on reversion.]—At a ct. baron C. surrendered copyhold premises to the use of H. for life, & after his decease to the use of such person & for such estate as H. should by will attested by three witnesses appoint, & in default of such appointment to the use of the heirs & assigns of H. for ever. H. was admitted on such surrender, & afterwards by will attested by two witnesses only devised the premises to W. & J., & died without having made any other surrender or will:—*Held*: although the will attested by only two witnesses was not a good execution of the power given to H. by the surrender, it operated on the reversion vested in him in default of appointment, & the want of a surrender to the use of such will was cured by stat. 55 Geo. 3, c. 192.—*DOE d. HICKMAN v. HICKMAN* (1832), 4 B. & Ad. 56; 1 Nev. & M. K. B. 780; 1 L. J. K. B. 238; 110 E. R. 376. *Annotation*:—*Reid. Doe d. Smith v. Bird* (1833), 5 B. & Ad. 695.

1533. Devise to one for life—Remainder to his sons in succession—Rule in Shelley's case applies.]—By a will copyhold lands were limited to the use of the eldest son of B. for his life & then to his sons & their sons in succession:—*Held*: the rule in Shelley's case applied & the eldest son of B. took an estate tail.—*Re BUCKTON, BUCKTON v. BUCKTON*, [1907] 2 Ch. 406; 76 L. J. Ch. 584; 97 L. T. 332; 23 T. L. R. 692.

Annotations:—*Mentd. Re Halston, Ewen v. Halston*, [1912] 1 Ch. 435; *Re Flecher, King v. King* (1918), 62 Sol. Jo. 740.

—See, generally, REAL PROPERTY & CHATTELS REAL.

SECT. 6.—CHARITABLE DEVISES.

1534. No surrender to use of will—Devise good as appointment.]—R. devised fourteen acres of

copyhold by inheritance to his son & his heirs on condition that the profits should be employed on the relief of the poor at S. for ever. R. died without any surrender being made to the use of the will either before or after the will:—*Held*: although there was no surrender the will was a limitation & assignment to charitable uses within 43 Eliz. c. 4.—*RIVET'S CASE* (1617), Moore, K. B. 890; 72 E. R. 977, L. C.

Annotations:—*Refd.* A.-G. v. Skinners' Co. (1827), 2 Russ. 407. *Mentd.* Goring v. Bickerstaffe (1662), Freem. Ch. 163.

1535. — — —.]—Devise of a copyhold of a charity:—*Held*: it was good though not surrendered to the use of the will since it was a good appointment within the stat. 43 Eliz. c. 4.—*CHARD (PORTREEVE & BURGESSSES) v. OPIE* (1673), Cas. temp. Finch 75; 23 E. R. 40.

1536. — — —.]—W., before the Charitable Uses Act, 1736 (c. 36), devised all his copyhold lands to a charity. He had some copyholds surrendered to the use of the will & other copyholds not surrendered:—*Held*: (1) the devise of copyholds unsurrendered was good; (2) in the case of a devise to a charitable use the ct. would supply a defect of surrender & make the devise good by way of appointment under the very strong & general words of Stat. 43 Eliz. c. 4.—A.-G. v. *ANDREWS* (1749), 1 Ves. Sen. 225; 27 E. R. 996, L. C.

Annotations:—*As to* (1) *Refd.* *Habergham v. Vincent* (1793), 4 Bro. C. C. 353; *Doe d. Cook v. Danvers* (1806), 3 Smith, K. B. 291.

1537. — — — *Heir-at-law ordered to surrender.*]—A copyhold estate was devised to Pembroke Hall, Cambridge, not having been surrendered to the use of the will:—*Held*: the defect should be supplied by the heir-at-law to whom testator had devised freehold estates.—A.-G. v. *PARKIN* (1769), Dick. 422; 21 E. R. 333, L. C.

Annotations:—*Mentd.* *Ashburner v. Macguire* (1786), 2 Bro. C. C. 108; *Stanley v. Potter* (1789), 2 Cox, Eq. Cas. 180; *Chaworth v. Beech* (1799), 4 Ves. 555; *Colville v. Middleton* (1840), 3 Beav. 570; *Williams v. Hughes* (1857), 24 Beav. 474; *Re Bridle* (1879), 4 C. P. D. 336; *Re Robe, Slade v. Walpole* (1889), 61 L. T. 497.

See, now, Wills Act, 1837 (c. 26), s. 3.

1538. *Surrender to use of will—Defective execution of will—Devise good as appointment.*]—A will of freehold & copyhold lands in favour of a charity, though not validly executed, might operate as an appointment of the copyholds, under stat. 43 Eliz. c. 4, if there was a surrender to the uses of the will, since the lands passed by the surrender & not by the will, but it could not so operate in the case of freeholds.—A.-G. v. *BARNES* (1708), 2 Vern. 597; Gilb. Ch. 5; 23 E. R. 990; *sub nom.* A.-G. v. *BAINS*, Prec. Ch. 270; 3 Rep. Ch. 150, L. C.

Annotations:—*Consd.* *Tufnell v. Pago* (1740), 3 Atk. 37. *Mentd.* *Jenner v. Harper* (1714), 1 P. Wms. 247; A.-G. v. *Downing* (1769), Dick. 415.

1539. — — —.]—T. devised copyhold lands in charity that he had before surrendered to the use of his will, which consisted of eleven sheets, the two first of which he signed, & died before he signed the rest, nor were there any witnesses:—*Held*: it was a good appointment of the copyhold

estate for the charity under stat. 43 Eliz. c. 4.—A.-G. v. *SAWTELL* (1742), 2 Atk. 497; 26 E. R. 700, L. C.

See, generally, CHARITIES, Vol. VIII., pp. 282 *et seq.*

SECT. 7.—ELECTION AND CONDITIONAL GIFTS.

See, generally, EQUITY; GIFTS.

1540. *Devise in lieu of dower—Widow put to election.*]—The suit was to stay a suit at law in a writ of dower made by deft. Deft.'s wife had certain copyhold lands devised unto her in lieu of her thirds at law, which she accepted & enjoyed twenty years, & yet she sought to recover dower of the freehold lands. Defts. demurred because copyhold lands could be no bar of dower:—*Held*: she should not have both, & should be ordered to answer.—*LACY v. ANDERSON* (1582), Ch. Cas. in Ch. 155; 1 Swan. 445; 21 E. R. 91.

1541. *Annuity in lieu of dower—Widow customary heir—No election.*]—Testator, having freeholds & copyholds in fee, gave an annuity to his wife in lieu & satisfaction of all dower & thirds or other claims & demands which she might otherwise have had upon his estate, & died intestate as to his real estates. His widow was his customary heir:—*Held*: she was not bound to elect between the annuity & the copyholds but was entitled to both.—*NORCOTT v. GORDON* (1844), 14 Sim. 258; 4 L. T. O. S. 49; 8 Jur. 679; 60 E. R. 357.

Annotation:—*Mentd.* *Stahlschmidt v. Lett* (1853), 1 Sm. & G. 421.

1542. *Devise of real estate to heir-at-law—Power given to widow to reside in copyhold house—Claim by heir-at-law to copyholds as unsurrendered—Heir put to election.*]—Testator, possessed of freehold & copyhold not surrendered, of which latter his mansion house was part, after certain legacies, devised all his real & personal estate to his wife for life, remainder to his heir-at-law. There was an expression in the will that his wife, if she should think proper, should reside at his mansion house:—*Held*: testator intended to devise his copyhold, & the heir ought to be put to his election.—*UNETT v. WILKES* (1763), 2 Eden, 187; Amb. 430; 28 E. R. 869, L. C.

Annotation:—*Consd.* *Judd v. Pratt* (1806), 13 Ves. 168.

1543. *General devise—To nephews & nieces—Copyholds not surrendered—Does not raise election.*]—Devise by the general terms "all the rest residue & remainder of my real & personal estate of what nature or kind soever" to nephews & nieces:—*Held*: the devise, not being for creditors wife or children, was not sufficient to raise a case of election, or for supplying the want of surrender of copyhold land contiguous & intermixed with freehold, against the heir.—*JUDD v. PRATT* (1808), 15 Ves. 390; 33 E. R. 802.

Annotations:—*Refd.* *Torre v. Browne* (1855), 5 H. L. Cas. 556. *Mentd.* *Dummer v. Pitcher* (1833), 2 My. & K. 262; *Allen v. Anderson* (1846), 5 Hare, 163; *Maxwell v. Maxwell* (1852), 2 De G. M. & G. 705.

— *Whether amounting to limitation.*]—*See, generally*, WILLS.

Part XVI.—Settlement of Copyholds.

SECT. 1.—VOLUNTARY SETTLEMENTS.

See, generally, SETTLEMENTS.

1544. Not enforced—As against heir.]—BELLINGHAM *v.* LOWTHER (1674), 1 Cas. in Ch. 243; 22 E. R. 781.

1545. — In favour of children.]—Testator voluntarily covenanted to surrender copyholds on trusts for his children:—*Held*: equity would not compel any act to be done for the purpose of carrying the covenant into effect.—TATHAM *v.* VERNON (1861), 29 Beav. 604; 4 L. T. 531; 7 Jur. N. S. 814; 9 W. R. 822; 54 E. R. 762.

Annotations:—*Mentd.* *Re* Whiston's Settlmt., Lovatt *v.* Williamson, [1894] 1 Ch. 661; *Re* Hudson, Kühne *v.* Hudson (1895), 72 L. T. 892; *Re* Irwin, Irwin *v.* Parkes, [1904] 2 Ch. 752; *Re* Tringham's Trusts, Tringham *v.* Greenhill, [1904] 2 Ch. 487; *Re* Clarke's Settlmt. Trust, Wanklyn *v.* Streetfield, [1916] 1 Ch. 407; *Re* Bostock's Settlmt., Norrish *v.* Bostock, [1921] 2 Ch. 469.

1546. — Post-nuptial settlement of parents—Though for value as between parents.]—GREEN *v.* PATERSON, No. 763, *ante*.

1547. Covenant to surrender by way of voluntary settlement—With covenant for further assurance at expense of settled property—Executor allowed expenses—Except fine on subsequent admission of trustee.]—Testatrix, being seised according to the custom of the manor of B. & admitted on the ct. roll as tenant in tail of certain copyholds, by an indenture of settlement inrolled under the Fines & Recoveries Act, 1833 (c. 74), which operated as a disentailing deed, in consideration of natural love & affection covenanted to surrender the copyholds to a trustee, in trust for deft. for life, with remainders over. She also covenanted with the trustee for further assurance, "at the costs of the thereby settled estates & property." Afterwards by her will she bequeathed all her residuary estate, after payment of her just debts, to pltf., & made deft. her exor. After her death deft., at the instance of the trustee, procured himself to be admitted on the ct. roll, & surrendered to the trustee, who was thereupon admitted as tenant:—*Held*: (1) deft. was entitled to be allowed all expenses properly incurred in the surrender, & in the execution & registration of the deed of surrender; (2) he was not entitled to anything in respect of the fine payable to the lord upon the admission of the tenant, & which was necessary in order to effectuate the disentail.—CLARKE *v.* TWYFORD, *Re* PIRKINS'S ESTATE (1859), 33 L. T. O. S. 178; 5 Jur. N. S. 564; 7 W. R. 538.

SECT. 2.—IN CONSIDERATION OF MARRIAGE.

1548. Surrender to son after son's treaty of marriage—Statement by father to wife's friends that copyhold settled—Surrender not voluntary or fraudulent.]—A. surrendered the reversion in fee of copyhold lands to his son to lessen the fine he must have paid in case it had come to him by descent, after the son's treaty of marriage. He told the wife's friends that this copyhold was so settled, in consideration of which & of some leasehold lands a marriage was had, & £2,000 portion paid:—*Held*: this surrender of the copyhold was not voluntary or fraudulent.—KIRK *v.* CLARK (1708), Proc. Ch. 275; 2 Eq. Cas. Abr. 479, pl. 8; 24 E. R. 133, L. C.

Annotation:—*Consd.* Brown *v.* Carter (1801), 5 Ves. 862.

1549. Enforcement of covenant to surrender—In consideration of marriage—Not in favour of

mortgagee without surrender—As against subsequent purchaser by surrender from covenantor.]—Trust moneys were invested in lands belonging to W., partly copyhold & partly freehold & settled in a marriage settlement, the copyhold being limited & settled, apart from the freehold, to the use of the issue of the marriage & afterwards in fee to the son R., with a covenant from W. to surrender the copyhold. The son, on the death of the wife, mortgaged both lands, without a surrender, to O. for valuable consideration. The son died & the lands descended to E., the sister, as heir-at-law. The mtgees. foreclosed E. by decree & entered into possession. E. released & confirmed the estate in fee. W., the father, surrendered the copyhold, having been out of possession for 13 years, to P. for valuable consideration. O. was admitted & brought an ejectment. The mtgees. asked to be relieved:—*Held*: the mtgee. could not be relieved, the ct. not being able to supply the defect of surrender as against a person who had come with the title upon surrender.—OXWITH *v.* PLUMMER (1708), Gilb. Ch. 13; 2 Vern. 636; Bac. Abr. tit Mortgage E. 3; 25 E. R. 10, L. C.

Annotations:—*Expld.* Bamhart *v.* Greenshields (1853), 9 Moo. P. C. C. 18. *Reid.* Holmes *v.* Powell (1856), 8 De G. M. & G. 572.

1550. — Not enforced in favour of collaterals—As against son admitted in fee & covenanting to settle on marriage.]—There was a covenant in a marriage settlement that the settlor would surrender certain copyholds which were intermixed with his freeholds, to be settled upon the issue of the marriage, with limitations to collateral branches of the family; his eldest son, upon his marriage, covenanted to suffer a recovery of the freehold, which was done, & to settle the copyhold, to which he was admitted in fee. A bill was brought by a nephew of the first settlor, on failure of issue of that marriage, for specific performance of the covenant to surrender in favour of collaterals:—*Held*: though the consideration of marriage extended to collaterals, yet the son by the covenants on his marriage & by his admission in fee had taken the copyholds discharged of the specific limitations.—HALE *v.* LAMB (1704), 2 Eden, 292; 28 E. R. 910.

1551. — Proposed surrenderee must be party.]—COPE *v.* PARRY (1821), 2 Jac. & W. 538; 37 E. R. 733.

1552. — Settlement on second marriage in favour of children of first marriage—Children of first marriage can enforce.]—By a settlement made upon her second marriage a widow covenanted to surrender copyholds to be held upon trust for her separate use for life, & after her death upon trust for the children & grandchildren of her former marriage, but the copyholds were never surrendered. She outlived her husband & by her will she devised the copyholds in a manner inconsistent with the limitations in the settlement:—*Held*: the children & grandchildren of the former marriage were not volunteers under the settlement, & the ct. would enforce in their favour the covenant to surrender.—GALE *v.* GALE (1877), 6 Ch. D. 144; 46 L. J. Ch. 809; 36 L. T. 690; 25 W. R. 772.

Annotations:—*Reid.* Gandy *v.* Gandy (1885), 30 Ch. D. 57; Tucker *v.* Bennett (1887), 38 Ch. D. 1; A.-G. *v.* Jacobs Smith, [1895] 2 Q. B. 341. *Mentd.* *Re* Cameron & Wells (1887), 37 Ch. D. 32; Meredyth *v.* Meredyth, [1895] P. 92; Russell *v.* Russell (1897), 13 T. L. R. 516.

1553. Effect of covenant to surrender—Legal tenant in tail under covenant taking as heiress—No equity to settlement.]—Copyhold property descended in fee upon a married woman, subject to a covenant entered into by a former owner upon his marriage to surrender it to certain uses, under which, had the surrender been made, the married woman would have been legal tenant in tail :—*Held* : she had no equity to a settlement out of property so circumstanced.—*Re CUMMING, Ex p. TURNER* (1860), 2 De G. F. & J. 376 ; 30 L. J. Ch. 29 ; 3 L. T. 391 ; 6 Jur. N. S. 1129 ; 9 W. R. 213 ; 45 E. R. 666, L. JJ.

1554. — To same uses as declared of freeholds—General power of appointment of freeholds—Remainder in default to issue—Power of appointment of copyholds not restricted to issue.]—By a marriage settlement, reciting only the intended marriage, & that it had been agreed that the lady's property should be settled & assured to the uses after mentioned, freeholds were conveyed to the use of the wife for life, remainder to the husband for life, remainder to such uses & upon such trusts as the wife should appoint, & in default of appointment to uses in favour of the issue of the marriage. The wife covenanted to surrender her copyholds "to the uses hereinbefore expressed" concerning the freeholds. An appointee under the power was admitted to the copyholds, & obtained an enfranchisement to himself :—*Held* : (1) the power of appointment was general, & could not be restricted

to a power to appoint to issue ; (2) the covenant to surrender the copyholds to the same uses as the freeholds made the copyholds subject in equity to the same power of appointment as the freeholds, though powers were not expressly referred to in the covenant ; (3) the concurrence of the customary heir of the settlor [in a sale by the appointee] was a question of conveyance, & not of title, for the heir clearly had no beneficial interest.—*MINTON v. KIRWOOD* (1868), 3 Ch. App. 614 ; 37 L. J. Ch. 606 ; 18 L. T. 781 ; 16 W. R. 991, L. JJ.

Annotation :—As to (2) *Consd. Heasman v. Pearse* (1871), L. R. 11 Eq. 522.

1555. — Freeholds subject to power of appointment—Copyholds subject to same power.]—*MINTON v. KIRWOOD*, No. 1554, *ante*.

1556. Settlement of equitable estate with covenant for further assurance—Settlor admitted—Sale by settlor—Trustees can recover purchase-money against settlor's estate.]—A. assigned to the trustees of his marriage settlement an equitable interest in certain copyholds with a covenant for further assurance. A. afterwards got himself admitted, & sold the copyholds, & received the purchase-moneys, & applied them to his own use :—*Held* : the trustees were entitled under the covenant to prove against his estate as for a specialty debt.—*Re DICKSON, BLACKBURN v. DICKSON* (1871), L. R. 12 Eq. 154 ; 40 L. J. Ch. 707 ; 25 L. T. 118.

Part XVII.—Devolution on Bankruptcy.

See Bankruptcy Act, 1914 (c. 59), s. 48 (4).

1557. Copyholds subject to bankruptcy statutes.]—*CRISP v. PRATT* (1639), Cro. Car. 549 ; 79 E. R. 1072.

Annotations :—*Folld. Lilly v. Osborn* (1734), 3 P. Wms. 298. *Consd. Glaister v. Hower* (1802), 8 Ves. 195. *Appld. Doe d. Spencer v. Clark* (1822), 5 B. & Ald. 458. *Mentd. Tucker v. Cosh* (1651), Sty. 288 ; *Scroope v. Scroope* (1663), 1 Cas. in Ch. 27 ; *Newton v. Trigg* (1689), 3 Mod. Rep. 328 ; *Banks v. Farquharson* (1752), 2 Hov. Supp. 178.

1558. Estate vests in assignees—Without entry on court rolls.]—*DOE d. SMITH v. GLENFIELD* (1835), 1 Bing. N. C. 729 ; 131 E. R. 1298 ; *sub nom. DOE d. BRENNAN v. GLENFIELD*, 1 Hodg. 78 ; 1 Scott, 609 ; 4 L. J. C. P. 234.

1559. — Title not postponed to mortgagee from bankrupt by delay.]—1 Geo. 4, c. 119, s. 7, provided that, in case an insolvent should be entitled to any copyhold or customary estate, the assignment to or certified copy of the appointment of the assignee should be entered on the ct. rolls of the manor, & the assignee should with all convenient speed make sale of all the estate & effects of the insolvent. The assignees of an

insolvent debtor omitted to sell or take possession of his copyhold estate, or to cause an entry of the assignment or copy of the appointment of the assignee to be made on the ct. rolls, or to possess themselves of the copies of ct. roll, for a period of nineteen years after the insolvency, whereby the insolvent was enabled to retain the property, hold himself out as the owner, & mortgage it for value to a person who had no actual knowledge of the insolvency :—*Held* : (1) this did not constitute an equitable ground for giving the mtgee. a charge in priority to the title of the assignee ; (2) the provisions of 1 Geo. 4, c. 119, s. 7, were not mandatory but directory only.—*COLE v. COLES* (1848), 6 Hare, 517 ; 67 E. R. 1269 ; 12 L. T. O. S. 237, L. C.

See, also, BANKRUPTCY & INSOLVENCY, Vol. V., pp. 689, 1007, Nos. 6093, 8209.

1560. Sale by trustees—Defeats bankrupt's wife's freebench—Though bankrupt die before purchaser admitted.]—*PARKER v. BLEEKE*, No. 947, *ante*.

See, also, BANKRUPTCY & INSOLVENCY, Vol. V., p. 967, Nos. 7915, 7917.

Part XVIII.—Mode of Transmission of Copyholds inter vivos.

SECT. 1.—WHETHER BY DEED OR BY SURRENDER AND ADMITTANCE.

1561. By surrender—Purported assignment otherwise void—Unless to lord.]—A copyholder may not convey his copyhold to a stranger without surrender & admittance ; yet he may grant his estate to the lord of the manor out of the ct. by bargain & sale, for the custom is not between the lord & his tenants, but between themselves only (*HOBERT, C.J.*). The admittance of the lord, viz.

the lessee of the manor amounts to a grant to him, who had a title, but it is otherwise, if it is to him who was in by wrong, as by disseisin (*WINCH, J.*).—*HASSET v. HANSON* (1623), Win. 66 ; 124 E. R. 57.

1562. — Though for valuable consideration.]—S. assigned to D. & surrendered the copyhold, & D. assigned the two acres of freehold to the pltf., & (*inter alia*), the copyhold in the tenure of J. These assignments were on valuable

Sect. 1.—Whether by deed or by surrender and admittance. Sect. 2: Sub-sect. 1, A. (a), (b) i., ii. & iii. & (c).]

consideration:—*Held*: the copyhold could not pass but by surrender only, & not by conveyance.—**KNIGHT v. COOKE** (1680), 2 Cas. in Ch. 43; 22 E. R. 838, L. C.

1563. — Common recovery.]—OLIVER v. TAYLOR, No. 575, *ante*.

1564. — Lease & release—Relessee cannot bring ejectment against widow of relessor.]—DOE d. NORTH v. WEBBER, No. 2001, *post*.

1565. — Though by assignee in bankruptcy.]—DRURY v. MAN (1746), 1 Atk. 95; 26 E. R. 62, L. C.

Annotations:—**Apld.** *Re Harvey, Ex.p.* Holland (1819), 4 Madd. 483. **Reid.** Bristow v. Booth (1869), L. R. 5 C. P. 80.

1566. — Though in form authorised by particular statute—Heir ordered to be admitted & to hold as trustee.]—An Act of Parliament, incorporated certain persons as a co. for the purpose of making a canal, & gave them powers to purchase & hold lands for the purposes of the Act; it authorised persons to contract for, sell, & convey their lands, gave a form of conveyance of all the estate, right, title, & interest of the person conveying, & enacted that all such contracts, agreements, sales, conveyances, & assurances should be valid to all intents, etc. S. was a tenant of copyhold land, a portion of which was wanted for the purposes of the canal; he sold it to the co., & executed a conveyance according to the form given by the Act. The land was then applied to the purposes of the canal. On the death of S. the lord made a proclamation for the heir of S. to come in & be admitted as a tenant on the rolls of the manor. No one appeared to claim admittance, & the lord seized the land *quousque*. He afterwards brought ejectment against the canal proprietors, & obtained judgment against them on the ground that the conveyance under the Canal Act had only vested in them an equitable estate in the copyhold land. He then interfered to stop the course of the navigation. The canal proprietors filed a bill against him, praying that the customary heir of S. or such other person as plffs. might appoint, might be admitted to the copyhold premises, plffs. undertaking to pay a fine & fees upon such admission; & further praying for a perpetual injunction & general relief. The Vice-Chancellor made a decree directing that the customary heir of S. who had been made a party to the suit should be admitted tenant to the copyhold premises in question, & when admitted should hold the same as trustee for plffs. in the suit, & the amount of the fine was referred to the master, & an injunction was granted as prayed:

Held: (1) the decree of the Vice-Chancellor was right; (2) the lord having seized *quousque*, & having recovered at law, could not be allowed to contend that the legal estate of S. had passed to the Canal Co. & that his customary heir was a stranger.

Copyholds Act, 1722 (c. 29), and Infants Property Act, 1830 (c. 65), provide, that, in default of an infant heir appearing by his guardian or attorney to be admitted, the lord of a manor may, after three proclamations, appoint an attorney for the infant, and admit him by such attorney; that he may then proceed to fix the fine; & if it be not paid, may seize & hold the land until he has paid himself the fine & expenses; & after payment thereof, give up the land to the heir:—*Held*: those statutes applied to cases of seizure *quousque*.—**DIMES v. GRAND JUNCTION CANAL**

(PROPRIETORS) (1852), 3 H. L. Cas. 794; 19 L. T. O. S. 317; 17 Jur. 73; 10 E. R. 315, H. L.; *affg.* S. C. *sub nom.* GRAND JUNCTION CANAL Co. v. DIMES (1846), 15 Sim. 402.

Annotations:—**Mentd.** Doe d. Patrick v. Beaufort (1851), 8 Exch. 498; Bright v. Hutton, Hutton v. Bright (1852), 3 H. L. Cas. 341; Hawkins v. Gathercole (1852), 16 Jur. 650; R. v. West Riding JJ. (1852), 17 J. P. 67; Egerton v. Brownlow (1853), 4 H. L. Cas. 1; Banks v. Ollerton (1854), 10 Exch. 168; Ranger v. G. W. Ry. (1854), 5 H. L. Cas. 72; R. v. Surrey JJ. (1855), 19 J. P. Jo. 755; *Ex p.* Hopkins (1857), 4 Jur. N. S. 529; R. v. Storks (1857), 5 W. R. 563; Ellis v. Hopper (1858), 3 H. & N. 766; Kemp v. Rose (1858), 1 Giff. 258; Lancaster & Carlisle Ry. v. Heaton (1858), 27 L. J. Q. B. 195; Williams v. G. W. Ry. (1858), 3 H. & N. 869; Parr v. Winteringham (1859), 5 Jur. N. S. 787; Wildes v. Russell (1866), L. R. 1 C. P. 722; R. v. M. S. & L. Ry. (1867), 36 L. J. Q. B. 171; Phillips v. Eyre (1870), L. R. 6 Q. B. 1; Todd v. Robinson (1884), 14 Q. B. D. 739; R. v. Farrant (1887), 20 Q. B. D. 58; Leeson v. General Council of Medical Education & Registration (1889), 43 Ch. D. 366; Lowther v. Cale. Ry., [1891] 3 Ch. 443; Allinson v. General Medical Council (1894), 42 W. R. 289; City of London Electric Lighting Co. v. London Corpn. (1900), 82 L. T. 531; R. v. Simpson, [1914] 1 K. B. 66; Transvaal Lands Co. v. New Belgium (Transvaal) Land & Development Co., [1914] 2 Ch. 488; Haynes v. Davis, [1915] 1 K. B. 332.

See, also, Sect. 3, *post*.

SECT. 2.—BY SURRENDER AND ADMITTANCE.

SUB-SECT. 1.—SURRENDER.

A. Who may Surrender.

(a) Whether Possession Essential or Sufficient.

1567. Persons out of possession—Remainderman expectant on life estate—May surrender—Unless custom to the contrary.]—BUTLER & LIGHTFOOT'S CASE, No. 880, *ante*.

See, also, No. 881, *ante*.

1568. — Tenant — Cannot surrender.] — A special verdict was found, that a copyholder of the King's was put out of possession & during this ouster, the copyholder made a surrender to S. who was lessor of pltf.:—*Held*: nothing did pass by this surrender, because the tenant was out of possession at the time of the surrender, yet there could be no disseisin, because the freehold was in the King, who could not be disseised; & then by the entry of the lessor, who had made the surrender, his estate was regained.—NALSON v. REMINGTON** (1631), Clay, 1, N. P.**

1569. — Devisee of contingent remainder—Cannot surrender.]—Devisees of contingent remainders in a copyhold, not being in the seisin, cannot make a surrender of their interest; nor will such a surrender operate by estoppel against the parties or their heirs.—DOE d. BLACKSELL v. TOMKINS** (1809), 11 East, 185; 103 E. R. 975.**

Annotations:—**Consd.** Randfield v. Randfield (1860), 1 Drew. & Sm. 310. **Reid.** Doe d. Baverstock v. Rolfe (1838), 8 Ad. & El. 650; Rider v. Wood (1855), 1 K. & J. 644.

1570. Persons in possession—Reversioner or remainderman—As disseisor of life tenant—Cannot surrender.]—If a copyholder in reversion enter upon the tenant for life, he is a disseisor & a surrender by him is void. If a copyholder for life suffer a recovery in the ct. baron as tenant of the fee, yet this is no forfeiture of the estate. If a copyholder for life commit forfeiture, the lord & not he in remainder shall take advantage of it.—KEEN v. KIRBY** (1675), 1 Mod. Rep. 199; 86 E. R. 827; *sub nom.* KREN v. KIRBY, 2 Mod. Rep. 32; *sub nom.* KERBY'S (ALIAS KIRK'S) CASE, 1 Freem. K. B. 192; *sub nom.* BIRD v. KIRKBY Cart, 237.**

Annotation:—**Reid.** Doe d. Bover v. Trueman (1831), 1 B. & Ad. 736.

*(b) Persons under Disability.**i. Married Women.*

1571. Not out of court.]—A surrender of copyholds by a married woman cannot be taken out of ct., because she must be secretly examined by the steward.—*RICH v. EARTH* (1596), Toth. 46; 21 E. R. 119.

1572. — Unless by custom—To two tenants of manor.]—(1) Copyholds cannot be entailed except by special custom.

(2) The surrender of a copyhold estate tail is a discontinuance of the estate.

(3) It is a good custom, that a *feme covert* copyholder may surrender to two tenants of the manor out of ct.

(4) The surrender of a copyhold to the steward to the use of the steward himself is good.

(5) *Qu.*: If the lessee of a copyholder can maintain an ejectment.—*ERISH v. RIVES* (1599), Cro. Eliz. 717; 78 E. R. 951.

Annotation:—*As to* (3) *Refd.* *Compton v. Collinson* (1790), 1 Hy. Bl. 334.

1573. By husband & wife together—When wife separately examined—To disseisor in possession—Binds her without custom.]—The surrender in ct. of a copyhold by husband & wife, to a tenant in possession by a wrongful title, she being examined by the steward, binds the wife, although there is no custom to support it.—*STONE v. EXTON* (1679), 2 Show. 82; 89 E. R. 808.

1574. By wife alone—Without consent of husband—Custom to permit—Bad.]—*STEVENS d. WISE v. TYRELL* (1753), 2 Wils. 1; 95 E. R. 653.

Annotation:—*Consd.* *Compton v. Collinson* (1790), 1 Hy. Bl. 334.

1575. — Custom requiring husband's consent—Presence of husband at court—Insufficient proof of consent.]—*DOE d. SHELTON v. SHELTON*, No. 1589, *post*.

1576. — Wife living apart from husband under articles of separation.]—Where a married woman lives apart from her husband under articles of separation, by which he covenants that she shall enjoy to her own use all such estates, both real & personal, as shall come to her during the coverture & that he will join in the necessary conveyances to limit them to such uses as she shall appoint; & copyhold lands having afterwards descended to her, the husband again covenants in the same manner as before & that he will join in surrendering such estates to such uses as she shall appoint:—*Held*: the wife might surrender the copyhold lands without the husband joining & without a special custom for that purpose.—*COMPTON v. COLLINSON* (1790), 1 Hy. Bl. 334; 126 E. R. 197.
Annotations:—*Mentd.* *Board v. Webb* (1800), 2 Bos. & P. 93; *Murray v. Barlee* (1834), 3 My. & K. 209.

1577. — Wife deserted by husband—Court may authorise.]—Under Fines & Recoveries Act, 1833 (c. 74), ss. 77, 91, the Ct. of Common Pleas authorised a *feme covert* to convey her copyhold property, her husband having resided abroad for more than twenty years with another woman.—*Ex p. SHIRLEY* (1839), 5 Bing. N. C. 226; 7 Dowl. 258; 1 Arn. 484; 7 Scott, 174; 3 Jur. 125; 132 E. R. 1091.

1578. — After separate examination—By steward—Or two tenants by custom.]—A *feme covert*, who surrenders copyhold lands, ought previously to be examined separately from her husband, by the steward of the manor. But by special custom she may be separately examined before two customary tenants.—*DRIVER d. BERRY v. THOMPSON* (1811), 4 Taunt. 294; 128 E. R. 342.

1579. — — — Consent of husband proved by his admittance.]—A *feme covert*, entitled to a

copyhold, surrendered it after secret examination by the steward, to the use of her husband, with his assent, testified by his immediate admittance:—*Held*: this surrender was valid.—*SCAMON v. MAW* (1826), 3 Bing. 378; 11 Moore, C. P. 243; 4 L. J. O. S. C. P. 97; 130 E. R. 558.

Annotation:—*Refd.* *Wood v. Lambirth* (1841), 1 Ph. 8.

ii. Infants.

1580. By infant—Remainderman—Does not bind his heir.]—Surrender by copyholder for life & an infant in remainder, does not bar the entry of the heir to him in remainder.—*KNIGHT v. FORTIPAN* (1588), Cro. Eliz. 90; 78 E. R. 349; *sub nom.* *KNIGHT & FOOTMAN'S CASE*, 1 Leon. 95.

1581. — Voidable on majority.]—If an infant surrenders copyhold land to the use of a stranger, & the stranger is admitted, the infant when he comes of age can enter, as there is no bar or discontinuance.—*GOOLES v. GRANE* (1593), Moore, K. B. 597; 72 E. R. 782.

1582. — Invalid.]—*HUGHES v. CARPENTER* (1611), Toth. 180; 21 E. R. 161.

1583. — Twelve years old—Valid—Manor of Parrington.]—*LYDE v. SOMISTER* (1639), Toth. 109; 21 E. R. 138.

1584. — Five years old—Surrender valid.]—*NAYLER v. STRODE* (1687), 2 Rep. Ch. 392; 21 E. R. 696.

iii. Lunatics.

1585. Surrender by lunatic—Void.]—*THOMPSON v. LEACH* (1698), Carth. 435; Comb. 438, 468; 1 Com. 45; 1 Eq. Cas. Abr. 278, pl. 3; Holt, K. B. 357; 3 Mod. Rep. 301; 12 Mod. Rep. 173; 1 Id. Raym. 313; 2 Salk. 427, 576, 675; 3 Salk. 300; 90 E. R. 852; *sub nom.* *LEACH v. THOMSON*, Show. Parl. Cas. 150, H. L.

Annotations:—*Consd.* *Zouch d. Abbot v. Parsons* (1765), 3 Burr. 1794. *Refd.* *Atkin v. Berwick* (1718), 10 Mod. Rep. 431; *Standing v. Bowring* (1885), 31 Ch. D. 282; *Mallott v. Wilson*, [1903] 2 Ch. 494; *Daily Telegraph Newspaper Co. v. McLaughlin*, [1904] A. C. 776. *Mentd.* *Burgoyne v. Benson* (1738), West temp. Hard. 340; *Yates v. Boen* (1738), 2 Stra. 1104; *Taylor d. Atkyns v. Horde* (1757), 1 Burr. 60; *Townson v. Tickell* (1819), 3 B. & Ald. 31; *Doe d. Chidgey v. Harris* (1847), 16 M. & W. 517; *Siggers v. Evans* (1855), 5 E. & B. 367; *Xenos v. Wickham* (1862), 13 C. B. N. S. 381; *Peacock v. Eastland* (1870), L. R. 10 Eq. 17; *Muller's Margarine v. I. R. Comrs.* (1899), 69 L. J. Q. B. 291.

(c) Attorney.

1586. Surrenderor in prison—Surrender by attorney bad—Lord must appoint special steward—To take surrender in prison.]—A copyholder surrendered his customary lands to the use of his last will, & thereby devised the lands to his youngest son & his heirs, & died. The youngest son being in prison made a letter of attorney to one to be admitted to the land in the lords ct., & also after admittance to surrender the same to the use of B. & his heirs, to whom he had sold it for the payment of his debts:—*Held*: not a good surrender, it not being in person. The lord must appoint a special steward to go to the prison & accept a surrender.—*ANON.* (1586), 1 Leon. 36; 74 E. R. 34.

1587. Surrender by attorney—Good.]—Every copyholder having a customary estate of inheritance, may of common right without any particular custom surrender his lands held by copy, in full ct., & as a thing incident by the common law, he may do it by attorney. But the attorney ought to pursue the manner & form of the surrender in all points, according to the custom, as the copyholder himself ought to have done. When any one has authority to do an act, he ought to do it in his name who gives the authority, & he cannot do it in his own name nor as his own proper act.

Sect. 2.—By surrender and admittance: Sub-sect. 1, A. (c), B., C., D. & E.]

Where two by letter of attorney were constituted attornies to make a surrender, & they first showed their letter of attorney, & then by the authority given to them by the said letter of attorney surrendered, etc.:—*Held*: their authority was well pursued.—COMBES'S CASE (1613), 9 Co. Rep. 75 a; 77 E. R. 843.

Annotations:—*Consd.* Parker v. Kett (1701), 1 Ld. Raym. 658. *Refd.* Compton v. Collinson (1790), 1 Hy. Bl. 334; Hunter v. Parker (1840), 7 M. & W. 322.

1588. — Not on sale in court—If surrender in person possible.]—Upon sales in ct. the vendor will be compelled to surrender a copyhold in person, if it can be conveniently done.—NOEL v. WESTON (1821), 6 Madd. 50; 56 E. R. 1009.

See, also, No. 1427, *ante*.

Refusal to appoint attorney.]—*See* No. 1413, *ante*.

1589. Custom to surrender by attorney—Does not include surrender by assignees—In bankruptcy.]—By the custom of a manor, on the surrender of a wife, if the husband consents to the surrender, such consent shall be expressed in the surrender & admission; & without his consent the surrender is wholly inoperative; & by the custom of the manor, the husband takes no interest after the wife's decease, as tenant to the curtesy. It would seem that such a custom is good, & applies generally, whether the husband has an interest or not; & that a surrender by the wife, in which it did not appear that it was with the husband's consent, would be void. At all events, supposing evidence of such consent could be supplied by parol testimony that husband was present at the ct., yet, upon a case which did not find that there was any consent, the ct. would not take upon themselves to draw an inference of that fact from circumstances stated, although by the case they were at liberty to draw any inference which a jury might have drawn. By another custom of the manor, a surrender may be made by an attorney duly appointed; but, when a surrender is so made, it is always mentioned in the surrender that it was made by an attorney duly appointed:—*Held*: a surrender purporting to be made by the assignees of a party calling themselves assignees duly appointed, which made no mention of the bkpcy., would not be binding as an act of his attorney, not only on account of the custom to state in the surrender the due appointment of such attorney, but for want of all proof of authority from him; the fact of the surrender as to bkpt.'s interests might be proved by other evidence, & proof of his bkpcy. & the appointment of assignees.

By deed, Jan. 26, 1796, reciting, that a sale had taken place under a commission against S., the premises in question were conveyed to deft.; & deft., acting upon that conveyance, on Feb. 9, 1796, executed a settlement of the property on himself. The first deed, which recited the bkpcy., was not signed by deft.; the second was:—*Held*: this was no evidence against him of the bkpcy., & he could not, by executing the latter, be said to have adopted & recognised the facts stated in the former deed.—DOE d. SHELTON v. SHELTON (1835), 3 Ad. & El. 265; 1 Har. & W. 287; 4 Nev. & M. K. B. 857; 4 L. J. K. B. 167; 111 E. R. 413.

Annotation:—*Distd.* Legge v. Boyd (1840), 6 Bing. N. C. 240.

1590. Proof of authority—Statements on court rolls admissible—If original power cannot be found.]—A ct. roll stating that a surrender was by power of attorney, would be secondary evidence of the power of attorney if the power of attorney cannot be found after a sufficient search. The

steward of a manor proved that where a surrender was by power of attorney, the practice was to keep the power of attorney with the ct. rolls. The power in question, which was for a surrender in 1814, could not be found either with the ct. rolls or anywhere in the office in which the ct. rolls had been kept ever since 1814, both by the present steward & his predecessor, who was steward in 1814:—*Held*: sufficient to let in secondary evidence.—DOE d. COUNSELL v. CAPERTON (1839), 9 C. & P. 112, N. P.

Revocability of authority.]—*See* AGENCY, Vol. I., p. 695, No. 3037.

Effect of surrender by attorney—In excess of powers.]—*See* No. 1622, *post*.

B. To whom Surrender may be made.

1591. Disseisor lord—Valid on surrender to use of another—Invalid to extinguish estate.]—The surrender of a copyhold for life to a lord who is a disseisor of the manor, *ut inde faciat voluntatem suam*, is void, & does not extinguish the copyhold; but a surrender to the use of a stranger, though a disseisor, & admittance thereon, is good.—MOOR v. PIT (1681), 2 Mod. Rep. 287; 1 Vent. 359; 86 E. R. 1076; *sub nom.* MORE v. PITT, 1 Freem. K. B. 245; *sub nom.* PITT v. MOORE, 2 Show. 153; *sub nom.* PIT v. MOOR, Skin.

See, also, Sect. 2, sub-sect. 2, A., *post*.

Steward.]—*See* Nos. 501, 502, 551, *ante*.

1592. Custom to surrender to two copyholders—Surrender to heirs of unadmitted copyholder—Good.]—MUNIFAS v. BAKER, No. 1039, *ante*

C. Validity of Surrender.

What estates may be created.]—*See* Part IX., *ante*.

1593. Surrender in futuro—Void—Reversion on death of tenant.]—A copyholder in possession surrendered the reversion of his land *post mortem suam* to the lord to an use, etc.:—*Held*: thereby nothing passed.—CLAMP & CLAMPS CASE (1587), 4 Leon. 8; Cro. Eliz. 29; 74 E. R. 691.

Annotation:—*Refd.* Simpson v. Sothorne (1614), 2 Bulst. 272.

See, also, No. 1601, *post*.

1594. — — —.]—S., a copyholder in fee, *jacens in extremis*, made a surrender of his copyhold *habendum* to an infant *en ventre sa mere* & his heirs; & if such infant died before his full age or marriage, then to J. his brother & his heirs. The infant was born & died within two months: upon which J. was admitted, & a woman as heir-general to the deviser & to the infant was also admitted & entered into the land, against whom J. brought an action of trespass:—*Held*: (1) a surrender could not begin at a day to come, no more than a livery; (2) the remainder to J. could not be good, because it was to commence upon a condition precedent, which was never performed: & therefore the surrender into the hands of the lord was void; for the lord did not take but as an instrument to convey the same to another; (3) if a copyholder in fee surrendered unto the use of himself & his heirs, because the limitation of the use was void to him who had it before, the surrender to the lord was void.—SIMPSON'S CASE (1616), Godb. 264; 78 E. R. 154; *sub nom.* SIMPSON v. SOTHERNE, 2 Bulst. 272; 1 Roll. Rep. 109; *sub nom.* SYMPSON v. SOTHERN, Cro. Jac. 376.

Annotations:—As to (2) *Refd.* Nurse v. Yerworth (1674), 3 Swan. 608. *Generally, Refd.* Scatterwood v. Edge (1696), 1 Salk. 229; Fisher v. Wigg (1700), 1 P. Wms. 14. *Mentd.* Bradford v. Woodhouse (1619), Cro. Jac. 520.

1595. — — — Good—Uses not to take effect till death of surrenderor.]—(1) A surrender to the use of A. & B. & the longest liver of them, & for want of

issue of the body of B. the remainder to C. is good, notwithstanding a clause that it shall not be in force till after the death of the surrenderor.

(2) If a lord has several manors, he may, by custom, hold high courts in one of them for all the several manors.—*SEAGOOD v. HONE* (1633), Cro. Car. 366; W. Jo. 342; 79 E. R. 920.

Annotations :—*As to* (1) *Consd.* *Fisher v. Wigg* (1701), 1 Ld. Raym. 622. *Reid.* *Gardner v. Sheldon* (1671), 2 Keb. 781. *Pybus v. Mitford* (1674), 3 Keb. 838; *Idle v. Cooke* (1705), 2 Ld. Raym. 1144.

1596. ———.]—*BENTLEY v. DELAMOR*, No. 876, *ante*.

1597. Must specify tenements surrendered—General surrender bad—Though referring to previous specific surrenders.]—The steward of a manor is not bound to accept a general surrender of tenements, without describing particularly what the tenements are, although the proposed surrender refers to a previous surrender, in which there was a description of the tenements. *Semble* : it is a good custom for the steward to prepare all surrenders in a manor for a reasonable fee.—*R. v. BISHOP'S STOKE (LORD OF THE MANOR)* (1840), 8 Dowl. 608; 4 Jur. 630.

To charitable use.]—*See, generally*, CHARITIES, Vol. VIII., p. 270, No. 352.

1598. ——— Surrender to third party to use of charitable corporation—Lord must accept.]—A surrender to another of a copyhold to the use of a charitable corporation is not prejudicial to the lord & the lord must recognise it. *Semble* : a surrender to a charitable corporation direct is prejudicial & the lord cannot be compelled to admit the corpn.—*RANSHAW & ROBOTOM'S CASE* (1601), Duke, 140.

——— Enrolment.]—*See* CHARITIES, Vol. VIII., pp. 280, 281, Nos. 534, 543.

1599. Surrender to use of steward—Good.]—*ERISH v. RIVES*, No. 1572, *ante*.

1600. Surrender to use of child en ventre sa mère—Bad—Unless by way of remainder.]—*SIMPSON'S CASE*, No. 1594, *ante*.

1601. Surrender of unsevered reversion—Bad.]—A woman copyholder in fee came to a manorial ct. & offered to surrender to J. S. & his heirs, but desired to retain an estate for her life. The steward made an entry that she surrendered the reversion of her copyhold to J. S. after her death.

Held : this was a bad grant, for there was no such reversion.—*DREWELL'S CASE* (prior to 1649), cited in Litt. 18; 124 E. R. 115.

Annotation :—*Reid.* *Selbye v. Becke* (1649), Litt. 17.

See, also, No. 1593, *ante*.

1602. Time for presentment—After death of surrenderor—Good.]—*BUNTING v. LEPINGWELL*, No. 1610, *post*.

1603. ——— At next court—Or within year—Or at next court after—Good by custom.]—A special custom, that the surrender of a copyhold shall be presented at the next ct. or within a year, or at the next ct. after the year, is a good custom.—*PARMAN v. BOWYER* (1598), Cro. Eliz. 669; 78 E. R. 907.

1604. ——— Surrender to use of will—At next court after death of surrenderor—Good by custom.]—The presentment of a surrender to the use of a will, at the next ct. after the death of the surrenderor, though it be not the next after the surrender made, is good, without a special custom.—*STINT v. BLOUNT* (1705), Com. Dig. 173, F. 10.

D. Duty of Lord to accept.

1605. Surrender subject to uses—To be declared—Lord must accept—If uses not illegal.]—*R. v. J.*—VOL. XIII.

ELY (DEAN & CHAPTER) (1839), 22 L. J. C. P. 232, n.; 17 Jur. 699, n.

Annotation :—*Dttd.* *Flack v. Downing College, Cambridge* (1853), 13 C. B. 945.

1606. ——— Lord not bound to accept—Apart from custom.]—In the absence of any special custom to that effect, the lord cannot be compelled to take a surrender by deed burthened with trusts. A surrender, therefore, to such uses as A., his exors., administrators, or assigns, at any time, or from time to time during the lives of the surrenderor & A., or the life of the survivor of them, or within twenty-one years from the day of the decease inclusively of such survivor, shall by any writing or writings under his or their hand or hands appoint, &, in default of & until such appointment, to the use of A., his heirs & assigns for ever, according to the custom of the said manor, etc.,—is not, without some special custom in the manor to warrant it, such a surrender as the lord is bound to accept.—*FLACK v. DOWNING COLLEGE (MASTER, ETC.)* (1853), 13 C. B. 945; 22 L. J. C. P. 229; 21 L. T. O. S. 335; 17 Jur. 697; 1 W. R. 453; 1 C. L. R. 692; 138 E. R. 1475.

Annotation :—*Reid.* *Eddleston v. Collins* (1853), 3 De G. M. & G. 1.

1607. Enforceable by mandamus—Conditional surrender.]—*Re* *CAWLEY (LORD OF THE MANOR)* (1846), 6 L. T. O. S. 371.

E. Construction of Surrender.

See, generally, DEEDS & OTHER INSTRUMENTS; MISTAKE.

1608. Surrender to use—Omitting words of inheritance—Construed as fee simple.]—B. father to pltf.'s wife surrendered certain copyhold lands, parcel of the manor of F. in the county of S. to R. P. & A. his wife (A. being sole daughter & heir to B.) without any words to carry an estate of inheritance :—*Held* : because it was meant by B. to pass a fee simple, & many other copyholds as well in the manor as manors adjoined were passed in like words, pltf. had a fee simple.—*PARKE v. PEAKE* (1577), Ch. Cas. in Ch. 116; 21 E. R. 71.

1609. ——— Lord may grant in fee—By custom.]—If a surrender be made to the use of another without expressing what estate he shall have; a custom that the lord may grant it in fee to him to whose use the surrender is made, is a good custom; but it must be pleaded that he had used to do it.—*BROWN v. FOSTER* (1595), Cro. Eliz. 392; 78 E. R. 638.

Construed as estate for life.]

B. contracted himself to A., & afterwards A. was married to T., & cohabited with him. B. sued A. in the ct. of Audience, & proved the contract; & sentence was pronounced that she should marry B. & cohabit with him, which she did, & they had issue C.; & then B. died. R. B., the father of B., surrendered out of ct. by the hands of tenants, to the use of his wife, M., & R. his youngest son, & died, after whose death the surrender was presented according to the custom, & the lord granted admittance to M. & R., & the heirs of R.; M. died & R. surrendered to the use of E. his wife & died. & C. entered as heir at law of R. B. :—*Held* : (1) though T. was not party to the suit, yet the sentence against the wife only being but declaratory was good, & bound the husband *de facto*. As the cognisance of the right of marriage belongs to the Ecclesiastical ct., the courts of law ought to give credit to their proceedings; so that C., the issue of B., was legitimate; (2) the limitation of the use being general, the surrenderees took

Sect. 2.—By surrender and admittance: Sub-sect. 1, E. & F. (a) &

but an estate for life, for copyhold estates are regulated by the rules of law, unless there be a special custom to the contrary, as that *sibi et suis*, or *sibi et assignatis*, etc., should create a fee; (3) though the lord granted admittance to M. & R., & the heirs of R., yet it enured to them only for their lives; the reversion to the surrenderor for the lord was but an instrument, & they were in by him who made the surrender; (4) though R. B. died before the surrender was presented in ct., yet presentment being afterwards made according to the custom; it was good; *secus* had it not been according to the custom. So if the person by whose hands the surrender was made died yet it might be presented on good proof; & if the surrenderee died before admittance, yet his heirs should be admitted.—**BUNTING v. LEPINGWELL** (1585), 4 Co. Rep. 29 a; 76 E. R. 950; *sub nom.* **BUNTINGS CASE**, Moore, K. B. 169.

Annotations:—As to (1) **Folld. Caudrey's Case** (1591), 5 Co. Rep. 1 a; **Kenn's Case** (1607), 7 Co. Rep. 42 b. **Consd. Holder v. Dickeson** (1673), *Freem. K. B.* 95. **Phillips v. Bury** (1694), *Skin.* 447; **Dalrymple v. Dalrymple** (1811), 2 Hag. Con. 54. **Consd. & Expld. R. v. Millis** (1844), 10 Cl. & Fin. 534. **Refd. Manby v. Scott** (1662), O. Bridg. 229; **Grove v. Elliott** (1670), 2 Vent. 41; **Combe v. Edwards** (1878), 42 J. P. 820. As to (2) **Refd. Fisher v. Wigg** (1699), 1 Ld. Raym. 622. As to (3) **Refd. Westwick v. Wyer** (1591), 4 Co. Rep. 28 a. As to (4) **Consd. Frosel v. Welsh** (1616), Cro. Jac. 403. **Refd. Doe d. Priestley v. Calloway** (1827), 5 L. J. O. S. K. B. 188; **Doe d. Winder v. Lawes** (1837), 7 Ad. & El. 195.

See, also, Nos. 1723, 1724, 1734, *post*.

1611. — Of will—Devise to one for ever—Lord may grant in fee simple.]—A copyholder surrendered unto the use of a stranger for ever; & the lord admitted the surrenderee to have & to hold to him & his heirs:—**Held**: if it were upon a devise, that such a one should have the copyhold in fee; & afterwards a surrender was made unto the lord to grant the copyhold according to the will; & he granted it in fee to him & his heirs, that the grant was good.—**ALLEN & PATSHALL'S CASE** (1587), Godb. 137; 78 E. R. 83.

1612. Construed as will—"Equally to be divided."]—The surrender of a copyhold must be construed as a will. The words "equally to be divided between them" will make a limitation by way of use which would otherwise have passed a joint estate, pass an estate in common.—**FISHER v. WIGG** (1700), 1 Ld. Raym. 622; 1 Com. 92; Holt, K. B. 369; 12 Mod. Rep. 296; 1 Salk. 391; 3 Salk. 206; 1 P. Wms. 14; 91 E. R. 1316.

Annotations:—**Refd. Rigden v. Vallier** (1751), 3 Atk. 731; **Goodtitle d. Hord v. Stokes** (1753), Say. 67; **Denn d. Gaskin v. Gaskin** (1777), 2 Cowp. 657; **Morgan v. Morgan** (1870), L. R. 10 Eq. 99; **Goddard v. Lewis** (1909), 101 L. T. 528. **Mentd. Attree v. Scott** (1805), 6 East, 476; **Garland v. Jekyll** (1824), 2 Bing. 273.

1613. — "Or" construed as "and"—To effectuate intention of parties.]—In order to effectuate the intention of the parties, the ct. will construe the word "or" to mean "and" as well in a surrender of copyhold premises as in a will.—**WRIGHT d. BURRILL v. KEMP** (1789), 3 Term Rep. 470; 100 E. R. 682.

Annotations:—**Distd. Doe d. Nepean v. Goddard** (1823), 2 Dow. & Ry. K. B. 773. **Consd. Eno v. Eno** (1847), 6 Hare, 171. **Refd. Doe d. Clift v. Birkhead** (1849), 4 Exch. 110.

1614. Construed by common law rules—As conveyance.]—Copyhold estates are subject to the rules of law & will not pass by such words in a conveyance as are improper to pass other estates unless there be a custom for it.—**FISHER v. NICHOLLS** (1700), Holt, K. B. 163; 3 Salk. 99; 90 E. R. 988.

—.]—A limitation of uses in a

copyhold surrender must be construed by the same rules as if it were a limitation in any other conveyance at common law.—**IDLE v. COKE** (1705), Holt, K. B. 164; 11 Mod. Rep. 57; 2 Ld. Raym. 1144; 2 Salk. 620; 1 P. Wms. 70; 90 E. R. 989.

Annotations:—**Mentd. Darbison v. Beaumont** (1713), Fortes. Rep. 18; **Martin d. Tregonwell v. Strachan** (1743), 5 Term Rep. 107 n.; **Doe d. Willis v. Martin** (1790), 4 Term Rep. 39; **Goodtitle d. Holford v. Otway** (1796), 1 Bos. & P. 576; **Cave v. Holford** (1798), 3 Ves. 650; **Doe d. Littledale v. Smeddle** (1818), 2 B. & Ald. 120; **Morgan v. Morgan** (1870), L. R. 10 Eq. 99; **Olivant v. Wright** (1878), 9 Ch. D. 646.

1616. — —.]—The surrender of copyhold estates must have the same construction with feoffments at law, & other conveyances, & not as a will; & if the limitations of a copyhold are so framed, as by the rules of law they are void, they must take their fate, & no intention can make them good.—**LOVELL v. LOVELL** (1743), 3 Atk. 11; 26 E. R. 809.

Construction of devise.]—See Part XV., Sect. 5, *ante*.

1617. Parol evidence admissible—To show mistake in land—Or uses.]—Parol proof shall be admitted to explain a surrender of copyhold land, to show a mistake either in the land or uses, since this is only a matter of fact.—**TOWERS v. MOOR** (1689), 2 Vern. 98; 23 E. R. 673.

Annotation:—**Mentd. Goodtitle d. Holford v. Otway** (1796), 2 Hy. Bl. 516.

F. Effect of Surrender.

(a) In General.

1618. Discrepancy between surrender & enrolment—Enrolment operative—Only within limits of surrender.]—B., a tenant of the manor, was bound by covenant to convey all his interest before a certain day, & before that day he surrendered divers parcels to F., steward of the manor.

At the next ct. this surrender was duly enrolled with particulars concluding "by the name of all the lands, etc., which he had & held of the manor on the day of this surrender, etc.," these general words not being in the surrender taken by the steward:—**Held**: no more passed than was particularly expressed in the surrender.—**WINTER v. JERINGHAM** (1566), 2 Dyer, 251 b; 73 E. R. 556.

Annotation:—**Consd. Doe d. Priestley v. Calloway** (1827), 9 Dow. & Ry. K. B. 518.

1619. Surrender by tenant in extremis—To use of self for life, remainder over—Surrender stands—Though tenant recover.]—In *ejectione firmæ*, where customary land descended to the younger son by custom, & he entered & leased it to another, who took the profits, & was ejected:—**Held**: he should have an *ejectione firmæ* without any admittance of his lessor or presentment that he was heir.

Lessor at the time of the death of his ancestor was only two years old, & after his full age no ct. had been held for a long time, & at the first ct. held, he prayed to be admitted, but the steward refused to admit him:—**Held**: this was a good excuse for his negligence.

If a copyholder surrender *in extremis* to the use of himself for life, etc., if he shall be well again, the surrender shall stand, for he hath reserved an estate to himself (**WRAY, J.**).—**RUMNEY & EVES CASE** (1588), 1 Leon. 100; 74 E. R. 93.

Annotations:—**Refd. King v. Dilliston** (1690), 1 Show. 31, 83. **Mentd. Doe d. Bover v. Trueman** (1831), 1 B. & Ad. 736.

1620. Surrender by husband in fee—No discontinuance of wife's estate.]—**BULLOCK v. DIBLER**, No. 778, *ante*.

1621. Surrender by heir apparent—In lifetime of

tenant—Heir of heir not bound.]—The heir apparent of a copyholder in fee surrendered in the lifetime of his ancestor, & survived him:—*Held*: the heir of such surrenderor was not estopped by that surrender of his ancestor from claiming against the surrenderee.—*GOODTITLE* d. *FAULKNER* v. *MORSE* (1789), 3 Term Rep. 365; 100 E. R. 623; *subsequent proceedings, sub nom.* *MORSE* v. *FAULKNER* (1792), 3 Swan. 429.

Annotation:—*Distd.* *Right* d. *Jefferys* v. *Bucknell* (1831), 2 B. & Ad. 278.

1622. Surrender by attorney—In excess of powers—Admittance operative only within limits of attorney's power.]—Copyholds were surrendered by attorney, & the attorney exceeded his power:—*Held*: the admittance was cut down to the limits of the surrender authorised by the power.—*CARTER* v. *CARTER* (1857), 3 K. & J. 617; 27 L. J. Ch. 74; 30 L. T. O. S. 349; 4 Jur. N. S. 63; 69 E. R. 1256.

Annotations:—*Mentd.* *Bates* v. *Johnson* (1859), John. 304; *Prosser* v. *Rice* (1859), 28 Beav. 68; *Young* v. *Young* (1867), L. R. 3 Eq. 801; *Wilkinson* v. *Castle* (1868), 37 L. J. Ch. 467; *Pilcher* v. *Rawlins* (1872), 7 Ch. App. 259; *Blackwood* v. *London Chartered Bank of Australia* (1873), L. R. 5 P. C. 92; *Heath* v. *Crealock* (1874), 31 L. T. 650; *Mumford* v. *Stohwasser* (1874), 22 W. R. 833; *Re Palmer*, *Clarke* v. *Palmer* (1882), 51 L. J. Ch. 634; *Bailey* v. *Barnes*, [1894] 1 Ch. 25; *Williams* v. *Pinckney* (1897), 67 L. J. Ch. 34; *Taylor* v. *London & County Banking Co.*, *London & County Banking Co.* v. *Nixon*, [1901] 2 Ch. 231.

1623. Surrender & admittance—To rentcharge issuing out of copyholds—Rentcharge does not pass—Evidence of agreement for sale.]—Alienation of a rent issuing out of copyholds had been made by surrender & admittance:—*Held*: (1) the rent would not pass in this way at law; (2) the surrender & admittance were evidence of an agreement for sale, which would be enforced in equity in favour of a purchaser.—*SPINDLAR* v. *WILFORD* (1686), 2 Vern. 16; 23 E. R. 621, L. C.

To bar estate tail.]—*See* Nos. 747, 748, *ante*.

To sever co-ownership.]—*See* Nos. 862, 867, *ante*.

Effect of dormant surrender—To support contingent remainder.]—*See* No. 889, *ante*.

Construction of surrender.]—*See* Sect. 2, sub-sect. 1, E., *ante*.

Defective surrender.]—*See* Sect. 2, sub-sect. 1, H., *post*.

Validity of surrender.]—*See* Sect. 2, sub-sect. 1, C., *ante*.

(b) On Estate of Surrenderor.

1624. Property remains in surrenderor—Until admittance of surrenderee.]—Pltf.'s grandfather, being a copyholder in fee, surrendered to W. in fee, who surrendered to the use of M., his wife in fee. M. was admitted but W. was not. The grandfather & W. died, & W.'s son was admitted & entered upon the land, M. being in possession:—*Held*: a surrender of a copyhold was of no effect till the surrenderee was admitted, & if the surrenderee before admittance surrendered to a stranger who was admitted it was nothing worth to the stranger for the surrenderor had nothing so could pass nothing.—*WILSON* v. *WEDDELL* (1608), Yelv. 144; 1 Brownl. 143; 80 E. R. 97.

Annotations:—*Consd.* *Doe* d. *Tofield* v. *Tofield* (1809), 11 East, 246; *Right* d. *Taylor* v. *Banks* (1832), 3 B. & Ad. 664. *Reid.* *Wainwright* v. *Elwell* (1816), 1 Madd. 627; *King* v. *Turner* (1833), 1 My. & K. 456.

1625. ———.]—*BURGAINE* v. *SPURLING*, No. 1738, *post*.

1626. ——— Former estate unchanged.]—A. being seised of copyhold lands in fee to him & his heirs in borough English surrendered into the hands of the lord to the use of himself & the heirs male of his body but there was no admittance:—*Held*: without admittance on the surrender A.

continued seised in fee as before.—*BROWN* v. *DYER* (1707), Holt, K. B. 165; 11 Mod. Rep. 107; 6 Vin. Abr. 88, pl. 19; 90 E. R. 989.

Annotations:—*Reid.* *Right* d. *Taylor* v. *Banks* (1832), 3 B. & Ad. 664; *R. v. Dullingham* (1838), 8 Ad. & El. 858; *Doe* d. *Gutteridge* v. *Sowerby* (1860), 29 L. J. C. P. 291.

1627. ———.]—Testator mortgaged his copyhold in fee, & surrendered to the mtgee., but the latter was not admitted. He then made his will, devising the estate, without a surrender to the use of his will; & died. The devisee brought a bill to redeem, making the heir a party:—*Held*: pltf. had no interest in the copyhold, in practice or otherwise. If the mtgee. had not the legal estate there was no equity of estate. The legal estate remained in the surrenderor till admission of the surrenderee. As between the devisee & the heir, as there was no surrender to the uses of the will, the estate did not pass at law, & equity would not assist a volunteer against the heir.—*FLOYD* v. *ALDRIDGE & WILLIS* (1777), cited in 5 East, 137; 102 E. R. 1021.

Annotations:—*Distd.* *Wilson* v. *Dent* (1830), 3 Sim. 385. *Reid.* *Doe* d. *Shewen* v. *Wroot* (1804), 5 East, 132; *Wainwright* v. *Elwell* (1816), 1 Madd. 627.

1628. ——— Surrender by way of mortgage.]—On a conditional surrender of copyhold lands, by way of mtge., the legal estate remains in the mtgor. until the admission of the mtgee., & the mtgor. cannot devise the equity of redemption even after the surrender made, without a new surrender to the use of his will; but the legal estate, which on his death descends to his heir-at-law, will carry the equity of redemption also to the heir in respect to the mtgee.—*DOE* d. *SHEWEN* v. *WROOT* (1804), 5 East, 132; 1 Smith, K. B. 363; 102 E. R. 1019.

Annotations:—*Consd.* *Wainwright* v. *Elwell* (1816), 1 Madd. 627. *Mentd.* *Wilson* v. *Dent* (1830), 3 Sim. 385.

1629. ——— Surrender to use of will.]—*FITCH* v. *STUCKLEY*, No. 1061, *ante*.

See, also, Nos. 1738, 1744, *post*.

1630. Death of surrenderor—Before admittance of surrenderee—Estate descends to heir.]—*WILSON* v. *WEDDELL*, No. 1624, *ante*.

1631. ———.]—Ejectment for lands in M.:—*Held*: (1) a surrender to the use of another of a copyhold to two tenants might be presented at the next ct. though the two tenants died before it was held, but nothing passed until it was presented; (2) if the surrenderor died before admittance the estate would descend to his heir notwithstanding the lord had accepted rent from the *cestui que use*.—*FROSEL* v. *WELSH* (1616), Cro. Jac. 403; J. Bridg. 49; Godb. 268; 1 Roll. Rep. 415; 79 E. R. 344; *sub nom.* *ROSWELL* v. *WELSH*, 3 Bulst. 214.

Annotations:—*As to* (1) *Consd.* *Payne* v. *Barker* (1662), O. Bridg. 18; *Graham* v. *Graham* (1791), 1 Ves. 272. *Expld.* *Eccl. Comrs. for England* v. *Parr*, [1894] 2 Q. B. 420. *Reid.* *Brown* v. *Dyer* (1706), 11 Mod. Rep. 70. *As to* (2) *Reid.* *Eccl. Comrs. for England* v. *Parr*, [1894] 2 Q. B. 420.

1632. ——— Surrenderee convicted of felony & hanged—Estate descends to heir of surrenderor.]—Surrender to one who was convicted of felony & hanged before admittance:—*Held*: (1) the lands were not forfeited to the lord, but descended to the heir of the surrenderor; (2) the devisee of a copyhold estate had only a title until admittance, & such a right could not be forfeited to the lord, but would continue in the heirs of the surrenderor.—*ROE* d. *JEFFEREYS* v. *HICKS* (1754), 2 Wils. 13, 16; 95 E. R. 659, 661; *sub nom.* ——— d. *JEFFERIES* v. ———, 1 Keny. 110.

Annotations:—*As to* (1) *Consd.* *Doe* d. *Tofield* v. *Tofield* (1809), 11 East, 246; *Wainwright* v. *Elwell* (1816), 1 Madd. 627. *Reid.* *R. v. Mildmay* (1833), 5 B. & Ad. 2; *Doe* d. *Dand* v. *Thompson* (1849), 13 Q. B. 670. *As to*

Sect. 2.—By surrender and admittance: Sub-sect. 1,

Refd. Doe d. Tofield v. Tofield (1809), 11 East, 246; Doe d. Winder v. Lawes (1837), 7 Ad. & El. 195; Doe d. Dand v. Thompson (1849), 13 Q. B. 870. *Generally, Mentd.* Doe d. Bennington v. Hall (1812), 16 East, 208.

1633. Conviction of surrenderor for felony—Before admittance of surrenderee—Estate forfeited—Surrenderee loses right to admittance.]—A copyholder in fee surrendered to the use of another by way of mtge., & afterwards, before the admittance of the surrenderee, committed & was convicted of simple felony. There was a custom in the manor that any tenant of customary tenements who should commit & be convicted of felony should forfeit his tenements to the lord:—**Held:** the surrenderor, before admittance, was still tenant for the purpose of forfeiture, & his estate was forfeited to the lord, & the surrenderee not entitled to be admitted.—**R. v. ST. JOHN MILDMAI (DAME JANE)** (1833), 5 B. & Ad. 254; 2 Nev. & M. K. B. 778; 110 E. R. 786.

Annotations:—**Refd.** R. v. Oundle (1834), 3 Nev. & M. K. B. 484; R. v. Dullingham (1838), 8 Ad. & El. 858.

1634. Surrender upon condition—Surrenderor re-entering for condition broken—Reinstated in former estate.]—**SIMONDS v. LAWND** (1591), Cro. Eliz. 239; 78 E. R. 494.

(c) Estate of Surrenderee before Admittance.

Death of surrenderee before admittance—Whether heir-at-law or customary heir takes.]—See Part XII., Sect. 3, *ante*.

See, also, No. 1610, ante.

1635. Passes under devise of copyholds.]—D. agreed for the purchase of certain copyholds which were surrendered out of ct. to his use, but before admittance he died having other copyholds; & having made his will after the contract, he devised to pltf., who was then his visible heir, all his copyholds. His wife, after his death, was delivered of deft.'s wife, who then became heir to the devisor. Pltf., admitting that the copyhold contracted for did not pass by the will, took a lease of it from the heir for twenty years, & agreed to hold it longer at a rent, but afterwards, differences arising, pltf. sued for the copyhold so contracted for, as passing by the devise:—**Held:** the copyhold would have passed by the will to pltf., for the purchaser had an equity to recover the lands, & the vendor stood seised in trust for him except for the payment of rent by pltf. by which he had admitted the title to be in deft.—**DAVIES v. BEVERSHAM** (1661), Freem. Ch. 157; 1 Cas. in Ch. 39; 3 Rep. Ch. 4; 22 E. R. 1127; *sub nom.* **DAIRE v. BEVERSHAM**, Nels. 76.

Annotations:—**Refd.** Wainwright v. Elwell (1816), 1 Madd. 627; Cholmondeley v. Clinton (1820), 2 Jac. & W. 1; Matthew v. Osborne (1853), 13 C. B. 919.

1636. Bankruptcy of surrenderor—Delay by surrenderee in presenting—Beyond time limited by custom—Equitable right to have defect supplied—Against surrenderor's assignees in bankruptcy.]—**TAYLOR v. WHEELER**, No. 1663, *post*.

1637. Widow entitled to freebench.]—**VAUGHAN d. ATKINS v. ATKINS**, No. 926, *ante*.

1638. Surrenderee—On sale—Has no seisin before admittance.]—**HOLMES v. FACIE**, No. 1363, *ante*.

1639. — Has estate by surrender.]—**BENSON v. SCOT**, No. 948, *ante*.

1640. — May grant lease.]—**BULLOCK v. DIBLER**, No. 778, *ante*.

1641. — Cannot enforce admittance—Right of action in surrenderor.]—The question was whether he who surrendered might have an action upon the

case against the lord for not holding his ct. & admitting him to whom the surrender was made:—**Held:** the party who made the surrender might have his action against the lord, but not he to whom the surrender was made, & until admittance by force of the surrender the party had nothing, it was only *inchoatum* but not *perfectum*.—**GALLAWAY'S CASE** (1583), cited in 3 Bulst. 217; 81 E. R. 183.

1642. — —.]—**FORD v. HOSKINS**, No. 1709, *post*.

1643. — Cannot enter—Though admittance wrongfully refused by lord.]—A copyholder surrendered to the use of S. but the lord without reasonable cause refused to admit him:—**Held:** (1) the surrenderee of a copyhold could not enter before admittance though the lord refused admittance without cause; (2) he could not support an action before admittance though the lord refused admittance without cause.—**BERRY v. GREENE** (1594), Cro. Eliz. 349; 78 E. R. 597.

Annotation:—**Generally, Refd.** Payne v. Barker (1662), O. Bridg. 18.

1644. — Cannot support action—Though admittance wrongfully refused by lord.]—**BERRY v. GREENE**, No. 1643, *ante*.

1645. — —.]—**YORK v. ALLEIN**, No. 1377, *ante*.

1646. — — Surrender by way of mortgage.]—The mtgee. of copyhold premises has no legal title till he has been admitted by the lord of the manor, &, therefore, cannot bring ejectment against an occupier till then.—**RAYSON v. ADCOCK** (1863), 1 New Rep. 395; 7 L. T. 747; 9 Jur. N. S. 800.

1647. — Cannot surrender.]—**BULLOCK v. DIBLER**, No. 778, *ante*.

1648. — —.]—**WILSON v. WEDDELL**, No. 1624, *ante*.

1649. — —.]—**RAWLINSON v. GREEN** (1617), Poph. 127; 79 E. R. 1230.

Annotation:—**Refd.** Doe d. Tofield v. Tofield (1809), 11 East, 246.

1650. — Has title against all except lord.]—**DOE d. WHEELER v. GIBBONS**, No. 1486, *ante*.

1651. — If volunteer—Cannot make good title.]—A woman seised of copyholds executed a surrender jointly with her husband to such uses as her husband should appoint, & in default of appointment to him in fee, but no admittance was entered under the surrender. The husband then executed a conveyance of the copyholds to a purchaser, but still no admittance was entered. Pltf., who claimed under the purchaser, filed a bill to restrain an action of ejectment by the copyhold heir of the wife, & to compel a surrender to complete his title:—**Held:** the husband of the copyholder had no power to make perfect that title which he, as a volunteer & without consideration took imperfectly, & no person claiming under him could ask that his defective title should be made complete.—**SOWERBY v. GUTTERIDGE** (1848), 18 L. J. Ch. 9, L. C.

— **By way of mortgage.]—**See No. 1484, *ante*.

Assignment of covenant to surrender.]—See No. 1678, *post*.

Rights of unadmitted devisee.]—See Nos. 1494 *et seq.*, 1632, *ante*.

Relation back of estate on admittance.]—See Nos. 1738–1744, *post*.

G. Proof of Surrender.

1652. Presumed after 45 years' possession.]—**KNIGHT v. ADAMSON** (1689), Freem. Ch. 106; 22 E. R. 1087.

See, also, No. 1762, post.

1653. Written statement by lord—Supported by affidavit as to handwriting—By attorney of party submitting proof.]—CHANCE *v.* DOD, No. 449, *ante*.

1654. By original entry or court rolls—Or copy.]—The rule of evidence is the same in equity as at law; the proper evidence of surrenders, or title to a copyhold, is the ct. roll or a copy of it, or it must appear they existed once, & are lost, etc., & so make way to go into parol evidence.—ANDREWS *v.* WALLER (1733), 2 Eq. Cas. Abr. 414; 22 E. R. 351, L. C.

*Annotation:—*Mentd. Chapman *v.* Gibson (1791), 3 Bro. C. C. 229.

See, also, No. 1657, post.

1655. — Without production of stamped copy.]—A surrender of & admittance to a copyhold may be proved by the original entries on the court-rolls, without showing a copy stamped as required by 48 Geo. 3, c. 149. An admittance of the surrenderee before trial will maintain ejectment brought by him before admittance upon a demise laid between the time of surrender & admittance.—DOE *d.* BENNINGTON *v.* HALL (1812), 16 East, 208; 104 E. R. 1068.

1656. By draft entry of surrender—Produced from manor muniments—Supported by parol evidence—Of foreman of jury presenting surrender.]—A surrender of a copyhold was duly made & presented by the homage, but no entry of such surrender & presentment was made on the ct. rolls:—*Held*: such surrender & presentment might be proved by a draft of an entry produced from the muniments of the manor, & the parol testimony of the foreman of the homage jury who made such presentment.—DOE *d.* PRIESTLEY *v.* CALLOWAY (1827), 6 B. & C. 484; 9 Dow. & Ry. K. B. 518; 5 L. J. O. S. K. B. 188; 108 E. R. 530.

*Annotations:—*Mentd. Horlock *v.* Smith (1837), 2 My. & Cr. 495; Doe *d.* Guttridge *v.* Sowerby (1860), 7 C. B. N. S. 599.

See, also, Part V., Sect. 1, sub-sect. 3, ante.

1657. By examined copy—Without production of original.]—The copy of the ct. roll of a manor, duly examined & stamped, is sufficient evidence of surrender & admittance out of ct.—DOE *d.* CAWTHORN *v.* MEE (1833), 4 B. & Ad. 617; 110 E. R. 588; *sub nom.* DOE *d.* HAWTHORN *v.* MEE, 1 Nev. & M. K. B. 424; 2 L. J. K. B. 104.

*Annotation:—*Refd. Doe *d.* Garrod *v.* Olley (1840), 12 Ad. & El. 481.

See, also, Nos. 461, 463, 1654, ante.

1658. Recital of surrender—In manorial record of admittance.]—A record in the record book of a manor, of admittance to a copyhold, reciting a surrender of the same copyhold to the use of a will, is admissible evidence of the surrender, the steward not being able to find the surrender itself on the roll or elsewhere, & the surrender being irregularly kept in the manor, although all the other surrenders were either preserved or recorded on the roll.—R. *v.* THRUSCROSS (INHABITANTS) (1834), 1 Ad. & El. 126; 3 Nev. & M. K. B. 284; 2 Nev. & M. M. C. 201; 3 L. J. M. C. 83; 110 E. R. 1156.

*Annotations:—*Mentd. R. *v.* Axbridge (1835), 1 Har. & W. 74; R. *v.* St. Mary, Castlegate (1852), 21 L. J. M. C. 106.

1659. Manorial record of admittance—On surrender.]—The ct. rolls, containing a presentment of an admittance upon a surrender out of ct. are primary evidence of the surrender as between surrenderors, without producing the original surrender, or inquiring into the sufficiency of the stamp upon it.

A mtgee. deed, reciting a loan of £850 at 5 per cent. interest, contained an agreement that the mtgor. during his occupation of the mtged. premises, should yield & pay for the same to the mtgee. the yearly rent or sum of £50 payable half-

yearly, & that it should be lawful for the mtgee. to use such remedies by distress & sale for the recovery of the rent as landlords have on common demises; provided that the reservation of such rent should not prejudice the mtgee.'s right to enter & evict the mtgor. at any time after default made in payment of the moneys secured, or any part thereof:—*Held*: after default made in payment of the principal & of one half-year's rent, the mtgee. might eject the mtgor. without any notice to quit, though he had treated the mtgor. as tenant by distraining on him for a previous year's rent.—DOE *d.* GARROD *v.* OLLEY (1840), 12 Ad. & El. 481; 4 Per. & Dav. 275; 9 L. J. Q. B. 379; 4 Jur. 1084; 113 E. R. 894.

*Annotations:—*Mentd. Doe *d.* Snell *v.* Tom (1843), 4 Q. B. 615; Jolly *v.* Arbuthnot (1859), 4 De G. & J. 224; Metropolitan Counties Assoc. Co. *v.* Brown (1859), 4 H. & N. 428.

H. Whether Aided or Supplied in Equity.

1660. Omission of life estate for surrenderor—Not supplied.]—Pltf. brought an *ejectione firmæ* & a special verdict upon a surrender of copyhold land, which was to the use of the second son for life, after the death of the tenant & his heirs:—*Held*: not to be good in a surrender; for though it was good in a will, yet implication was not good in a surrender.—ALLEN *v.* NASH (1607), 1 Brownl. 127; 123 E. R. 708.

1661. In favour of purchaser—As against heir.]—If a copyholder do for a valuable consideration sell or mortgage, or covenant to convey his copyhold, & dies before any surrender made, the heir is compellable to surrender according to the agreement of the copyholder; but if a copyholder devises his copyhold, & makes no surrender to the use of his will, the heir shall not be compellable to make this good to the devisee:—*Qu.*: if a copyholder do devise lands for the payment of his debts, & dies without making any surrender, whether the heir be in this case compellable to make a surrender.—ANON. (1681), Freem. Ch. 65; 22 E. R. 1061.

1662. In favour of mortgagee—As against heir.]—ANON., No. 1661, *ante*.

1663. As against mortgagor's assignees in bankruptcy.]—A mortgaged copyhold land to B., but the surrender not being presented within the time limited by the custom, became void. Afterwards A. became bkpt. On a bill by B. against the assignees, the defective surrender was made good.—TAYLOR *v.* WHEELER (1708), 2 Vern. 564; 2 Salk. 449; 23 E. R. 968, L. C.

*Annotations:—*Consd. Jennings *v.* Moore (1708), 2 Vern. 609. Distd. Oxwith *v.* Plummer (1708), Gilb. Ch. 13. Refd. Brown *v.* Jones (1744), 1 Atk. 188; Hinton *v.* Hinton (1755), Amb. 277; Ross *v.* Army & Navy Hotel Co. (1886), 34 Ch. D. 43. Mentd. Morrice *v.* Bank of England (1736), Cas. temp. Talb. 217; Unwin *v.* Grosvenor (1739), West temp. Hard. 647; Jewson *v.* Moulson (1742), 2 Atk. 417; Tyrrell *v.* Hope (1746), 1 Atk. 160 (1846), 1 Ph. 728.

1664. Against subsequent purchaser with notice—Surrender by way of mortgage—Presented out of time.]—A defective surrender of a copyhold estate for securing a sum of money, which had become void, by not being presented in due time, made good against a subsequent purchaser, with notice.—BLENKARNE *v.* JENNENS (1708), 2 Bro. Parl. Cas. 278; 1 E. R. 943; *sub nom.* JENNINGS *v.* MOORE, 2 Vern. 609, H. L.

*Annotations:—*Refd. Le Neve *v.* Le Neve (1748), 3 Atk. 646; Ross *v.* Army & Navy Hotel Co. (1886), 34 Ch. D. 43. Mentd. Dresser *v.* Norwood (1863), 14 C. B. N. S. 574.

1665. Not against heir—Rule confined to heir by blood—Haeres factus not included.]—SMITH *v.* BAKER, No. 792, *ante*.

Sect. 2.—By surrender and admittance: Sub-sect. 1,

1666. By parol evidence—Not where party seeking relief guilty of fraud.]—In a case of fraud & imposition debt. shall be allowed to read parol evidence in order to prove it.

Parol evidence shall be allowed to be read to rebut an equity set up by plff., notwithstanding Stat. Frauds.—**WALKER v. WALKER** (1740), 2 Atk. 98; Barn. Ch. 214; 27 E. R. 618, L. C.

*Annotations:—*Reid. **Robinson v. Gee** (1749), 1 Ves. Sen. 251; **Woollam v. Hearn** (1802), 7 Ves. 211; **Podmore v. Gunning** (1836), Donnelly, 74; **Maddison v. Alderson** (1883), 8 App. Cas. 467. *Mentd.* **Young v. Peachy** (1741), 2 Atk. 254; **Pitcairn v. Ogbourne** (1751), 2 Ves. Sen. 375; **Rich v. Jackson** (1794), 4 Bro. C. C. 514 o; **Wood v. Midgley** (1854), 5 De G. M. & G. 41.

1667. Not in favour of younger son—As against heir, a grandchild.]—**RODGERS v. MARSHALL** (1809), 17 Ves. 294; 34 E. R. 114.

1668. Surrender by married woman—Assent of husband not presumed—As against party disputing surrender.]—**DOE d. SHELTON v. SHELTON**, No. 1589, *ante*.

1669. ——— Where not included in entry of surrender in court rolls.]—**DOE d. SHELTON v. SHELTON**, No. 1589, *ante*.

SUB-SECT. 2.—ADMITTANCE.

A. Who may admit.

1670. Lord de facto.]—**ANON.**, No. 660, *ante*.

1671. ———.]—**CLARKE v. PENNIFATHER**, No.

1672. ———.]—**CHUDLEIGH'S CASE**, No. 661, *ante*.

1673. ——— Whether on surrender—Or descent.]—**CHUDLEIGH'S CASE**, No. 661, *ante*.

1674. ——— Devisee—Though devise subsequently found void.]—**STOWLEY'S CASE**, No. 659, *ante*.

1675. ——— In right of wife—Or during minority of infant heir.]—If a man is seised of a manor, on which are divers copyholders for years or for life, in right of his wife or during the minority of the heir either in tail or in fee, a surrender by such copyholder to the lord to the use of others & copy made according to the custom is clearly good & binding on the reversion & the fee.—**ANON.** (1557), Ben. & D. 19; 123 E. R. 239.

1676. ——— Lessee of manor—Where copyholder has valid title to admittance.]—**HASSET v. HANSON**, No. 1561, *ante*.

1677. ——— Unconfirmed bishop.]—Copyhold property, in a manor belonging to the see of E., was surrendered to B., who was admitted on this surrender, at a ct. purporting to be a ct. of J. bishop of E., lord of the manor. At the time of the admission, no grant of the temporalities had been made to J. since the death of the preceding bishop; nor had J. been confirmed:—*Held*: the admission was nevertheless good, the lord's title being immaterial, since the admission was not a voluntary act, but in pursuance of a surrender.—**DOE d. BURGESS v. THOMPSON** (1836), 5 Ad. & El. 532; 2 Har. & W. 451; 1 Nev. & P. K. B. 215; 6 L. J. K. B. 57; 111 E. R. 1266.

*Annotation:—**Mentd.* **Doe d. Linsey v. Edwards** (1836), 6 Nev. & M. K. B. 633.

*Steward.]—*See Part VI., Sect. 1, sub-sect. 3, *ante*.

*B. The Right to Admittance.**(a) Who Entitled.*

1678. Surrenderee—Though amount of fine not agreed.]—A., a copyholder, covenanted to assign

& surrender to B., which covenant was presented by the homage, but before any surrender, B. assigned his interest to C. to whom A. surrendered:—*Held*: (1) C. had a right to be admitted on payment of a fine for his own admittance only; (2) a covenant made by a copyholder with a stranger to assign & surrender his copyhold to him, which covenant was afterwards presented by the homage, did not give the lord any right to a fine; (3) if the lord of a manor refused to admit a person to whom a copyhold was surrendered, on account of a disagreement respecting the fine to be paid, the ct. would grant a mandamus to compel the lord to admit without examining the right to the fine, for no fine could arise till admittance.—**R. v. HENDON (LORD OF THE MANOR) & TROWARD (STEWARD OF THE MANOR)** (1788), 2 Term Rep. 484; 100 E. R. 261.

*Annotations:—*As to (1) *Reid.* **R. v. Oundle** (1834), 1 Ad. & El. 283. As to (3) *Consd.* **Graham v. Sime** (1801), 1 East, 632. *Reid.* **R. v. Evans** (1839), 1 Q. B. 356, n. *Generally, Reid.* **R. v. Wanstead Manor** (1853), 22 L. T. O. S. 100.

1679. ——— From one joint tenant—Not entitled—Partition by parol without lord's assent.]—A. & B., joint tenants of a copyhold, made partition by parol without assent of the lord, & afterwards occupied in severalty; A. surrendered to C. by general words:—*Held*: C. was not entitled to be admitted to the parcels occupied by A. in severalty.—**R. v. SOUTHWOOD** (1830), 5 Man. & Ry. K. B. 414.

1680. ——— Not where surrender taken by unqualified person.]—Rule for a mandamus commanding the steward of W. B., in N., to enrol a surrender of copyhold lands. It appearing, that the surrender was taken by a party not legally qualified to take it, the rule was discharged with costs.—*Ex p.* **WATSON** (1845), 6 L. T. O. S. 159.

1681. Heir of surrenderee dying before admittance.]—**BUNTING v. LEPINGWELL**, No. 1610, *ante*.

1682. Appointee—Though appointor unadmitted & no surrender to use of appointor's will.]—Devise of a copyhold to two & their heirs, in trust to permit S. to enjoy the same or to pay to, or permit & suffer her to receive the rents during her life, for her separate use & subject to such estate to S. to such persons, etc., as S. should by her will appoint, & in default of appointment to the right heirs of S.:—*Held*: the appointee by will of S. took a legal estate although the trustees had never surrendered to the use of the will of S., nor had S. been admitted tenant.—**DOE d. WOODCOCK v. BARTROP** (1814), 5 Taunt. 382; 1 Marsh. 90; 128 E. R. 737.

*Annotations:—**Consd.* **Creton v. Creton** (1856), 3 Sm. & G. 386. *Appl.* **Baker v. White** (1875), L. R. 20 Eq. 166. *Consd.* **Allen v. Bewsey** (1877), 7 Ch. D. 453. *Reid.* **Doe d. Player v. Nicholls** (1823), 2 Dow. & Ry. K. B. 481. *Mentd.* **Williams v. Waters** (1845), 14 M. & W. 166.

1683. ——— Under surrender to use of will.]—Copyholder in fee, surrenders to such uses as A. shall appoint, & in default of, & until such appointment, to the use of A. in fee. A., without having been admitted, appoints:—*Held*: the appointment was a good execution of the power, & entitled the appointee to be admitted as surrenderee of the copyholder, who continued tenant to the lord till some one was admitted under his surrender.—**R. v. OUNDLE (LORD OF THE MANOR)** (1834), 1 Ad. & El. 283; 3 Nev. & M. K. B. 484; 3 L. J. K. B. 117; 110 E. R. 1214.

*Annotations:—**Consd.* **Flack v. Downing College, Cambridge** (1853), 13 C. B. 946. *Reid.* **Glass v. Richardson** (1852), 3 De G. M. & G. 658. *Mentd.* **R. v. Eastern Counties R.** (1840), 2 Ry. & Can. Cas. 260; **R. v. Birmingham & Gloucester Ry.** (1841), 2 Ry. & Can. Cas. 694.

1684. ——— Though prior uses declared—Power of revocation in settlement.]—Where copyholder

in fee surrendered to the uses of a prior settlement, which contained a power to revoke the uses therein declared, & limit new ones:—*Held*: uses limited in execution of this power were good, although they had the effect of defeating prior vested estates.—*BODDINGTON v. ABERNETHY* (1826), 5 B. & C. 776; 8 Dow. & Ry. K. B. 626; 4 L. J. O. S. K. B. 181; 108 E. R. 289.

Annotations:—*Apld.* *R. v. Oundle* (1834), 3 L. J. K. B. 117; *Glass v. Richardson* (1852), 9 Hare, 698.

1685. Purchaser—From appointee—Under surrender to use of will—Though vendor not admitted.]—A copyhold surrendered to the use of a will & devised "to A. & if she has issue, then to such issue; but if she has not issue, then she shall choose an attorney & sell the land to her best advantage;" conveys an estate to A. for life only; & gives her, on failure of issue, a bare authority, but not an interest.—*BEAL v. SHEPHERD* (1607), Cro. Jac. 199; 79 E. R. 174.

Annotations:—*Consd.* *R. v. Oundle* (1834), 1 Ad. & El. 283; *Re Heathcote & Rawsons Contract* (1913), 108 L. T. 185. *Reid.* *Holder d. Sulyard v. Preston* (1769), 2 Wils. 400; *White v. Vitty* (1826), 2 Russ. 484; *Flack v. Downing College, Cambridge* (1853), 13 C. B. 945.

1686. ————.]—HOLDER d. SULARD v. PRESTON, No. 1074, *ante*.

See, also, No. 1765, *post*.

1687. ———— From executors with power of A testator authorised, empowered & directed his exors. to sell, either by public auction or private contract, his messuage, etc., held of the manor of H., & to convey & assure such copyhold hereditaments unto the purchaser or purchasers thereof. The exors. sold the messuage by auction, & executed a deed of bargain & sale of it to the purchaser:—*Held*: the purchaser was entitled to be admitted as tenant without a previous admission by the exors. or the heir.—*R. v. WILSON* (1862), 3 B. & S. 201; 1 New Rep. 55; 32 L. J. Q. B. 9; 7 L. T. 326; 9 Jur. N. S. 439; 11 W. R. 70; 122 E. R. 76.

Annotation:—*Folld.* *Sissons v. Chichester-Constable*, [1916] 2 Ch. 75.

1688. ————.]—Testator by his will appointed exors. & directed that his debts should be paid. He then gave & bequeathed all his real & personal estate, which included certain copyhold hereditaments, to seven named persons, & directed that everything should be sold, without saying by whom, & divided among the seven persons. The exors. contracted to sell the copyhold hereditaments to a purchaser, but the lord of the manor objected to the proposed conveyance by way of bargain & sale on the ground that they had no power of sale under the will:—*Held*: (1) the exors. had a power of sale by virtue of the charge of debts upon the copyholds which resulted from the direction that the debts should be paid, & by virtue of the direction that everything should be sold, addressed, on construction, to them; (2) such direction did not in order to be effective either involve or require any estate in the exors., & they could sell to a purchaser who would be entitled to be admitted direct without the previous admittance of the exors. or of any other persons.—*SISSONS v. CHICHESTER-CONSTABLE*, [1916] 2 Ch. 75; 85 L. J. Ch. 489; 114 L. T. 1163; 60 Sol. Jo. 605.

1689. ———— From trustees with power of sale.]—Testator by his will devised & appointed to his trustees his freeholds & copyholds for a period of a thousand years, & settled the whole of his property on ordinary legal uses, there was an overriding power of sale given by the will to the trustees. The will contained no express power to revoke uses. Testator died in 1883. The lord of the manor had

not called upon the trustees for a tenant. The trustees were now selling under their power of sale, & proposed to nominate the purchaser of the copyholds to be admitted tenant on the rolls of the manor. The lord claimed the right to have the trustees admitted. The purchaser accordingly took objection to the title of the trustees to nominate him for admittance:—*Held*: the purchaser was lawfully put forward under the trusts of the will to be admitted tenant on the rolls of the manor, & the lord of the manor could not refuse to accept his nomination by the trustees, but must admit him upon the ct. rolls of the manor upon payment of a single fine on such admittance.—*Re HEATHCOTE & RAWSON'S CONTRACT* (1913), 108 L. T. 185; 57 Sol. Jo. 374.

Annotation:—*Reid.* *Sissons v. Chichester-Constable*, [1916] 2 Ch. 75.

See, also, Nos. 1498, 1504, *ante*.

Whether lord entitled to double fine, *see* Part XI., Sect. 1, sub-sect. 4, C., *ante*.

1690. ———— Of tenement of small value—To get benefit of custom—Reducing fine for existing tenants.]—R. v. BOUGHEY, No. 1124, *ante*.

1691. Not charitable corporation.]—RANSHAW & ROBOTOM'S CASE, No. 1598, *ante*.

1692. Person appointed to convey—By order of court—Under Trustee Act, 1850 (c. 60).]—The ct. will, by mandamus to the lord of the manor, give effect to an order of the Ct. of Ch., appointing a person to convey copyholds under Trustee Act, 1850 (c. 60), s. 20. Where such an order has been made the ct. will not look beyond it, but give effect to it according to its terms.—*Re LANE & IRVING* (1864), 12 W. R. 710.

1693. Devisee—Not in respect of part only of estate devised—To get benefit of custom—Excusing fine for remainder.]—JOHNSTONE v. SPENCER (EARL), No. 1088, *ante*.

Right to copy of admission.]—See No. 1731, *post*.

1694. One of several co-owners—Devisees.]—Copyhold surrendered to the use of a will, is devised to six persons, one offers to be admitted, the lord refuses to admit him, the lord cannot seize *quousque*, etc.—*ROE d. ASHTON v. HUTTON* (1763), 2 Wils. 163; 95 E. R. 744.

Annotation:—*Reid.* *Doe d. Bover v. Trueman* (1831), 1 B. & Ad. 736.

1695. ———— Though fine unpaid.]—Tenant in fee of copyhold hereditaments devised them to E., M. & W. on certain trusts. E. demanded admittance: the steward refused admittance, except upon payment of a treble fine:—Held: the lord being bound to admit before payment of fine, & the right to the fine accruing only by reason of the admittance, a rule absolute was made for a mandamus commanding to admit.—*R. v. WELLESLEY* (1853), 2 E. & B. 924; 118 E. R. 1012; *sub nom.* *R. v. WANSTEAD (LORD OF THE MANOR)*, 23 L. J. Q. B. 67; 22 L. T. O. S. 100; 18 Jur. 311. *Annotation*:—*Reid.* *Re Thames Tunnel (Rotherhithe & Ratcliff) Act, 1900*, [1908] 1 Ch. 493.

See, also, No. 1679, *ante*.

Whether lord entitled to multiple fine.]—See Part XI., Sect. 1, sub-sect. 4, C., *ante*.

(b) Enforcement.

i. By Mandamus.

1696. Prima facie legal estate sufficient.]—A mandamus may be granted to admit to a copyhold estate the person who appears to have the legal estate, without regard to his equity.

It is determined that if an estate is devised to a man, & his heirs in trust for one & his heirs, & the heirs of the *cestui que trust* die without heirs, the

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i.

estate does not escheat to the Crown, but goes to the trustee; so that if there is no heir it does not go to the lord (LAWRENCE, J.).—*R. v. COGGAN* (1805), 6 East, 431; 2 Smith, K. B. 417; 102 E. R. 1352.

Annotation:—*Consd. Gallard v. Hawkins* (1884), 27 Ch. D. 298.

1697. — Validity of instrument disputed.]—Rule nisi for a mandamus to the lord & steward of the manor, to admit W. to a customary tenement, parcel of the manor. The question was whether the deed, upon which appct. claimed to be admitted, was an operative instrument according to the custom of the manor:—*Held*: the writ ought to go. It will set up a *prima facie* title, which ought to be answered. Rule absolute.—*R. v. STRICKLAND IN BARONY OF KENDAL (LORD OF THE MANOR)* (1846), 7 L. T. O. S. 139.

1698. Prima facie title—Must be shown.]—On a bill to be admitted to a copyhold for the purpose of trying the right to it, the ct. will not interfere, where the pltf. is barred by the Statute of Limitations, or where he does not show a *prima facie* title, with a reasonable prospect of success.—*WIDDOWSON v. HARRINGTON (EARL)* (1820), 1 Jac. & W. 532; 37 E. R. 471.

1699. Though admittance only sought to try title.]—Mandamus granted to the Duke of Leeds to admit C., for the purpose of enabling him to try his title to certain customary tenements in the manor of W., for which he afterwards brought an ejectment.—*R. v. LEEDS (DUKE)* (circa 1800), 6 East, 432, n.; 102 E. R. 1353.

1700. —.]—*TOWEL v. CORNISH* (1668), 2 Keb. 357; 84 E. R. 224.

1701. —.]—The ct. will, as a matter of course, grant a mandamus for the admission of a person to copyhold premises, that he may try his right to them.—*ANON.* (1824), 2 L. J. O. S. K. B. 93.

1702. — & another party already admitted.]—Where a party claiming a copyhold tenement cannot try his right without admission, the ct. of K. B. will issue a mandamus to compel the lord to admit him, even although another party has already been admitted.—*R. v. HEXHAM (LORD OF THE MANOR)* (1836), 5 Ad. & El. 559; 2 Har. & W. 396; 1 Nev. & P. K. B. 53; 6 L. J. K. B. 33; 111 E. R. 1276.

Annotations:—*Folld. R. v. Ham* (1839), 8 L. J. Q. B. 265. *Reid. Smith v. Glasscock* (1858), 4 C. B. N. S. 357.

1703. Refused where claim statute-barred.]—*WIDDOWSON v. HARRINGTON (EARL)*, No. 1698, *ante*.

1704. —.]—Where it is clear that by Real Property Limitation Act, 1833 (c. 27), a claimant's title to a copyhold is barred by lapse of time, the ct. will not compel the lord by mandamus to admit him.—*R. v. AGARSDLEY* (1836), 5 Dowl. 19.

1705. — Though claimant heir.]—The ct. will not grant a mandamus to admit an heir to a copyhold, where it appears his claim is long since barred by Real Property Limitation Act, 1833 (c. 27).—*Ex p. PHILLIPS* (1836), 1 Har. & W. 660.

See, also, No. 1362, *ante*.

1706. To steward—Lord must be party.]—A rule for a mandamus to the steward of a manor, to accept a surrender of copyhold premises to certain uses, should make the lord of the manor a party to the rule.—*R. v. EVANS (STEWARD OF THE MANOR OF WITCHEFORD)* (1840), 1 Q. B. 355, n.; 113 E. R. 1168; *sub nom. R. v. WHITFORD (LORD OF THE MANOR)*, 7 Dowl. 709; 8 L. J. Q. B. 251; 3 Jur. 533.

Annotations:—*Consd. R. v. Richmond* (1841), Arn. & H. 290. *Reid. Glass v. Richardson* (1852), 2 De G. M. & G. 658.

1707. — —.]—A mandamus to admit to a copyhold tenement must be directed to the lord of the manor, as well as to the steward; not to the steward only. A mandamus to admit will not issue to the steward of a manor belonging to the Crown, though he may have received his appointment from the Comrs. of Woods & Forests under 10 Geo. 4, c. 50, s. 14.—*R. v. POWELL* (1841), 1 Q. B. 352; 4 Per. & Dav. 719; 113 E. R. 1166; *sub nom. R. v. RICHMOND (STEWARD OF THE MANOR)*, Arn. & H. 290; 10 L. J. Q. B. 148; 5 J. P. 465; 5 Jur. 605.

Annotations:—*Expld. Re Budge, R. v. Woods & Forests Comrs.* (1848), 17 L. J. Q. B. 341. *Reid. Re Nathan, R. v. I. R. Comrs.* (1884), 12 Q. B. D. 461. *Mentd. London Corpn. v. R., Re Ashurst* (1848), 17 L. J. Q. B. 330; *Chabot v. Morpeth* (1850), 19 L. J. Q. B. 377; *R. v. Lambourn Valley Ry.* (1888), 22 Q. B. D. 463.

1708. Costs—Neglect of lord & steward to enrol surrender—Subsequent refusal to admit.]—*R. v. CARDIGAN (LORD) (LORD OF CORBY MANOR) & HALL (STEWARD OF CORBY MANOR)* (1847), 11 J. P. Jo. 421.

ii. In Equity.

1709. Relief in Chancery.]—Action on the case against deft., lord of the manor of B.:—*Held*: (1) an action on the case would not lie against the lord of a manor for refusing to admit a copyholder; (2) he might obtain relief by application to the Ct. of Ch.—*FORD v. HOSKINS* (1615), Cro. Jac. 368; Moore, K. B. 842; 1 Roll. Rep. 195; 79 E. R. 315; *sub nom. FOORDE v. HOSKINS*, 2 Bulst. 336.

Annotations:—*As to* (1) *Consd. Ashby v. White* (1703), 2 Ld. Raym. 938. *Reid. Barnardiston v. Soame* (1674), 6 State Tr. 1063; *R. v. Orton Trustees* (1849), 14 Q. B. 139.

1710. —.]—A copyholder cannot have any writ of false judgment, nor other remedy at common law against his lord, but he shall have aid in Ch., & if the lord will put out his copyholder that pays his customs & services, or will not admit him to whose use a surrender is made, or will not hold his ct. for the benefit of his copyholder, or will exact fines arbitrary, where they are customary & certain, the copyholder shall have a *subpoena* to restrain or compel him as the case shall require.—*ANON.* (undated), Cary, 3; 21 E. R. 2.

Annotation:—*Reid. Andrews v. Hulse* (1858), 27 L. J. Ch. 655.

1711. —.]—A lord of a manor was compellable to admit a tenant by suit in Chancery.—*LUNSFORD v. POPHAM* (1617), Toth. 2; 21 E. R. 105.

1712. —.]—A lord of a manor was compellable to admit a tenant by suit in Chancery.—*NEWBY v. CHAMBERLAINE* (1630), Toth. 3; 21 E. R. 105.

1713. S. P. MARCH v. GAGE (1630), Toth. 3; 21 E. R. 105.

1714. —.]—*MOOR v. HUNTINGTON (EARL)*, No. 315, *ante*.

By whom action brought.]—*See* Nos. 1641, 1709, *ante*.

C. Lord's Right to enforce.

1715. By seizure quousque—After proclamation made.]—After proclamations made, and so many ct. days, if the copyholders do not come in the lord may seize upon their lands.—*CLAYTON v. COOKES* (1742), 2 Atk. 449; 26 E. R. 672, L. O.

Annotation:—*Reid. Doe d. Bover v. Trueman* (1831), 1 B. & Ad. 736.

1716. — — Against remainderman.]—*DOE d. WHITBREAD v. JENNEY*, No. 1067, *ante*.

Against heir.]—*See* Part XII., Sect. 7, *ante*.

Unadmitted vendors.]—*See* Nos. 1074, 1685, 1687, 1688, 1689, *ante*.

1717. Not as between surrenderor & surrenderee for value.]—*HALL v. BROMLEY*, No. 1054, *ante*.

D. Validity of Admittance.

1718. Of neighbour in name of heir—Heir abroad—Good.]—T. C., a copyholder, surrendered to the use of T. S. & his heirs provided that if T. C. paid £800 on a named day the surrender should be void. T. S. died before the day, not being admitted, his heir being beyond seas. A neighbour was admitted in the name of the heir:—*Held*: this was a good admittance of the heir.—*BLUNT v. CLARK* (1858), 2 Sid. 61; 82 E. R. 1257.

Annotations:—*Consd.* *Re Hudson, Cassels v. Hudson*, [1908] 1 Ch. 655. *Reid.* *King v. Dilliston* (1686), 1 Show. 83; *Vaughan d. Atkins v. Atkins* (1771), 5 Burr. 2764; *Rider v. Wood* (1855), 1 K. & J. 644.

1719. Not by attorney.]—*Held*: a copyholder could not be admitted by attorney, for he must swear fealty in person.—*FLOYER v. HEDGINGHAM* (1669), 2 Rep. Ch. 56; 21 E. R. 614.

1720. Invalid admittance—Lord cannot avoid—After taking fine.]—Where a lord has taken a fine for admittance to copyholds, he cannot avoid the admittance on the ground that the same was granted at a leet held out of the manor.—*MARKES v. SULIARD* (1582), Ch. Cas. in Ch. 170; Toth. 45; 21 E. R. 99.

1721. — Subsequent entries in court rolls treating admittance as valid—Amount to ratification.]—An admittance previous to 4 & 5 Vict. c. 35 by the steward of a manor, as such, out of the manor, whether at a ct. or otherwise, was bad. But, as such an admittance would have been good if a special authority for that purpose had been given by the lord, so also it might have been rendered valid by his subsequent ratification & notification to the homage, so as to make it an admittance by implication. A. was in 1810 admitted, out of ct., by the steward, to a copyhold, upon a surrender made in 1791, & paid a fine to the steward for the use of the lord. An informal entry of the admittance appeared on the ct.-rolls; & the admittance was in subsequent entries treated as a valid admittance, & the property had been held for about thirty-five years, under it, & transmitted to purchasers:—*Held*: the admittance, though at first invalid, was rendered a good admittance by the subsequent ratification & adoption of the lord.—*DOE d. GUTTERIDGE v. SOWERBY* (1860), 7 C. B. N. S. 599; 29 L. J. C. P. 291; 2 L. T. 150; 6 Jur. N. S. 870; 8 W. R. 393; 141 E. R. 950.

1722. Must conform to surrender—Admittance of surrenderee & wife jointly—Void as to wife.]—If a surrender be to A., & A. & his wife are admitted, it is void as to the wife, without a special custom.

The lord has but a customary power to make admittances according to the surrender; & he cannot vary the estate, or grant it to any other person than the surrenderor has appointed.—*WESTWICK v. WYER* (1591), 4 Co. Rep. 28 a; 76 E. R. 947.

Annotations:—*Consd.* *Doe d. Winder v. Lawes* (1837), 7 Ad. & El. 195. *Reid.* *Bunting v. Lepingwell* (1585), 4 Co. Rep. 29 a; *Payne v. Barker* (1662), O. Bridg. 18; *Holder d. Sulyard v. Preston* (1769), 2 Wils. 400. *Mentd.* *Nedham's Case* (1610), 8 Co. Rep. 135 a; *Barnardiston v. Soames* (1674), Freem. K. B. 380; *Baddley v. Leppingwell* (1764), 3 Burr. 1533.

1723. — Surrender not declaring uses—Regrant to surrenderor & wife in tail—Good.]—If a copyholder surrender his estate generally, without saying to whose use it is made, & the lord regrant it to the surrenderor, habendum to him & his wife in tail, the wife shall take, though not named in the premises.—*BROOKS v. BROOKS & WRIGHT* (1617), Cro. Jac. 434; 79 E. R. 370; *sub nom.* *BROOKS CASE*, Poph. 125.

Annotations:—*Consd.* *Fisher v.* (1699), 1 Ld. Raym.

622. *Reid.* *Flack v. Downing College* (1853), 22 L. J. C. P. 229; *Phillips v. Ball* (1859), 6 C. B. N. S. 811.

See, also, Nos. 1608-1610, *ante*.

1724. —.]—In a trial at bar in trespass & ejectment:—*Held*: the lord of a copyhold was but an instrument to admit the copyholder, & ought to admit him according to the surrender, or otherwise the admittance was not good.—*HETHER v. BOWMAN* (1655), Sty. 462; 82 E. R. 863.

*E. Effect of Admittance.**(a) In General.*

1725. Passes estate—Without attornment.]—In an action of replevin:—*Held*: a copyhold estate passed by surrender & admittance in ct. without the necessity for attornment or notice.—*BLUCKE v. MOLE* (1661), 1 Lev. 40; 83 E. R. 286.

1726. Tenant cannot dispute lord's right to admit—After fealty.]—A copyholder had been admitted to a tenement & had done fealty to the lord of a manor:—*Held*: he was estopped in an action by the lord for a forfeiture from showing that the legal estate was not in the lord at the time of admittance.—*DOE d. NEPEAN v. BUDDEN* (1822), 5 B. & Ald. 626; 1 Dow. & Ry. K. B. 243; 106 E. R. 1319.

1727. As evidence of title—Prima facie proof.]—In 1824, H., tenant of certain copyhold premises, demised them for 21 years & the lease contained a covenant for further renewal. In Jan. 1847, the devisees of H., who had been admitted tenants as such by the lord of the manor, demised the premises to M. who had previously purchased the lessee's interest under the lease of 1824:—*Held*: the proof of the devisees of H., admitted tenants as such by the lord of the manor, being in possession at the time they granted the lease, & of M., the lessee, holding under them, was *prima facie* evidence of their title.—*PINHORN v. SOUSTER* (1853), 8 Exch. 763; 22 L. J. Ex. 266; 21 L. T. O. S. 92; 16 Jur. 1001; 1 W. R. 336; 1 C. L. R. 99; 155 E. R. 1560.

Annotations:—*Mentd.* *Re Lord* (1854), 1 K. & J. 90; *Melling v. Leak* (1855), 16 C. B. 652; *Brown v. Metropolitan Counties, etc., Soc.* (1859), 1 E. & E. 832; *Jolly v. Arbuthnot* (1859), 4 De G. & J. 224; *Turner v. Barnes* (1862), 2 B. & S. 435; *Hampson v. Fellows* (1868), 37 L. J. Ch. 694; *Re Potter & Ferrige, Ex p. Parke* (1874), 43 L. J. Ch. 139; *Re Threlfall, Ex p. Queen's Benefit Bldg. Soc.* (1880), 16 Ch. D. 274; *Re Betts, Ex p. Harrison* (1881), 18 Ch. D. 127; *Kearsley v. Phillips* (1883), 11 Q. B. D. 621.

1728. — Not conclusive.]—Pltf. was tenant of a copyhold farm, & evidence was offered that his father had been admitted tenant to the copyhold farm & had agreed to lease it to him:—*Held*: this was no evidence at all of his title, & pltf. could have no better than his father had.—*GROVER v. LEWIS* (1862), 3 F. & F. 266.

See, also, No. 1752, *post*.

1729. Admittance of one joint tenant—Operates as admittance of all—Unless by special custom only one can be admitted.]—*HOWARD v. GWYNN*, No. 1509, *ante*.

1730. Fraudulent admittance of freeholder—As copyholder—May be relieved in equity.]—A lord & his steward had by a fraud got a freeholder to be admitted as by copy of ct.-roll:—*Held*: relief might be given by the Ct. of Ch.—*HAMMOND v. AINGE* (1718-25), 6 Vin. Abr. 115, L. C.

1731. Carries right to copy of admittance—Though fine unpaid.]—In ejectment, a rule to show cause why proceedings should not stay till the lessor, being lord of the manor, should deliver deft. a copy of the ct. roll of his admission to the copyhold lands of inheritance in question, which was detained for non-payment of the fine:—*Held*: deft. had a right to the admission, & might

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not be able to defend himself without it, & the lessor ought to deliver it, he having another remedy for his fine, for the lands would be forfeited for non-payment thereof.—**THOMPSON v. SMITH** (1730), Cooke, Pr. Cas. 57; 125 E. R. 955.

1732. Admittance upon trusts of indenture mentioned in surrender—Lord bound by trust.]—WEAVER v. MAULE, No. 1004, ante.

Presumption as to former admittances.]—See No. 1762, post.

As waiver of forfeiture.]—See Part XIX., Sect. 1, sub-sect. 2, I. (b), Nos. 564, 1039, ante, 1923, post.

Rentcharge issuing out of copyholds.]—See No. 1623, ante.

(b) Estate of Tenant on Admittance.

1733. Estate of surrenderor—Free of charges by lord.]—TAVERNER v. CROMWELL, No. 1853, post.

1734. — Though admittance incorrectly expressed.]—The lord is not entitled to his fine till admittance, but the admittance is merely form. On a surrender of a copyhold the estate remains in the surrenderor, till admittance. The lord by the custom has only a customary power to make admittance *secundum formam et effectum surrenditionis*, & therefore it is not like the case of feoffees to uses, at common law. Although the lord grant the land over by copy to another this is all without any warrant, for, notwithstanding this, the lord may make admittance according to the surrender, & this shall be good, & he who is admitted shall be in, by him who make the surrender. The estate must be according to the surrender, & not according to the admittance (WILMOT, J.).—BADDELEY v. LEPPINGWELL** (1764), 3 Burr. 1533; Wilm. 228; 97 E. R. 966.**

Annotations:—*Reid.* Cooke v. Blake (1847), 1 Exch. 220. *Mentd.* Doe d. Palmer v. Richards (1789), 3 Term Rep. 356; Goodright d. Baker v. Stocker (1792), 5 Term Rep. 13; Moor v. Denn (1800), 2 Bos. & P. 247; Doe d. Stevens v. Snelling (1804), 5 East, 87; Right d. Compton v. Compton (1808), 9 East, 267; Silvey v. Howard (1837), 6 Ad. & El. 253; Nickels v. Ross (1849), 8 C. B. 679.

1735. — —.]—(1) Admittance of the particular tenant of a copyhold is an admittance of the remainderman, & a devise of the remainder or reversion requires a surrender to the use of the will.

(2) Admittance to a copyhold enures according to the title though not correctly expressed.—CHURCH v. MUNDY (1806), 12 Ves. 426; 33 E. R. 161; on appeal (1808), 15 Ves. 396, L. C.

Annotations:—*As to (1)* *Reid.* Judd v. Pratt (1806), 13 Ves. 168; Doe d. Edmunds v. Llewellyn (1835), 1 Gale, 193; Flack v. Downing College (1853), 13 C. B. 945. *Generally.* *Consd.* Freeman v. Freeman (1854), Kay, 479. *Reid.* Ford v. Ford (1848), 6 Hare, 486; Wintour v. Clifton (1856), 21 Beav. 447. *Mentd.* Welby v. Welby (1813), 2 Ves. & B. 187; Leake v. Robinson (1817), 2 Mer. 363; Saumarez v. Saumarez (1839), 4 My. & Cr. 331; Doe d. Howell v. Thomas (1840), 1 Man. & G. 335; Parker v. Marchant (1842), 1 Y. & C. Ch. Cas. 290; Head v. Randall (1843), 2 Y. & C. Ch. Cas. 231; Midland Counties Ry. v. Oswin (1844), 1 Coll. 74; Mortimer v. Hartley (1851), 6 Exch. 47; Hart v. Tulk (1852), 2 De G. M. & G. 300; Heath v. Weston (1853), 3 De G. M. & G. 601; Key v. Key (1853), 1 Eq. Rep. 82; Coard v. Holdemess (1855), 20 Beav. 147; Anderson v. Anderson, [1895] 1 Q. B. 749; Jacob v. Jacob (1898), 78 L. T. 451; Edyvean v. Archer, *Re Brooke*, [1903] A. C. 379; Tillmanns v. S.S. Knutsford, [1908] 2 K. B. 385; Bolam v. Allgood (1913), 108 L. T. 461.

1736. — Tenant has right to have premises described as in surrender.]—HAYWARD v. RAW, No. 1102, ante.

See, also, Nos. 1722, 1723, 1724, ante.

1737. Devisee—From unadmitted surrenderee—Does not get legal estate.]—A surrenderee for a valuable consideration of a copyhold tenement, who had never been admitted thereto, by his will

devised it to B.:—*Held*: B., though admitted, gained no legal title to the premises.—**MATTHEW v. OSBORNE** (1853), 13 C. B. 919; 22 L. J. O. P. 241; 17 Jur. 696; 1 W. R. 151; 138 E. R. 1465. **Annotations:—***Reid.* Flack v. Downing College (1853), 13 C. B. 945; R. v. Wanstead Manor (1853), 22 L. T. O. S. 100; Wellesley v. Withers (1855), 25 L. T. O. S. 79; R. v. Wilberton (1857), 29 L. T. O. S. 126. *Mentd.* Wilkinson v. Kirby (1854), 15 C. B. 430.

See, also, No. 1744, post.

1738. Relates back to surrender—Though surrenderee under subsequent surrender already admitted.]—A copyholder surrendered to A. & afterwards surrendered to B. who was admitted. The surrender to A. was presented at the next ct. & he was admitted:—*Held*: (1) the admission of B. would be avoided; (2) after surrender the estate remained in the surrenderor until admittance.—BURGAINE v. SPURLING** (1632), Cro. Car. 283; O. Bridg. 579; W. Jo. 306; 79 E. R. 849.**

Annotations:—*As to (1)* *Consd.* Payne v. Barker (1662), O. Bridg. 18. *As to (2)* *Reid.* King v. Dilleston (1688), 1 Show. 83.

1739. — Admittance of surrenderor to particular estate created by settlement—Will made after surrender & before admittance not revoked.]—ROE d. NODEN v. GRIFFITS (1766), 4 Burr. 1952; 1 Wm. Bl. 605; 98 E. R. 17.

Annotations:—*Reid.* Vawser v. Jeffery (1828), 3 Russ. 479. *Mentd.* Jones v. Roe (1789), 3 Term Rep. 88; Goodtitle d. Holford v. Otway (1797), 7 Term Rep. 399; Goodright v. Forrester (1807), 8 East, 552; Doe d. Calkin v. Tomkinson (1813), 2 M. & S. 165.

1740. — As against all persons except lord.]—Ejectment for lands in Y.:—*Held*: the title to copyhold lands related back from the time of the admittance to the surrender as against all persons but the lord, so the surrenderee might recover in ejectment against the surrenderor on a demise laid between the times of surrender & admittance.—HOLDFAST d. WOOLLAMS v. OLAPHAM** (1787), 1 Term Rep. 600; 99 E. R. 1273.**

Annotations:—*Consd.* Doe d. Bennington v. Hall (1812), 16 East, 208. *Reid.* Minton v. Kirwood (1868), 3 Ch. App. 614.

1741. — Cause of action arising between surrender & admittance—Admittance before action brought sufficient.]—DOE d. BENNINGTON v. HALL, No. 1655, ante.

1742. — Gives priority over incumbrancer—Though without notice.]—Where, by the custom of a manor, no time is limited for presenting surrenders of copyholds, an incumbrancer whose security has not been enrolled until long after a subsequent incumbrance, will not be postponed, although the subsequent incumbrancer had no notice of the prior charge.—HORLOCK v. PRIESTLEY** (1827), 2 Sim. 75; 57 E. R. 718.**

1743. — Though admittance out of time.]—By the custom of the manor of H. every person to whose use lands were surrendered ought to come within 3 years after the surrender was presented & be admitted. P., copyholder of the manor, surrendered to the use of W., who was admitted more than 3 years after presentment of the surrender:—*Held*: this custom was only for the benefit of the lord, who might waive it & grant a valid admittance after the expiration of the 3 years, & W., after admittance, might maintain ejectment against P., & all claiming under her.—DOE d. WARWICK v. COOMBS** (1844), 6 Q. B. 535; 14 L. J. Q. B. 37; 4 L. T. O. S. 156; 8 Jur. 1166; 115 E. R. 200.**

1744. — Not in case of devisee—Of unadmitted devisee.]—The devisee of a copyhold or customary estate which had been surrendered to the use of the will, died before admittance:—*Held*: her devisee, though afterwards admitted, could not recover in ejectment, for his admittance

had no relation to the last legal surrender, but the legal title remained in the heir of the surrenderor. Though if the first devisee had been considered to be admitted in construction of law, the devise to her having been in remainder after a devise to one who was customary heir of the surrenderor, & who paid rent to the lord for several years, but though required to come in & be admitted, had never done so, or if the admittance of the first devisee's heir could have been considered as an admittance by relation back of the first devisee herself, yet she not having surrendered to the use of her will, her devisee could not take the legal estate. But whether the heir of the surrenderor would be considered as a trustee for the second devisee a ct. of equity was alone competent to decide.—*DOE d. VERNON v. VERNON* (1805), 7 East, 8; 3 Smith, K. B. 6; 103 E. R. 4.

Annotations:—*Consd. Wainwright v. Elwell* (1816), 1 Madd. 627. *Distd. King v. Turner* (1829), 2 Sim. 545. *Consd. Matthew v. Osborne* (1853), 13 C. B. 919. *Distd. Hall v. Bromley* (1887), 35 Ch. D. 642. *Refd. Doe d. Tofield v. Tofield* (1809), 11 East, 246; *Doe d. Winder v. Lawes* (1837), 7 Ad. & El. 195. *Mentd. Portland v. Hill* (1866), 35 L. J. Ch. 439.

See, also, No. 1737, *ante*.

(c) *On Estates in Remainder and Reversion.*

1745. Admittance of tenant for life—Is admittance of remainderman.]—A copyholder surrendered to the use of his wife for life, & after to the use of his daughter in fee. The wife was admitted:—

Held: the daughter, after the death of the wife, might without any admittance surrender the same land, for the first admittance was sufficient.—*HEGGOR & FELSTONS CASE* (circa 1578), 4 Leon. 111; 74 E. R. 763.

1746. — — —.]—The heir of a copyholder may surrender a reversion descended to him, before admittance; & if it be to one for life, remainder in fee, the admittance of tenant for life, admits him in remainder.—*COLCHIN v. COLCHIN* (1599), Cro. Eliz. 662; 78 E. R. 901.

Annotations:—*Consd. Doe d. Tofield v. Tofield* (1809), 11 East, 246. *Refd. King v. Turner* (1833), Coop. temp. Brough. 64; *Doe d. Winder v. Lawes* (1837), 2 Nev. & P. K. B. 195. *Mentd. Graves v. Ashenhurst* (1673), Freem. K. B. 77.

1747. — — —.]—*AUNCHELM v. AUNCHELM* (1604), Cro. Jac. 31; 79 E. R. 24.

Annotations:—*Consd. Doe d. Whitbread v. Jenny* (1804), 5 East, 522. *Refd. Church v. Mundy* (1806), 12 Ves. 426; *Everingham v. Ivatt* (1873), 42 L. J. Q. B. 203.

1748. — — —.]—*JURDEN v. STONE* (1608), Hut. 18; 123 E. R. 1069.

1749. — — —.]—*WARSOPP v. ABELL* (1696), 5 Mod. Rep. 306; 87 E. R. 672.

1750. — — —.]—*CHURCH v. MUNDY*, No. 1735, *ante*.

1751. — — —.]—*DOE d. BESLEY v. MAISEY* (1828), 7 L. J. O. S. K. B. 85.

1752. — — —.]—**Enures for joint remainderman—Against heir.]**—The admittance of tenant for life upon a surrender to the use of the will, enures as the admittance of those in remainder, so as to vest the estate in them. Testator devised copyhold land to his widow for life, remainder to his six children, three sons & three daughters, in equal shares, as tenants in common. After his death, his widow was duly admitted. The widow died, & two of the daughters also died unmarried & intestate: but there was no evidence as to the third daughter. One of the sons went abroad, & never was heard of. The second was proved to be alive. The third, in 1848, his mother & two sisters being then dead, got himself admitted in respect of three sixths of the land, & in 1845, in

default of claim by the other remainder-men. after proclamation, got admitted to the rest —

law of the person last seised. In 1850, he covenanted to surrender five sixths of the land to pltf., & pltf. was thereupon admitted by the lord:—*Held*: pltf. thereby obtained no title to more than four sixths,—even as against one having no title, but a bare possession.—*SMITH v. GLASSCOCK* (1858), 4 C. B. N. S. 357; 27 L. J. C. P. 192; 31 L. T. O. S. 116; 6 W. R. 487; 140 E. R. 1122.

See, also, Nos. 627, 721, 1059, 1061, 1063, 1065, *ante*.

1753. — — —.]—**Is admittance of reversioner.]**—*DOE d. WINDER v. LAWES*, No. 1374, *ante*.

1754. — — —.]—**Includes executors upon trust for sale—Though no estate given—& purchaser from executors.]**—Testator, seised in fee of a copyhold estate, devised it to his wife for life, & after her decease without giving any estate to his exors. directed them to sell the copyholds, & then divide the proceeds. Testator's widow was admitted for life, & after her decease the exors. sold the estate, & executed a bargain & sale to the purchaser; & he, without having been admitted, made his will, & devised the estate to his wife; he was subsequently admitted to the copyhold estate & died. Upon a suit to administer the estate of the purchaser's wife:—*Held*: (1) the admission of the wife of first testator enured for the benefit of the purchaser under the exors.; (2) the customary heir of the purchaser took no estate in the copyholds, but that they passed to the wife as devisee.—*SEAMAN v. WOODS* (1857), 24 Beav. 372; 27 L. J. Ch. 538; 4 Jur. N. S. 725; 53 E. R. 401.

F. Proof of Admittance.

1755. By court rolls—Must be supported by evidence of identity—Of persons named.]—In ejectment by devisees of copyhold premises to prove the admission of the lessors of pltf., it is only necessary to prove by the ct.-rolls, that persons of their names have been admitted, but evidence must be given of their identity.—*DOE d. HANSON v. SMITH* (1808), 1 Camp. 196, N. P.

1756. — — —.]—**Without stamped copy.]**—*DOE d. BENNINGTON v. HALL*, No. 1655, *ante*.

1757. By steward's rough draft.]—*ANON.*, No. copy.]—*CHANCE v. DOD*, No. 449, *ante*.

At customary court—By entry in court

baron" of the manor. It appeared that the usual form of entry for cts. at which both freehold & customary tenants attended, & that admittances to the copyhold of the manor were granted at such cts.:—*Held*: sufficient evidence that an admittance at the ct. in question was made at a customary ct.—*DOE d. EVANS v. WALKER* (1850), 15 Q. B. 28; 19 L. J. Q. B. 293; 15 L. T. O. S. 132; 117 E. R. 368.

G. When Admittance Implied.

1760. Acceptance of rent by lord.]—*FROSEL v. WELSH*, No. 1631, *ante*.

1761. — — —.]—*Held*: (1) the acceptance of quit-rents by the lord of the manor in respect of copyholds from a person paying as heir or surrenderee implies an admittance of such person as tenant if the lord knows that the quit-rents are so paid: (2) the Statutes of Limitation apply to a seizure *quousque* of copyholds by the lord of the manor,

Sect. 2.—By surrender and admittance: Sub-sect. 2, G., H. & I. Sect. 3: Sub-sects. 1 & 2. Sect. 4. Part XIX. Sect. 1: Sub-sect. 1, A. & B.]

& begin to run when after proclamation or notice the heir fails to come in & be admitted.—*ECCLESIASTICAL COMRS. FOR ENGLAND v. PARR*, [1894] 2 Q. B. 420; 63 L. J. Q. B. 784; 71 L. T. 65; 42 W. R. 561; 9 R. 542, C. A.

Annotations:—As to (1) Rehd. Monckton v. Payne (1899), 81 L. T. 204. *As to (2) Consd. Beighton v. Beighton* (1895), 64 L. J. Ch. 796. *Rehd. Re Nisbet & Potts' Contract*, [1905] 1 Ch. 391.

1762. — Over long period—Subsequent admittances extending over many years.]—(1) An equitable estate tail of a copyhold cannot be barred by the devise alone of the tenant in tail. *Qu.*: whether it would be barred by a lease of the equitable tenant in tail. (2) If there have been regular surrenders & admittances for a considerable length of time (*e.g.* for above 40 years) it will be presumed that surrenders & admittances were duly made before that period, especially if the rent has been paid during the whole time.—*ROE d. EBERALL v. LOWE* (1790), 1 Hy. Bl. 446; 126 E. R. 258.

Ratification of invalid admittance.]—See No. 1721, *ante*.

1763. Entry on copyhold rolls—Of subsequent surrender.]—The admission of B. in 1812 was proved by entry on the rolls & a surrender by him to pltf. in 1824 by an entry of presentment of surrender out of ct. but no admission.—*BRIDGER v. HUETT* (1860), 2 F. & F. 35, N. P.

Entry in steward's book.]—See No. 1102, *ante*.

H. Fines on Admittance.

See Part XI., Sect. 1, sub-sect. 2, *ante*.

I. When Readmittance Necessary.

1764. On change of quantity of tenant's estate—Tenant for life subsequently acquiring fee—By devise.]—*DOE d. WINDER v. LAWES*, No. 1374, *ante*.

1765. — Admittance of heir quousque—Heir subsequently taking as appointee.]—Where by the special custom of a manor, upon the death of a tenant, whose will conferred upon his exors. a power of sale, the customary heir or other claimant might be admitted on the roll, before the execution of the power conferred by the will, to hold for the purposes declared by the will:—*Held*: after the execution of the power a fresh admittance was necessary, although the appointee was customary heir, & had been previously admitted *quousque*.—*R. v. CORBETT* (1853), 1 E. & B. 836; 22 L. J. Q. B. 335; 22 L. T. O. S. 40; 17 Jur. 1024; 1 W. R. 306; 1 C. L. R. 543; 118 E. R. 650.

Annotation:—Distd. Hall v. Bromley (1887), 35 Ch. D. 642.

SECT. 3.—BY DEED.

SUB-SECT. 1.—WHEN BINDING LEGAL ESTATE.

1766. Release—Of condition of surrender—After admittance.]—A surrender out of ct. upon condition having been presented without the condition, & the surrenderee being dead, the steward admitted the heir, to whom the surrenderor released by deed:—*Held*: (1) the presentment of the surrender was void; *secus* if the presentment had been truly made, & the steward on entering it had omitted the condition; & upon proof thereof the roll might have been amended; (2) the release was good, & extinguished the right of the copyholder, because the releasee was admitted, & was tenant in possession, so that a release of the

customary right might enure to him, & he was in by title, *scil.* by the lord's admission: but a copyholder cannot release to one who ousts him by wrong, for he gains no customary estate upon which a release may enure, & it would be a prejudice to the lord in respect of his fines & services.—*KITE v. QUEINTON* (1589), 4 Co. Rep. 25 a; 76 E. R. 931.

Annotations:—As to (1) Rehd. Bunting v. Lepingwell (1585), 4 Co. Rep. 29 a; *Hull v. Shar-Brook* (1604), Cro. Jac. 36; *Fursaker v. Robinson* (1717), Gilb. Ch. 139; *Doe d. Priestley v. Calloway* (1827), 6 B. & C. 484. *As to (2) Rehd. Hull v. Shar-Brook* (1604), Cro. Jac. 36; *Parker v. Kett* (1701), 1 Ld. Raym. 658; *Everingham v. Ivatt*, 26 L. T. 909.

1767. — Without surrender.]—*HULL v. SHAR-BROOK* (1604), Cro. Jac. 36; 79 E. R. 29.

1768. — To disseisor—Without admittance—Void.]—*MORTIMORES CASE* (1629), Het. 150; 124 E. R. 415.

1769. Lease & release—In favour of natural son—Subsequent surrender to use of will not barred—Devisee takes.]—Testator, who was seized of certain copyhold property, executed a lease & release in favour of pltf., who was his natural son. He, however, continued in possession, & subsequently surrendered to the use of his will, & devised the property to deft., who, upon his death, was duly admitted. The question was, whether the lease & release were binding upon testator so as to prevent him from surrendering to the use of his will:—*Held*: devisee took.—*JEFFERYS v. SMITH* (1843), 2 L. T. O. S. 120.

Bargain & sale—Whether operating as forfeiture.]—See No. 1813, *post*.

1770. Fine—Does not pass interest of married woman.]—*LIFE ASSOCN. OF SCOTLAND v. SIDDAL, COOPER v. GREENE* (1861), 3 De G. F. & J. 58; 4 L. T. 311; 7 Jur. N. S. 785; 9 W. R. 541; 45 E. R. 800, L. C. & L. JJ.; *subsequent proceedings*, 3 De G. F. & J. 271, L. JJ.

Annotations:—Mentd. Re Carr's Trust (1871), 19 W. R. 675; *Evans v. Davis* (1878), 10 Ch. D. 747; *Buckmaster* (1886), 55 L. T. 279; *Evans v. ...*, 37 Ch. D. 329; *Lyell v. Kennedy, Kennedy v. Lyell* (1889), 14 App. Cas. 437; *Soar v. Ashwell*, [1893] 2 Q. B. 390; *Price v. Phillips* (1894), 11 T. L. R. 86.

1771. Conveyance—When holding severed from manor.]—*PHILLIPS v. BALL*, No. 232, *ante*.

1772. Declaration of trust—By married woman—By deed acknowledged under Fines & Recovery Act, 1833 (c. 7), s. 77.]—A declaration of trust of copyholds by a married woman tenant on the rolls of the manor, by a deed acknowledged under the above Act is a "disposition" within the meaning of s. 77 of the Act & will effectually bind the copyholds as against her customary heir.—*CARTER v. CARTER*, [1896] 1 Ch. 62; 65 L. J. Ch. 86; 73 L. T. 437; 44 W. R. 73; 40 Sol. Jo. 33; 13 R. 824.

Mortgages.]—See Part XIV., *ante*.

Severance of estates in co-ownership.]—See Part IX., Sect. 5, sub-sect. 1, *ante*.

SUB-SECT. 2.—WHEN BINDING EQUITABLE ESTATE.

1773. Equitable mortgage.]—*Held*: (1) Copyhold property not otherwise subject to any charge, to be within the meaning of the security in an equitable mtge., the recital describing the property as freehold estates at I., subject to the charge affecting the same, but the operative part describing it merely as "lands, tenements, & hereditaments at or near I."; (2) freehold property at I., which was not subject to any charge, was within the mtgee.'s security; the intention, from other written memoranda, being clearly to give

a general charge.—*Re MEDLEY, Ex p. GLYN* (1840), 1 Mont. D. & De G. 29; 9 L. J. Bcy. 41; 4 Jur. 395.

1774. —.]—By a mtge. deed a mtgor. conveyed to a mtgee. in fee simple, subject to a prior charge, the estate, right, title, property & interest in two fields, containing together about twenty-two acres, situate at M. H., H., & also in any land, hereditaments, & premises at H., in which the mtgor. had any estate, right, title, property, or interest. The two fields were freehold, but a small strip of plantation, three-quarters of an acre in extent, was copyhold. The mtgor. was entitled to two undivided thirds in this copyhold strip, which, with the two freehold fields, nearly made up the twenty-two acres:—*Held*: the copyhold strip passed under the general words.—*EARLY v. RATHBONE* (1888), 57 L. J. Ch. 652; 58 L. T. 517; 4 T. L. R. 382.

Lord's right to fines—On devolution of equitable title.]—*See* No. 1054, *ante*.

1775. Purported disentailing assurance—Not en-

rolled—*Vold*.]—*GREEN v. PATERSON*, No. 763, *ante*.

SECT. 4.—OTHER CASES.

1776. Fee of copyhold severed from manor—By bill in Chancery only.]—*MURREL v. SMITH*, No. 96, *ante*.

— Tenement passes by common law conveyance.]—*See* No. 232, *post*.

1777. Feoffment & livery—*Vold* unless presented within year—Special custom of manor of Porchester.]—A custom was proved that if any tenant of any lands or tenements within the Manor of Porchester enfeoffed another of the tenements such feoffment was presented within a year next after & if not presented was void. A tenant enfeoffed another of land & made livery, but the feoffment was not presented:—*Held*: the feoffment was void by the custom.—*PEREMAN v. BOWER* (1598), 2 And. 125; 123 E. R. 580.

See, now, Real Property Act, 1845 (c. 106), s. 3.

Part XIX.—Determination and Suspension of Tenant's Estate.

SECT. 1.—DETERMINATION.

SUB-SECT. 1.—EXTINGUISHMENT.

A. By Surrender.

1778. Copyholder joining in feoffment of manor—Copyhold extinguished.]—(1) If a copyholder joins with his lord in a feoffment of the manor, the copyhold is extinct.

(2) It is the same if a copyholder accept a lease for years of his copyhold.—*ANON.* (1582), Godb. 11; 78 E. R. 7.

1779. Release by copyholder—To lord's grantee of freehold—Copyhold extinguished.]—A release by a copyholder to the lord's grantee of the freehold is an extinguishment of the copy.—*ANON.* (1583), Cro. Eliz. 21; 78 E. R. 287.

1780. —.]—The lord of the manor of B. sold the freehold interest of a copyholder of inheritance unto another, so that it was divided from the manor, & afterwards released to the purchaser:—*Held*: (1) by the release the copyhold interest was extinguished; (2) if a copyholder were ousted, so that the lord of the manor was disseised, & the copyholder released to the disseisor *nihil operatur*.—*WAKEFORD'S CASE* (1588), 1 Leon. 102; 74 E. R. 95.

1781. — To disseisor of lord—Copyhold not extinguished.]—*WAKEFORD'S CASE*, No. 1780, *ante*.
See, also, No. 1784, *post*.

1782. — To lord—Copyhold extinguished.]—*BLEMMER HASSET v. HUMBERSTONE*, No. 658, *ante*.

1783. Surrender by copyholder—To lessee of manor—To use of lessee—Copyhold extinguished.]—(1) If a copyholder surrenders to him who has a lease for years of the manor, to the use of the same lessee, the copyhold estate is extinct.

(2) The estate in the copyhold is not of right but an estate at will although custom & prescription has fortified it.

(3) if a copyholder accept a lease for years of the manor, the copyhold estate is extinct.—*ANON.* (1586), Godb. 101; 78 E. R. 62.

1784. — To disseisor of manor—Copyhold not extinguished.]—*PITT v. MOORE* (1681), 2 Show. 153; 89 E. R. 854; *sub nom.* *MOORE v. PITT*, 1 Freem. K. B. 245; *sub nom.* *MOOR v. PIT*, 2 Mod. Rep. 287; 1 Vent. 359; *sub nom.* *PIT v. MOOR*, Skin. 28; T. Jo. 153.

See, also, No. 1780, *ante*.

1785. Declaration by copyholder—That he would not hold by copy—But by bill—Accepted by lord—Copyhold determined.]—Upon a controversy between the lord & a copyholder the copyholder said that he would not hold the land any longer by copy but by bill under the hand of the lord for his life. The lord agreed & made a bill to him under his hand to that effect which the tenant accepted:—*Held*: the copyhold was determined.—*COLMAN v. BEDIL* (1589), 1 And. 199; 123 E. R. 429.

1786. — That he wishes to surrender—Copyhold extinguished.]—*BLEMMER HASSET v. HUMBERSTONE*, No. 658, *ante*.

B. By Acquisition of Copyholder's Interest by Lord.

1787. Sale of copyhold to lord—Lord lessee of manor—Copyhold extinguished.]—*BLEMMER HASSET v. HUMBERSTONE*, No. 658, *ante*.

1788. — After mortgage in fee of manor—Enures to benefit of mortgagee.]—A lord of a manor mortgaged the manor in fee to A., & afterwards purchased copyholds held of the manor, & took surrenders of them to himself in fee, & settled all his estate mortgaged to A.:—*Held*: (1) the surrenders should enure to the benefit of the mortgagee; (2) the settlement would pass the equity of redemption of such surrendered copyholds.—*DOE d. GIBBONS v. POTT* (1781), 2 Doug. K. B. 710; 99 E. R. 452.

Annotations:—*Generally, Rehd.* *St. Paul v. Dudley & Ward* (1808), 15 Ves. 167; *Christchurch v. Buckingham* (1864), 17 C. B. N. S. 391; *Delacherois v. Delacherois* (1864), 11 H. L. Cas. 62. *Mentd.* *Goodright v. Wells* (1781), 2 Doug. K. B. 771; *Goodtitle d. Holford v. Otway* (1796), 1 Bos. & P. 576; *Cave v. Holford* (1798), 3 Ves. 650.

1789. — Lord tenant for life of manor—Surrender to lord in fee—Copyhold merges in manor.]—Copyhold premises, purchased by the lord, a tenant for life of the manor, with remainders over, taking the surrender to him & his heirs, merge.—*ST. PAUL v. DUDLEY & WARD (VISCOUNT)* (1808), 15 Ves. 167; 33 E. R. 717, L. C.

Annotations:—*Rehd.* *King v. Moody* (1826), 2 Sim. & St. 579; *Bingham v. Woodgate* (1829), 1 Russ. & M. 32; *Thompson v. Hardinge* (1845), 1 C. B. 940; *Delacherois v. Delacherois* (1864), 4 New Rep. 501. *Mentd.* *Clifford v. Clifford* (1852), 9 Hare, 675.

1790. — Seised in fee subject to executory devise over—Copyhold merges in manor.]—The lord of a manor being seised in fee, subject to an executory devise over, purchased copyhold of the manor,

Sect. 1.—Determination: Sub-sect. 1, B., C., D. & E.; sub-sect. 2, A. & B. (a) & (b).]

& under an inclosure Act, carried in two claims, one in respect of the devised & the other in respect of the purchased estate, & obtained two allotments accordingly. He afterwards died, & the executory devise took effect:—*Held*: the copyhold was extinguished in the manor.—*KING v. MOODY* (1826), 2 Sim. & St. 579; 4 L. J. O. S. Ch. 227; 57 E. R. 467.

1791. — Lord tenant in common—Admitted tenant of entirety by act of all lords—Proportionate part of copyhold interest merges in freehold estate.]—A., seised in fee of twelve 24th parts of a manor held by several as tenants in common, purchased lands held of the manor, which were thereupon surrendered to a trustee for him, & afterwards to himself in fee, & he was admitted tenant of the entirety by the act of all the lords:—*Held*: twelve 24th parts of his copyhold interest in the lands merged in his freehold estate therein as lord of the manor.—*CATTLEY v. ARNOLD* (1858), 4 K. & J. 595; 70 E. R. 247.

Annotation:—*Mentd. Heath v. Deane*, [1905] 2 Ch. 86.

1792. Sale of copyhold to trustees—Possessed of manor upon trust—Copyhold merges in manor.]—*HICKS v. SALLITT*, No. 84, *ante*.

1793. Allotment under inclosure Act of copyholds to trustees—Possessed of manor upon trust—Copyhold merges in manor.]—*HICKS v. SALLITT*, No. 84, *ante*.

Merger operating as suspension.]—*See* No. 1976, *post*.

C. By Acquisition of Manor by Tenant.

1794. Lease for years of manor to copyholder—Copyhold extinguished—Lessee may grant again by *py.*]—*FRENCH'S CASE*, No. 676, *ante*.

1795. — — —.]—A copyholder in fee married a woman seignioress of the manor, & they suffered a common recovery, to the use of themselves for life, with remainder over:—*Held*: (1) the copyhold was extinct, for by the recovery the baron had gained an estate of freehold, (2) by the intermarriage it was only suspended.

(3) If a copyholder takes a lease of the manor his copyhold is extinct.—*ANON.* (1582), Cro. Eliz. 8; 78 E. R. 274.

1796. — — —.]—A copyholder in fee took a lease of the manor for a term of years:—*Held* the copyhold was extinguished for ever.—*HIDE v. NEWPORT* (1584), Moore, K. B. 185; 72 E. R. 520.

1797. — Copyhold not extinguished—After lease expired.]—A tenant by copy of ct. roll of a manor in the Queen's possession took a lease of the manor for 21 years. The term having expired the question was if the interest of the copyholder was determined:—*Held*: although the copyholder had but an estate at will at common law, still it was an estate of inheritance by the custom of the manor, which was not determined by the acceptance of a lease for years.—*ANON.* (1583), Sav. 70; 123 E. R. 1018.

1798. Marriage of copyholder & lady of manor—Common recovery suffered—Copyhold extinguished.]—*ANON.*, No. 1795, *ante*.

1799. Purchase of manor—By devisee in tail with remainder in fee—Tenement does not merge.]—W. H. was seised of land held of the manor of W. by suit & services & devised to F. H. in tail the remainder in fee, after which F. H. purchased the manor:—*Held*: the purchase did not make the land parcel of the manor though escheat would have done so.—*HOLMS v. HANBY* (1666), 2 Keb. 28; 1 Sid. 284; 84 E. R. 18.

Annotation:—*Consd. Delacherois v. Delacherois* (1864), 4 New Rep. 501.

Merger operating as suspension.]—*See* No. 1795, *ante*.

D. By Alteration of Tenant's Estate.

1800. Copyholder becoming lessee for years—Copyhold extinguished.]—*FRENCH'S CASE*, No. 676, *ante*.

1801. — — —.]—*ANON.*, No. 1778, *ante*.

1802. — — — Assignment from original lessee.]

—A. was copyholder of lands of which a lease was made to another person for years, & afterwards the reversion was granted to M. & his heirs. The lessee assigned his interest to A.:—*Held*: notwithstanding A. had the fee according to the custom the acceptance of the lease destroyed the copyhold interest.—*SMITH v. LANE & LANE* (1586), 1 And. 191; 123 E. R. 424; *sub nom.* *SMYTH v. LANE*, Gouldsb. 34; *sub nom.* *LANE'S CASE*, 2 Co. Rep. 16 b.

Annotations:—*Refd. Field v. Boethsby* (1658), 2 Sid. 137. *Mentd. Kemp v. Barnard* (1638), Cro. Car. 513; *Mounson v. Bourn* (1639), Cro. Car. 527; *Randall v. Riddle* (1673), Freem. K. B. 345; *Shaffesbury's Case* (1677), 1 Mod. Rep. 144; *The Bankers Case* (1695), Skin. 601; *Hayward v. Kinsey* (1701), 12 Mod. Rep. 568; *Doe d. Biddulph v. Poole* (1848), 11 Q. B. 713; *Cobbett v. Hudson* (1849), 13 Q. B. 497.

1803. — — —.]—*BELFIELD v. ADAMS*, No. 1804, *post*.

See, also, No. 1783, *ante*, No. 1806, *post*.

1804. Lease for life of copyhold—Life of tenant & two others—Copyhold not extinguished.]—(1) A mere failure to attend the lord's ct. is not a forfeiture; notice of his holding of his ct. must be proved & a wilful refusal to attend.

(2) If a copyholder take a lease of the lord of his copyhold estate, this is a surrender of his copyhold.

(3) If a copyholder of inheritance take a lease to himself, to his wife, & to his son, for their lives, the inheritance is not surrendered & gone, but still remains in him.—*BELFIELD v. ADAMS* (1615), 3 Bulst. 80; 81 E. R. 69.

Acquisition of freehold by copyholder.]—*See* Part XX., *post*.

Merger operating as suspension.]—*See* No. 1975, *post*.

E. Other Cases.

1805. Lease of customary lands of manor by reversioner—Copyholder's interest not extinguished.]—H. was seised of the manor of B. in his demesne as of fee, & L. was a copyholder in fee of parcel of the lands demisable by the custom of the manor by copy in fee. H. enfeoffed divers persons unto the use of himself for life, then to L. L. & E. his wife, & their heirs, who made a lease of the customary lands to pltf. for 100 years, & the question was if by the lease the lands were so severed from the manors that the copyhold was extinct:—*Held*: the copyhold interest remained.—*BEALE & LANGLEY'S CASE* (1587), 2 Leon. 208; 74 E. R. 483.

Annotation:—*Mentd. Hartop v. Hoare* (1743), 2 Stra. 1187.

1806. Lease for years—Followed by grant to another by copy for lives—Term of years acquired by purchaser of manor with notice of copyhold estate—Copyhold not extinguished.]—*HUTCHINGS v. STRODE* (1635), Nels. 26; 21 E. R. 780.

1807. Lease of tenement in hands of lord—Apart from manor—Tenure extinguished.]—(1) If the lord of a manor makes a lease of the manor & a copyhold describing the tenement by name the copyhold is not extinguished because it is included in the lease of the manor.

(2) If the lord makes a lease of the tenement apart from the manor, the tenure is extinguished.

LEE v. BOOTHBY (1638), Cro. Car. 521; 79 E. R. 1051.

Annotation :—As to (1) *Dttd. Re London & South Western Railway Act, 1856, Ex p. Henley* (1861), 29 Beav. 311.

1808. — By Crown—Tenure not extinguished.]—The King may grant a lease of copyholds for life without extinguishing his copyhold, & after the estate for life is determined he may grant the land again by copy of ct. roll.—CREMER v. BURNET (1651), Sty. 266; 82 E. R. 698.

1809. — Coupled by name with lease of manor—Tenure not extinguished.]—LEE v. BOOTHBY, No. 1807, *ante*.

See, also, No. 630, *ante*.

SUB-SECT. 2.—FORFEITURE.

A. In General.

1810. May be real—Or personal.]—(1) There is a real & a personal forfeiture of copyhold lands.

(2) Real forfeiture is not necessary to be found by the homages.

(3) It is otherwise of a personal forfeiture.

(4) A woman copyholder built a new house upon the land, & it was agreed to be a forfeiture.—WARDS CASE (1610), 4 Leon. 241; 74 E. R. 847.

Whether land ceases to be copyhold—Or particular tenant's estate extinguished.]—See Sect. 2, *post*.

B. Causes of.

(a) Alienation of Freehold.

1811. Alienation by copyholder—Is forfeiture of estate—& disselsin of lord.]—BROWN'S CASE, No. 627, *ante*.

1812. Surrender by life tenant—To use of another in fee—No forfeiture.]—OLDCOT v. LEVELL, No. 742, *ante*.

1813. Bargain & sale—By deed indented & enrolled—No forfeiture.]—LONDON'S CASE (prior to 1608), cited in Godb. 269; 78 E. R. 157.

1814. Recovery in court baron by life tenant—As tenant of fee—No forfeiture.]—(1) When a tenant for life of a copyhold suffers a recovery in ct. baron as tenant in fee, that is no forfeiture of

(2) If it were a forfeiture, the lord only & not any of those in remainder ought to take advantage.—KEEN v. KIRBY (1675), 1 Mod. Rep. 199; 86 E. R. 827; *sub nom.* KREN v. KIRBY, 2 Mod. Rep. 32; *sub nom.* KERBY'S (ALIAS KIRK'S) CASE, 1 Freem. K. B. 192; *sub nom.* BIRD v. KIRKBY, Cart. 237.

Annotation :—As to (2) *Reid. Doe d. Bover v. Trueman* (1831), 1 B. & Ad. 736.

(b) Lease Unwarranted by Custom.

1815. Lease for years—Forfeiture.]—(1) A lease for years made by a copyholder unwarranted by the custom is a forfeiture of the estate.

(2) A refusal to pay the lord a reasonable fine is a forfeiture.—JACKMAN v. HODDESDON (1594), Cro. Eliz. 351; 78 E. R. 599.

Annotations :—As to (3) *Consd. Dalton v. Hamond* (1600), Cro. Eliz. 779. *Reid. Hobart v. Hammond* (1600), 4 Co. Rep. 27, b; *Fraser v. Mason* (1883), 11 Q. B. D. 574.

1816. — Beginning at future date—Immediate forfeiture.]—HARDING v. TURPIN (1628), Het. 122; 124 E. R. 392.

1817. Lease for one year—& so from year to year for ten years—Forfeiture.]—M. prosecuted for the forfeiture of a copyhold of a manor belonging to her late husband done in his lifetime, being part of her jointure :—*Held* : (1) if a copyholder made a lease for one year & *sic de anno in annum* for ten years, it was a forfeiture of the estate if not

warranted by custom; (2) a lease by a copyholder for a year with a covenant to renew yearly for ten years would not be a forfeiture; (3) a reversioner could not take advantage of a forfeiture.

MONTAGUE'S (LADY) CASE (1612), Cro. Jac. 301 79 E. R. 258.

Annotations :—As to (1) *Reid. Fenny d. Eastman v. Child* (1814), 2 M. & S. 255; *Doe d. Bover v. Trueman* (1831), 1 B. & Ad. 736; *Doe d. Robinson v. Bousfield* (1844), 6 Q. B. 492. *Generally, Reid. Eastcourt v. Weekes* (1698), 1 Lut. 799; *Newman v. Holdmyast* (1717), 1 Stra. 54; *R. v. Skingle* (1718), 1 Stra. 100.

1818. — Excepting last day—& so from year to year—Forfeiture.]—LUTTEREL v. WESTON (1612), Cro. Jac. 308; 1 Bulst. 215; 79 E. R. 263.

1819. — With covenant to renew yearly for ten years—No forfeiture.]—MONTAGUE'S (LADY) CASE, No. 1817, *ante*.

1820. — — — — —.]—(1) Though a copyholder empowered by custom to make a lease for one year incurs a forfeiture if he makes a lease for ten years, it is necessary before forfeiture to prove that such a lease was in fact made & not merely that he promised to make such lease.

(2) A lease for one year with a covenant that after the end of the year the lessee shall have the land for another year & so on in this manner *de anno in annum* during the space of ten years does not make a forfeiture.

(3) If after a lease for years the copyholder continues in possession & the lord dies & his widow or successor take rent from the copyholder, the forfeiture is waived.—HAMLEN v. HAMLEN (1612), 1 Bulst. 189; 80 E. R. 877.

Annotations :—*Generally, Mentd. Turner v. Turner* (1726), 2 Stra. 708; *Gardiner v. Holt* (1744), 2 Stra. 1217.

1821. Promise of lease—When lease not made—No forfeiture.]—HAMLEN v. HAMLEN, No. 1820, *ante*.

1822. Three leases made together—Each to commence within two days of expiration of other—Where custom for lease of one year—Forfeiture.]—

(1) A copyholder, by special custom, may make a lease for a year; but if he make three leases together, each to commence within two days after the expiration of the other, it is an evasion of the custom & forfeiture of the estate.

(2) The lord's acceptance of the surrender, not knowing of the forfeiture, will not avoid it.—MATHEWS v. WHETTON (1631), Cro. Car. 233; W. Jo. 249; 79 E. R. 804.

Annotation :—*Generally, Reid. Eastcourt v. Weekes* (1698), 1 Lut. 799.

1823. Assignment for years—As collateral security for bond—Forfeiture.]—If a copyholder, to secure a person who has become bound for him, covenant, that such person shall hold & enjoy the copyhold estate for seven years & so from seven years to seven years, during the term of forty-nine years, if the copyholder should so long live, it is a forfeiture of the estate, for this deed, though intended only as a collateral security, amounts to a present lease.—RICHARDS v. SELLY (1676), 2

the person
copyhold tenant, is void against the
is a forfeiture as to himself.—SMITH d.
PACKHURST (1741), 3 Atk. 135; 26

327, H. L.

Annotations :—*Mentd. Pomfret v. Windsor* (1752), 2 Ves. Sen. 472; *Garth v. Cotton* (1753), 3 Atk. 751; *Doe d. Adams v. Horda* (1777), 2 Cowp. 689; *Cholmondeley v. Jac. & W.* 1; *Doe d. Jones v. Jones* (1823), 1 B. & C. 231.

L. J. O. S. C. P. 231.
Ford v. Beech (1848),

See Part IX., Sect. 4, sub-sect. 2, *ante*.

Sect. 1.—Determination: Sub-sect. 2, B. (b), (c), (d),

1825. Forfeiture not absolute—May be waived.]—DOE d. ROBINSON v. BOUSFIELD, No. 838, *ante*.

See, generally, Sect. 2, post.

Lease by husband of copyholder.]—*See* Nos. 1913, 1914, *post*.

Remedy of lessee.]—*See* Nos. 839, 847, *ante*.

Waiver.]—*See* No. 1931, *post*.

(c) *Waste.*

1826. Waste by tenant—Permissive or otherwise—Forfeiture.]—(1) All waste by a copyholder, permissive or otherwise is a forfeiture.

(2) If a copyholder makes a lease for years which is not according to the custom, yet the lease is good against all except the lord.—**DOWNINGHAM CASE** (1594), Owen, 17; 74 E. R. 868.

Annotations:—As to (1) Consd. Doe d. Grubb v. Burlington (1833), 5 B. & Ad. 507. *As to (2) Follid. Doe d. Tresidder v. Tresidder* (1841), 1 Q. B. 416. *Consd. Doe d. Robinson v. Bousfield* (1844), 8 Jur. 1121.

See, also, No. 336, ante.

1827. Voluntary waste—Forfeiture.]—(1) Voluntary waste is a forfeiture of copyhold by the common law.

(2) Negligent waste is not a forfeiture unless by custom.—**FARMER v. WARD** (1595), Noy, 51; 74 E. R. 1020.

See, also, No. 1833, post.

1828. Permissive waste—No forfeiture—Except by custom.]—**FARMER v. WARD**, No. 1827, *ante*.

1829. ——— Forfeiture.]—(1) The surviving coparcener of a manor cannot enter for a forfeiture, as for waste or a lease without licence, committed by a copyholder in her sister's lifetime.

(2) Permissive waste is a forfeiture of a copyhold.

(3) Freebench is defeated by a forfeiture, surrender, or by a lease with licence, by the husband.

(4) The lord may take advantage of a cause of forfeiture or not as he chooses, but if he does not, the cause of forfeiture does not descend to the heir.—**EASTCOURT v. WEEKS** (1699), 1 Freem. K. B. 516; 1 Lut. 799; 1 Salk. 186; 89 E. R. 387.

Annotations:—As to (4) Consd. Doe d. Bover v. Trueman (1831), 1 B. & Ad. 736. *Follid. Doe d. Robinson v. Bousfield* (1844), 6 Q. B. 492. *Refd. Doe d. Tarrant v. Hellier* (1789), 3 Term Rep. 162.

1830. Building new house—Forfeiture.]—**WARDS CASE**, No. 1810, *ante*.

1831. Custom of forfeiture on pulling down house—Good.]—A copyhold tenant of inheritance, claiming that four acres of land, of freehold, were not laid to his house, pulled the house down:—**Held**: (1) the copyholder could not pull down the house, (2) the custom was the lord might enter for a forfeiture.—**BROCK v. BEARE** (1610), 1 Bulst. 50; 80 E. R. 753.

1832. Digging marle—To be laid on tenement—No forfeiture.]—A copyholder may dig for marle without danger of forfeiture, but he ought to lay the marle upon the same copyhold land, & not upon other land.—**PASTON'S CASE** (1621), Win. 8; 124 E. R. 7.

1833. Part of holding converted into fishery—Forfeiture.]—A copyholder forfeits his holding by committing waste, but not if he has been fined for committing it; when the law gives the lord another recompense there will be no forfeiture. There is no forfeiture for infringing a right that the lord only has by custom & not by common law.

If a copyholder converts part of his holding into a fishery, there is forfeiture (**HUTTON, J.**).—**PASTON v. UTBER** (1629), Hut. 102; Litt. 264;

123 E. R. 1131; *sub nom. PASTON v. MANNE*, Het. 5.

Annotations:—Mentd. Shortridge v. Lamplough (1702), 7 Mod. Rep. 71; *R. v. Budd* (1758), Park. 190.

1834. Pulling down barn—Without intention of rebuilding—Property not damaged—No forfeiture.]—DOE d. GRUBB v. BURLINGTON (EARL) (1833), 5 B. & Ad. 507; 2 Nev. & M. K. B. 534; 3 L. J. K. B. 26; 110 E. R. 878.

Annotations:—Consd. Blackmore v. White (1898), 68 L. J. Q. B. 180. *Refd. Huntley v. Russell* (1849), 13 Q. B. 572; *Jones v. Chappell* (1875), L. R. 20 Eq. 539; *Doherty v. Allman* (1878), 3 App. Cas. 709; *Tucker v. Linger* (1882), 21 Ch. D. 18; *Dashwood v. Magniac*, [1891] 3 Ch. 306; *West Ham Central Charity Board v. East London Waterworks Co.*, [1900] 1 Ch. 624.

1835. Premises in disrepair—Rebuilt within reasonable time—No forfeiture.]—On *mandamus* to the lord of a manor to admit trustees of a building society, interested as mtgees., the return set up a forfeiture for permissive waste by the tenant, but that the tenement had since been rebuilt:—**Held**: the tenant had not delayed repairing for an unreasonable time, & the trustees were entitled to admittance.—*R. v. DARE* (1861), 2 F. & F. 355.

See, also, No. 272, ante.

Waste by tenant of several tenements.]—*See* Nos. 1047, *ante*, 1853, *post*.

Waste by husband of copyholder.]—*See* No. 336, *ante*; No. 1911, *post*.

Waste by tenant for life.]—*See* Nos. 1896, 1897, 1899, 1908, *post*.

Cutting timber.]—*See* AGRICULTURE, Vol. II., p. 67, Nos. 425, 426; p. 68, No. 446; p. 69, No. 456.

(d) *Refusal of Fine.*

1836. Reasonable fine—Refusal to pay—Forfeiture.]—**JACKMAN v. HODDESDON**, No. 1815, *ante*.

1837. ——— ———.]—If a copyholder refuse to pay a reasonable fine, or to be admitted to the copyhold, this is a forfeiture of his estate.—**FANSHAW & BOND** (1653), Sty. 387; 82 E. R. 800.

1838. Unreasonable fine—Refusal to pay—Where custom uncertain—No forfeiture.]—**HOBART v. HAMMOND**, No. 1047, *ante*.

1839. After admittance—Refusal to pay—Forfeiture.]—**HOBART v. HAMMOND**, No. 1047, *ante*.

1840. Refusal to pay fine assessed—When assessment disputed—No appearance on day appointed for payment—Forfeiture.]—A lord assessed a fine & appointed it to be paid three months after. The copyholder claimed that the fine was certain & offered a fine on the day of assessing, according to the rent for two years, but on the day appointed for payment did not attend to excuse non-payment nor make any other refusal:—**Held**: (1) this was a forfeiture; (2) if he had come on the day appointed for payment & had tendered the fine certain, though not the fine assessed & demanded by the lord it had not been a forfeiture.—**GARDINER v. NORMAN** (1621), Cro. Jac. 617; 79 E. R. 526.

Annotation:—Refd. Denny v. Lemman (1615), Hob. 135.

1841. ——— ——— Tender of amount alleged by tenant to be payable—No forfeiture.]—**GARDINER v. NORMAN**, No. 1840, *ante*.

1842. ——— While matter in doubt—No forfeiture.]—**BARNES v. CORKE**, No. 1063, *ante*.

(e) *Refusal of Rent.*

1843. Payment refused—After change of lord—Change not notified to tenant—No forfeiture.]—Where the estate of the lord of the manor was transferred without notice to the copyholder, to another, who demanded the rent from the copyholder, who refused to pay it to him:—**Held**: it

was no forfeiture.—**BECONSHAW v. SOUTHCOTE** (1604), cited in 8 Co. Rep. 92 a; 77 E. R. 615.

Annotation :—**Reid. Fraunces's Case** (1609), 8 Co. Rep. 89 b.

1844. — — — — —.]—Where there was a bargain & sale of a manor by deed indented & enrolled, & a copyholder before any notice given to him of the bargain & sale refused to pay his rent to the bargainee :—*Held* : it was not a forfeiture of which the lord could take advantage.—**FRAUNCES'S CASE** (1609), 8 Co. Rep. 89 b; 77 E. R. 609.

Annotations :—**Consd. Williams d. Porter v. Fry** (1672), 1 Mod. Rep. 86; **Malloon v. Fitzgerald** (1683), 3 Mod. Rep. 29; **Whalley v. Reede & Hall** (1699), 1 Lut. 804; **Burleton v. Humfrey** (1755), Amb. 256; **Doe d. Kenrick v. Beaucherk** (1809), 11 East, 657; **West v. Blakeway** (1841), 2 Man. & G. 729; **Scaltock v. Harston** (1875), 1 C. P. D. 106. *Reid. Hicks v. Goates* (1616), Cro. Jac. 390; **Tracey v. Dutton** (1621), Cro. Jac. [617]; **Doe d. Taylor v. Crisp** (1838), 1 Per. & Dav. 37. *Mentd. R. v. Hampden* (1637), 3 State Tr. 826; **Lancashire v. Kellingworth** (1700), 1 Com. 116; **Anon.** (1715), 1 Com. 228; **Le Bret v. Papillon** (1804), 4 East, 502; **Castledine v. Mundy** (1832), 4 B. & Ad. 90; **Clavering v. Ellison** (1856), 3 Drew. 451; **Kialmark v. Kialmark** (1856), 26 L. J. Ch. 1; **Jeffreys v. Jeffreys** (1901), 84 L. T. 417.

1845. **Non-payment of rent—Demanded at end of day appointed—No actual refusal to pay—Refusal implied from non-payment—Forfeiture.**—A copyholder held by a rent payable at Michaelmas & the Annunciation in equal portions : the rent was unpaid for 3 years. The lady of the manor demanded the rent at the last moment of Michaelmas day, & as there was no rent on the premises she seized the copyhold :—*Held* : the copyhold was forfeited although there was no actual refusal to pay, because non-payment was a breach of the custom, & the voluntary negligence for so long a time implied wilful refusal.—**CRISPE v. FRYER** (1596), Noy, 58; Cro. Eliz. 505; Moore, K. B. 350; 74 E. R. 1026.

1846. — — — — — **After demand—When time & place appointed within manor—Forfeiture.**—In an *ejectione firmæ* :—*Held* : (1) if a copyholder was demanded to do his services, & he agreed to do them but did not do them, this was a forfeiture; (2) if the lord demanded his rent of a copyholder, & afterwards appointed a day & place within his manor for payment of it, & he failed, this amounted to a wilful refusal & forfeiture; (3) if the place that the lord had appointed was outside the manor failure to pay was not a cause of forfeiture; (4) when the lord demanded suit of a mill & the tenant refused it it was a forfeiture; (5) if a copyholder erected a mill upon his copyhold this was a forfeiture.—**GREY v. ULISSES** (1625), 2 Dyer, 211b, n.; Lat 122; 73 E. R. 467.

1847. — — — — — **At place appointed outside manor—No forfeiture.**—**GREY v. ULISSES**, No. 1846, *ante*.

1848. — — — — — **On day due—Without refusal to pay—No forfeiture.**—**HOBART v. HAMMOND**, No. 1047, *ante*.

(f) Refusal of Services.

i. In General.

1849. **Non-performance of services—After agreement to perform—When services demanded—Forfeiture.**—**GREY v. ULISSES**, No. 1846, *ante*.

1850. — — — — — **Lord may enter.**—**BROWN'S CASE**, No. 627, *ante*.

1851. — — — — —.]—**RIVET v. DOWE**, No. 1305, *ante*.

1852. **Refusal until liability settled—When services in doubt—No forfeiture.**—**BARNHAM v. HIGGINS** (1584), cited in Lat. 14; 82 E. R. 251; *sub nom.* **VERNON v. HUGGINS**, cited in Lat. 123.

ii. Suit of Court.

1853. **Failure to attend—On general summons—In church—No forfeiture.**—**Trespass.** The case upon demurrer was, divers copyholds were granted by one copy & all began & were to end at one time. The copyholder committed waste in one of the copyholds :—*Held* : (1) if several copyholds were held by several tenures waste in one of them was a forfeiture of that estate only though they were all granted by the same copy; (2) it was no cause of forfeiture for a copyholder to disobey a general summons of the ct. in the church; (3) in making admittances the lord is only an instrument & the surrenderee when admitted is in by the surrenderor & paramount the charges & incumbrances of the lord.—**TAVERNER v. CROMWELL** (1594), Cro. Eliz. 353; 4 Co. Rep. 27 a; 3 Leon. 107; 78 E. R. 601.

Annotations :—*As to* (1) **Consd. Johnstone v. Spencer** (1885), 30 Ch. D. 581. *Reid. Hobart v. Hammond* (1600), 4 Co. Rep. 27 b. *As to* (3) *Reid. Westwick v. Wyer* (1591), 4 Co. Rep. 28 a.

1854. — — — — —.]—If a copyholder comes not to the lord's ct. after a particular summons made to their persons to come, it is a forfeiture without any express denial to come; yet the not coming after a general summons at the church was not any forfeiture, but if he might excuse his not coming upon any good cause, as sickness or the like, etc., it should save the forfeiture (*per CUR.*).—**HATTON'S CASE** (1595), cited in Cro. Eliz. 505; cited in 3 Leon. 109; 78 E. R. 756.

Annotations :—**Consd. Crispe v. Fryer** (1596), Moore, K. B. 350. *Reid. Gay v. Kay* (1599), Cro. Eliz. 661. *Mentd. Neale v. Jackson* (1595), 4 Co. Rep. 26 b; **Leicester Forest Case** (1607), Cro. Jac. 155; **University of Oxford Case** (1613), 10 Co. Rep. 53 b; **Smith v. Wheeler** (1671), 1 Vent. 128.

1855. — — — — — **Without wilful refusal—No forfeiture.**—**BELFIELD v. ADAMS**, No. 1804, *ante*.

1856. — — — — — **On particular summons—Without express refusal—Forfeiture.**—**HATTON'S CASE**, No. 1854, *ante*.

1857. **When absence excused—For good cause—No forfeiture.**—**HATTON'S CASE**, No. 1854, *ante*.

1858. **Wilful refusal—After notice—Forfeiture.**—**Deft. being a copyholder, was summoned to appear at the ct. of the lord, to perform his service as a copyhold tenant : he made default, upon this the lord took advantage, by forfeiture :—Held : deft. had forfeited his estate.**

The performance of services, is incident to every copyholder : if issue was taken upon his contemptuously refusing to come, this implies a notice to be given before (**MONTAGUE, C.J.**).

If a copyholder wilfully withdraws his suit & service which he owes to the lord, at his ct., this is a breach of the custom, & this is a forfeiture of his copyhold estate (**HAUGHTON, J.**).

As touching the custom to have this to be a forfeiture, in some cases it is so : a copyholder holds his estate *per redditus, servitias et consuetudines*, & this if he breaks & does not perform the same, this shall be a forfeiture of his copyhold estate (**CROKE, J.**).

If a copyholder refuses to pay his rent, or to perform his services to the lord, this is a forfeiture of his copyhold estate : the lord is to hold his ct. within his manor : but if the lord usually holds it in such a house, & holds this in another place, he ought to give notice to the copyholder. If a copyholder be warned to appear to do his suit & service in another part of the manor, in such a case it may be he is not bound to perform it (**DODDERIDGE, J.**).—**HAMMOND v. WEMIBANK** (1617), 3 Bulst. 268; 81 E. R. 226.

Sect. 1.—Determination: Sub-sect. 2, B. (f) ii. & iii., (g) & (h), C., D. (a), (b) & (c) & E.]

1859. ——— When holding of court questioned—No forfeiture.]—MUNIFAS *v.* BAKER, No. 1039, *ante*.

Relief in equity.]—See No. 1946, *post*.

iii. Other Services.

1860. Refusal of suit of mill—Forfeiture.]—GREY *v.* ULISSES, No. 1846, *ante*.

1861. Erection of mill—Forfeiture.]—GREY *v.* ULISSES, No. 1846, *ante*.

1862. Refusal of verdict—After sufficient evidence—Forfeiture.]—SOUTHWELL *v.* THURSTON (prior to 1594), cited in 3 Leon. 109; 74 E. R. 572.

(g) Failure to take Admittance.

1863. Refusal to be admitted—Forfeiture.]—FANSHAW & BOND, No. 1837, *ante*.

1864. Failure to claim admittance—By heir—Beyond seas—No forfeiture.]—COPLEY'S CASE (1610), Coke's Complete Copyholder, Sect. xix., Supp., p. 91.

1865. ——— After proclamation—No forfeiture—Except by custom.]—SALISBURY'S (EARL) CASE, No. 1388, *ante*.

1866. ——— ——— ——— ———.]—DOE *d.* TARRANT *v.* HELLIER, No. 1398, *ante*.

Seizure quousque, see Part XII., Sect. 7; Part XVIII., Sect. 2, sub-sect. 2, C.

1867. ——— When one of several co-heirs feme covert—No attorney for feme covert appointed by lord—Seizure of whole estate irregular.]—DOE *d.* TARRANT *v.* HELLIER, No. 1398, *ante*.

By infant.]—See No. 1566, *ante*, No. 1875, *post*.

1868. Custom of forfeiture on failure to take admittance—On surrender to surrenderee & his heirs—No forfeiture—After failure to claim by surrenderee for life.]—A custom in a manor was that upon a surrender made to one & his heirs if three proclamations passed & he did not come to be admitted the lord should have it as forfeited. A surrender was made to the use of A. for life, remainder to B. in fee. A. suffered three proclamations to pass & did not come to be admitted:—*Held*: (1) the custom should be taken strictly & the lord should not have the estate upon the default of the tenant for life for here the estates of A. & B. were divided estates & the custom was intended of an entire fee simple given to one person; (2) a custom that if the surrenderee of a copyhold did not take it up at the next ct. he should be barred was good.—BASPOLE *v.* LONG (1602), Yelv. 1; Noy, 42; Cro. Eliz. 879; 80 E. R. 1.

Annotations:—As to (1) *Consd.* Payne *v.* Barker (1662), O. Bridg. 18. *Refd.* King *v.* Dilliston (1690), 1 Show. 83; Doe *d.* Bover *v.* Trueman (1831), 1 B. & Ad. 736. As to (2) *Refd.* Royden & Moulster's Case (1626), Godb. 367; Doe *d.* Bover *v.* Trueman (1831), 1 B. & Ad. 736.

Waiver.]—See No. 1723, *ante*; No. 1945, *post*.

Right of lord to enforce admittance.]—See, generally, Part XVIII., Sect. 2, sub-sect. 2, C.

(h) Crime.

1869. Felony of heir—Expectant on determination of widow's freebench—Forfeiture.]—Deft. was seised of the manor of B. By the custom of the manor the widow of a copyholder dying seised was entitled to be admitted to the whole tenement during her widowhood as freebench; by another custom if any copyholder was convicted of felony the lord might seise. Pltf.'s grandfather died seised of a tenement of the manor, & his widow was admitted to her freebench. During her life-

time, pltf.'s father was convicted of felony & died. In an action of trespass after her death:—*Held*: pltf. could not recover.—BORNEFORD & PACKINGTON'S CASE (1583), 1 Leon. 1; 74 E. R. 1.

Annotation:—*Consd.* ——— *d.* Jefferies *v.* ——— (1754), 1 Keny. 110.

1870. Custom of forfeiture—On felony by tenant—Presented by homage—Good.]—GITTINS *v.* COWPER (1609), 2 Brownl. 217; 128 E. R. 906.

1871. ——— ——— Without attainder—Bad.]—*Held*: a custom of a manor, that if any copyholder committed felony, & the same was presented by twelve homagers, that the tenant should forfeit his copyhold was no good custom, because in judgment of law before attainder it is not felony.—PAGINTON & HUET'S CASE (1609), Godb. 267; 78 E. R. 156.

1872. ——— ——— Without attainder—Good by special custom.]—R. *v.* WILLES (1820), 3 B. & Ald. 510; 106 E. R. 748.

1873. Conviction of felony—Subsequent pardon—Subject to imprisonment—No seizure by lord during tenant's imprisonment—No forfeiture.]—A copyholder was convicted of a capital felony, but pardoned upon condition of remaining two years in prison, & the lord did not do any act towards seizing the copyhold:—*Held*: at the expiration of the two years the copyholder might maintain an ejectment for the land against one who had ousted him, inasmuch as the pardon restored his competency, & the estate would not vest in the lord without any act done by him.—DOE *d.* EVANS *v.* EVANS (1826), 5 B. & C. 584; 8 Dow. & Ry. K. B. 399; 4 L. J. O. S. K. B. 322; 108 E. R. 218.

1874. Felony of surrenderor—Before surrenderee admitted—Forfeiture—Though surrender by way of mortgage.]—R. *v.* ST. JOHN MILD MAY (DAME JANE), No. 1633, *ante*.

Felony by tenant for life.]—See No. 1904, *post*.

Outlawry of tenant.]—See CRIMINAL LAW & PROCEDURE.

Crime by devisee before admittance.]—See No. 1632, *ante*.

C. Who may incur.

1875. Infant—Not bound by custom for forfeiture—On failure of surrenderee to take admittance.]—Infant not bound.—KING *v.* DILLISTON (1690), 1 Salk. 386; 3 Mod. Rep. 221; 1 Show. 31; 1 Lut. 765; 1 Freem. K. B. 494; 91 E. R. 336.

Annotations:—*Refd.* Doe *d.* Bover *v.* Trueman (1831), 1 B. & Ad. 736; R. *v.* Oundle (1834), 3 Nev. & M. K. B. 484; Dimes *v.* Grand Junction Canal Co. (1846), 9 Q. B. 469; A.-G. *v.* Sandover, [1904] 1 K. B. 689.

See Infants Property Act, 1830, ss. 5 & 9.

Relief on forfeiture by infant.]—See No. 1945, *post*.

1876. Married woman—Waste by husband—Forfeiture.]—CLIFTON *v.* MOLINEUX, No. 336, *ante*.

1877. ——— Waste by stranger without consent of husband—No forfeiture.]—CLIFTON *v.* MOLINEUX, No. 336, *ante*.

See, generally, Sub-sect. 2, B. (c), *ante*.

D. Dispensation by Licence.

(a) Validity of Licence.

1878. By limited owner—Good only during lord's estate.]—If the copyholder by licence first then had of the lord did demise, & did not show what estate the lord had, nor the place nor time when it was made, it is not good. It ought to appear what estate the lord had, for he cannot give licence to make a lease of longer time in the tenancy, then he had in the signiory (*per* CUR.).—PERRY *v.* EVANS (1610), 2 Brownl. 40; 123 E. R. 803.

1879. By lessee of manor—To fell timber—Void against lessor.]—MUNIFAS v. BAKER, No. 1039, *ante*.

1880. To commit common nuisance—Bad.]—DEWELL v. SANDERS (1618), Cro. Jac. 490; 79 E. R. 419; *sub nom.* DUELL v. SAUNDERS, 2 Roll. Rep. 3, 30.

Annotations:—*Mentd.* Hannam v. Mockett (1824), 2 B. & C. 934; Taylor v. Newman (1863), 4 B. & S. 89; Nye v. Niblett (1917), 16 L. G. R. 57.

(b) Interpretation of Licence.

1881. Copyholder in fee—Must follow licence strictly.]—HADDON v. ARROWSMITH, No. 772, *ante*.

1882. Lease by copyholder for life for three years absolutely—On licence for lease for three years if tenant live so long—Good.]—HADDON v. ARROWSMITH, No. 772, *ante*.

1883. Lease for 21 years from Christmas next—On licence for lease from Michaelmas last—Bad.]—(1) If the lord of a manor grants the inheritance of all the copyholds, the grantee shall hold customary courts.

H. was seised of the manor of P.-G., & made a lease of two of the copyholds & of the ct. baron for two thousand years, saving to himself the other demesnes & services. The lessees kept ct. there, & a copyholder surrendered to the use of A. in fee. A. obtained licence in ct. to let it for one & twenty years, from Michaelmas last past. He made a lease afterwards for one & twenty years to begin at Christmas following to pltf., who entered, & being ousted by deft., brought an *ejectione firmæ*:—*Held*: (2) it was a good copy; (3) the ct. might well continue for admittance of copyholders; for otherwise every one of his own act might destroy his copyholder's estate; (4) the lease was not warranted by this licence, & no *ejectione firmæ* lay upon lease.—JACKSON v. NEAL (1594), Cro. Eliz. 395; 78 E. R. 640; *sub nom.* NEAL & JACKSON'S CASE, 4 Co. Rep. 26 b.

Annotations:—*Refd.* Doe d. Robinson v. Bousfield (1844), 6 Q. B. 492; Phillips v. Ball (1859), 6 Jur. N. S. 48.

1884. Lease for three years—On licence for lease for 21 years—Good.]—GOODWIN v. LONGHURST (1596), Cro. Eliz. 535; 78 E. R. 782.

Annotation:—*Consd.* Doe d. Robinson v. Bousfield (1844), 8 Jur. 1121.

1885. Lease for three years without limitation—On licence for lease for five years limited by a life—Good.]—WORLEDGE v. BENBURY, No. 1897, *post*.

1886. Licence to demise part of tenement saving fines—Further licence to demise remainder—Fixing rent for "the whole"—"The whole" meant whole of residue not demised.]—On Feb. 8, 1810, a licence was granted by the lord of a manor to a copyholder, to demise part of his copyhold premises to A. for seventy-one years, saving to the lord all fines, etc., in as ample a manner as if the licence had not been granted. On Apr. 4, 1810, a second licence was granted to him to demise the remainder of the copyhold tenement excepting the land demised to A. for the term of seventy-one years, with this condition, "that, in consequence of his engagement to improve the premises, & paying unto the lord a fine for his licence, it is hereby agreed, that, during the term of seventy-one years, the fine on all future admissions shall be at & after the rent of £37 per year, for 'the whole' & so in proportion for every less quantity of land":—

Held: the words "the whole" meant the whole of the residue which had not been demised to A.; & the exors. of the copyholder were bound to pay, on their admission to the whole of the premises, not only the two years' improved value on £37 per annum, but also two years' improved value

of the premises demised to A.—CURTIS v. SCALES (1845), 14 M. & W. 444; 14 L. J. Ex. 318; 153 E. R. 549.

See, generally, Part IX., Sect. 4.

(c) Discretion of Lord to grant.

1887. Agreement to grant—Enforceable by specific performance.]—The lord of a manor, in consideration of £300, agreed to grant to a copyhold tenant licence to let the estate for as long a time as had been formerly granted to his father or mother. He admitted a licence to the mother to let for 60 years:—*Held*: a decree would be made that he should grant the like licence now.—HUNGERFORD v. AUSTEN (1650), Nels. 49; 21 E. R. 786.

Enclosure from waste—Known to steward over twelve years—Licence presumed.]—*See* COMMONS & RIGHTS OF COMMON, Vol. XI., p. 55, No. 822.

1888. Alleged custom to demise for three years without licence—Or for longer with licence on payment to lord—Mandamus to lord for licence refused.]—On an application for a rule to show cause why a mandamus should not issue:—*Held*: a mandamus would not go to compel the lord of a manor to grant a licence to a copyholder to demise his copyhold land on an alleged custom that the tenant might demise for three years without licence, & that, for licence to demise during a longer term, the lord should have a sum certain for every year of such term.—R. v. HALE (1838), 9 Ad. & El. 339; 1 Per. & Dav. 293; 1 Will. Woll. & H. 741; 8 L. J. Q. B. 83; 112 E. R. 1240.

Annotations:—*Refd.* Mills v. Colchester Corp'n. (1867), L. R. 2 C. P. 476. *Mentd.* R. v. Chichester (1859), 6 Jur. N. S. 120.

E. Who may claim.

1889. Lessee for years of manor—Except for refusal of fealty.]—The question was if the lord of a manor made a lease for years, & a copyholder afterwards committed a forfeiture should the lessee for years take advantage thereof:—*Held*: the feoffee or lessee should have advantage of all forfeitures belonging to land, as in case of feoffment & the like, but on the contrary for not doing fealty.—EAST v. HARDING (1597), Owen, 63; Cro. Eliz. 498; Moore, K. B. 392; 74 E. R. 901. *Annotations*:—*Refd.* Eastcourt v. Weeks (1897), 1 Salk. 186; Willis v. Stone (1827), 1 Y. & J. 262; Doe d. Grubb v. Burlington (1833), 5 B. & Ad. 507.

1890. ———]—Where there was a copyholder for life, & the lord leased for years, & the copyholder committed a forfeiture:—*Held*: the lessee might enter for the forfeiture.

Where there was a tenant for life, & a remainder for life; if the tenant for life committed a forfeiture:—*Held*: the remainderman for life might enter; for the particular estate in possession was determined by the forfeiture, & if the remainderman could not enter, then it should be at the will of the lessor whether he should ever have it. The same law would apply if the remainder was for years.—MEERES & KIDOUT'S CASE (1611), Godb. 175; 78 E. R. 106.

1891. Not reversioner.]—MONTAGUE'S (LADY) CASE, No. 1817, *ante*.

1892. Not succeeding lord—For forfeiture incurred in time of predecessor.]—CHAMBERLIN v. DRAKE (1657), 2 Sid. 8; 82 E. R. 1226.

Annotation:—*Refd.* Doe d. Bover v. Trueman (1831), 1 B. & Ad. 736.

1893. ——— Unless act of forfeiture destroys estate.]—DOE d. TARRANT v. HELLIER, No. 1898, *ante*.

1894. Not surviving coparcener—For forfeiture incurred in life of deceased coparcener.]—EASTCOURT v. WEEKS, No. 1829, *ante*.

Sect. 1.—Determination: Sub-sect. 2, E. & F. (a) i. & ii., (b) & (c), G., H. (a), (b) & (c), I. (a) & (b) & J. (a).]

1895. Not heir.]—EASTCOURT v. WEEKS, No. 1829, *ante*.

F. Effect of Forfeiture.

(a) By Tenant for Life.

i. On Estates in Remainder or Reversion.

1896. Estate for lives—In succession—Reversion forfeited.]—If lands demisable by copy are let to two persons successively where the custom is that they may not cut trees, & the first tenant cuts trees that is a forfeiture of the copyhold, & he also forfeits the estate of him in the reversion because it is not regarded as frank tenement at the common law.—ANON. (1563), Ben. & D. 49; Moore, K. B. 69; 123 E. R. 263.

1897. — Custom for first name to hold for life only—Whole estate forfeited.]—If copyhold lands be demised for three lives, where the custom of the manor is, that the first name in the copy shall enjoy it only during his life, & the tenant for life commit waste, it is a forfeiture of the estate.

A lease by a copyholder for three years without any limitation, under a licence to lease for five years, if A. live so long, is good.—WORLEDGE v. BENBURY (1617), Cro. Jac. 436; 79 E. R. 373.

1898. Life estate only forfeited—Not estate in remainder.]—If a copyholder for life commit a forfeiture, his estate alone, & not that in remainder or reversion shall be forfeited; especially if the forfeiture was collusive.—RASTAL v. TURNER (1598), Cro. Eliz. 598; 78 E. R. 840.

*Annotations:—*Refd. Doe d. Grubb v. Burlington (1833), 5 B. & Ad. 507; *Re* London & South Western Railway Act, 1856, *Ex p.* Henley (1861), 29 Beav. 311.

1899. — Waste.]—If a copyholder for life commits waste, it shall not forfeit the estate of him in remainder.—REDSAL v. LACON (1597), cited in Cro. Eliz. 880; 78 E. R. 1104.

*Annotation:—*Refd. Baspool v. Long (1602), Cro. Eliz. 879.

1900. — Not estate in reversion.]—RASTAL v. TURNER, No. 1898, *ante*.

See, also, No. 1904, *post*.

1901. Widow's customary estate barred—Apart from special custom—Felony of tenant for life.]—ALLEN v. BRACH, No. 939, *ante*.

ii. Right of Entry.

1902. Tenant for years in remainder enters.]—MEERES & KIDOUT'S CASE, No. 1890, *ante*.

1903. Life tenant in remainder enters.]—MEERES & KIDOUT'S CASE, No. 1890, *ante*.

1904. Life tenant in reversion enters.]—Where a copyholder for life is attainted of felony; he in reversion for life may enter.—STRODE v. DENNISON (1682), 3 Lev. 94; 83 E. R. 594; *sub nom.* BENISON v. STRODE, T. Jo. 189; *sub nom.* BENESON v. STRODE, Skin. 9, 29, Ex. Ch.

*Annotation:—*Refd. Doe d. Evans v. Evans (1826), 5 B. & C. 584.

1905 Lord enters—Not remainderman.]—If a copyholder for life commits a forfeiture, the lord & not the remainderman shall enter.—PODGER'S CASE (1612), 9 Co. Rep. 104 a; 77 E. R. 883.

*Annotations:—*Refd. Waldor v. Barkley (1619), Palm. 111; Beneson v. Strode (1682), Skin. 29; Dighton v. Greenvil (1690), 2 Vent. 321; Fitcher v. Adams (1740), 2 Stra. 1128; Doe d. Tarrant v. Hellier (1789), 3 Term Rep. 162. *Mentd.* Rowden v. Maltster (1626), Cro. Car. 42; Hemming v. Brabason (1660), O. Bridg. 1; Thomason v. Mackworth (1662), O. Bridg. 502; Benyon v. Evelyn (1664), O. Bridg. 324; Wallwyn v. Landaff (1764), 2 Wils. 233; Goodright d. Hare v. Board (1782), 3 Doug. K. B. 147; Doe d. Blight v. Pett (1840), 11 Ad. & El. 842; Bird v. Brown (1850), 4 Exch. 786; Dibbins v. Dibbins (1896), 65 L. J. Ch. 724.

1906. — — —.]—KEEN v. KIRBY, No. 1814, *ante*.

1907. — — — For life of copyholder.]—If there be a copyhold estate for life, remainder to B. & the tenant for life forfeit, it is not such a determination as to let in the remainder; but the lord shall enjoy it during the life of the tenant for life (HOLT, C.J.).—HEAD v. TYLER (1697), 12 Mod. Rep. 123; 88 E. R. 1209.

1908. — Notwithstanding intermediate estate in remainder—Between copyholder's estate & lord's reversion.]—The lord may enter for waste committed by copyholder for life, though there be an intermediate estate in remainder between the estate of copyholder for life & the lord's reversion.—DOE d. FOLKES v. CLEMENTS (1813), 2 M. & S. 68; 105 E. R. 307.

See, also, Nos. 1896, 1897, 1898, 1899,

(b) By Tenant of Several Copyholds.

1909. Forfeiture for waste—Affects only estate in which waste committed—Other copyholds of tenant not affected—Though granted by same copy.]—TAVERNER v. CROMWELL, No. 1853, *ante*.

1910. — — —.]—HOBART v. HAMMOND, No. 1047, *ante*.

(c) By Husband of Copyholder.

1911. Forfeiture of wife's estate—After death of husband.]—On a case referred to the judges:—*Held*: (1) if a woman copyholder took a husband who committed waste it was a forfeiture of the wife's estate after the death of the husband; (2) a grant of copyholds parcel of one manor made at a ct. holden for another manor was void.—CLIFTON v. BASSET (1583), Ch. Cas. in Ch. 177; 21 E. R. 102.

1912. — — —.]—CLIFTON v. MOLINEUX, No. 336, *ante*.

1913. Forfeiture during husband's life only.]—The husband of a *feme covert* copyholder made a lease not warranted by the custom:—*Held*: he forfeited only during his own life.—HEDD v. CHALENER (1589), Cro. Eliz. 149; 78 E. R. 406.

1914. — — —.]—A husband seised of a copyhold in right of his wife made a lease not warranted by the custom:—*Held*: it was a forfeiture of the estate during the life of the husband only.—SAVERNE v. SMITH (1625), Cro. Car. 7; 79 E. R. 611, Ex. Ch.

G. Estate Acquired by Lord.

1915. Right to growing crops—No right to severed crops.]—ANON. (1368), 42 Edw. 3, fo. 25, pl. 9.

*Annotations:—*Refd. Brown's Case (1581), 4 Co. Rep. 21 a; Belfield v. Adams (1615), 3 Bulst. 80.

1916. Lease by copyholder—Under licence of lord—Not affected by forfeiture.]—In an action of ejectment:—*Held*: (1) a lease granted by a copyhold tenant under a licence of the lord was not affected by a forfeiture of the tenant's estate, such licence operating as a confirmation by the lord, & consequently, pending the term created thereby, the lord could maintain ejectment for the land; (2) & it was competent to a purchaser of the tenant's interest in the copyhold tenement, who came in & defended as landlord, & who was in receipt of the rents, to set up the lease as a bar to the lord's claim.—CLARKE v. ARDEN (1855), 16 C. B. 227; 24 L. J. C. P. 162; 25 L. T. O. S. 83; 1 Jur. N. S. 710; 3 W. R. 444; 3 C. L. R. 781; 139 E. R. 744.

Whether land remains copyhold.]—*See* No. 676, *ante*.

Copyhold with right of common—Effect of regrant by lord.]—*See* COMMONS & RIGHTS OF COMMON, Vol. XI., p. 28, No. 362.

*H. Enforcement.**(a) How Enforced.*

1917. Entry by steward—Without precept for seizure—Or written authority from lord—On refusal of fine.]—TROTTER v. BLAKE, No. 508, *ante*.

1918. Seizure not necessary.]—PAGE v. SMITH, No. 564, *ante*.

(b) Proof of Proclamation.

1919. *Viva voce*—Not merely by production of court rolls.]—PATESON v. DANGES, OR SALISBURIES (LORD) CASE, No. 1388, *ante*.

(c) Presentment.

1920. Real forfeiture—Need not be found by homage.]—WARDS CASE, No. 1810, *ante*.

1921. Personal forfeiture—Must be found by homage.]—WARDS CASE, No. 1810, *ante*.

*I. Loss of Right.**(a) By Lapse of Time.*

1922. After twenty years—Lord's right barred.]—WHITTON v. PEACOCK (1834), 3 My. & K. 325; 2 Bing. N. C. 411; 1 Hodg. 376; 2 Scott, 630; 5 L. J. C. P. 124; 40 E. R. 124.

Annotations:—*Refd.* *Re* Lidlard & Jackson's & Broadley's Contract (1889), 42 Ch. D. 254. *Mentd.* Gouldsworth v. Knights (1843), 11 M. & W. 337; Webb v. Austin (1844), 7 Man. & G. 701; Sturgeon v. Wingfield (1846), 15 M. & W. 224; Cuthbertson v. Irving (1859), 4 H. & N. 742; Irving v. Cuthbertson (1860), 6 Jur. N. S. 1211.

(b) By Waiver.

1923. Admittance—Waiver of former forfeiture.]—CLERKE v. WENTWORTH (1582), Toth. 45; 21 E. R. 119.

1924. — Of heir—No waiver.]—The father commits a forfeiture & dies; the son is admitted as heir by descent; this purgeth not the forfeiture, because, the father dying seised of no estate, the son cannot be admitted to any.—SMITH v. — (1587), Toth. 45; 21 E. R. 119.

1925. — By lord pro tempore—Waiver.]—MUNIFAS v. BAKER, No. 1039, *ante*.

1926. — By lord pro tempore—Waiver.]—PAGE v. SMITH, No. 564, *ante*.

1927. — By lord not entitled—No waiver.]—PAGE v. SMITH, No. 564, *ante*.

See, also, No. 1937, *post*.

1928. Acceptance of heir—After entry in lifetime of ancestor—No waiver—Of forfeiture incurred by ancestor.]—PASCAL v. WOOD (1676), 3 Keb. 641; 84 E. R. 926.

1929. Acceptance of fine—On admission of devisee—Waiver—Of testator's forfeiture for failure to claim admittance.]—Mtgee. of copyholds entered into possession & died without having been admitted; his devisee entered & the lord demanded a fine, &, by arrangement, had the profits for a certain time in satisfaction of the fine:—*Held*: the lord could not afterwards forfeit the estate for omission of the mtgee. to be admitted & pay a fine.—LUCAS v. PENNINGTON, WRIGHT & NOBLE (1629), Nels. 7; 21 E. R. 776.

1930. Acceptance of surrender—Without notice of liability to forfeiture—No waiver.]—MATHEWS v. WHEATON, No. 1822, *ante*.

1931. Lease of freehold—Before entry—Waiver—Of forfeiture for lease unwarranted by custom.]—If a copyholder makes a lease for years which is a forfeiture at common law, & afterwards the lord of the manor makes a feoffment or a lease for years of the freehold of this copyhold to another, should the feoffee or lessee take advantage thereof:—*Held*: he should not, for the lease of the freehold

made by the lord before entry was an assent that the lessee of the copyhold should continue his estate.—PENN v. MERIVALE (1597), Owen, 63; 74 E. R. 902.

1932. Seizure of heriot—Waiver—Of forfeiture incurred during tenancy.]—Where A. committed a forfeiture & the lord nevertheless seised a heriot upon his death:—*Held*: the lord cannot afterwards avoid the heir's estate for the forfeiture, because the taking of a heriot admits the dying seised.—BACON v. THURLEY (1592), Toth. 45; 21 E. R. 119.

1933. — For heriot service—Waiver—Of forfeiture incurred during tenancy.]—PASCAL v. WOOD (1676), 3 Keb. 641; 84 E. R. 926.

1934. — For heriot custom—No waiver.]—PASCAL v. WOOD (1676), 3 Keb. 641; 84 E. R. 926.

1935. Acceptance of rent—Waiver—Of forfeiture for lease unwarranted by custom—During life of previous lord.]—HAMLEN v. HAMLEN, No. 1820, *ante*.

1936. Tenant fined for waste—Waiver.]—PASTON v. UTBER, No. 1833, *ante*.

1937. Forfeiture not presented in lifetime of tenant—Not enforceable against successor.]—HOWLET v. CARPENTER (1677), 3 Keb. 775; 84 E. R. 1005.

1938. Forfeiture for levying fine—May be waived.]—DOE d. TARRANT v. HELLIER, No. 1398, *ante*.

1939. Forfeiture for failure to claim admittance—May be waived.]—DOE d. WARWICK v. COOMBES, No. 1743, *ante*.

See, also, No. 838, *ante*.

*J. Remedies of Tenant.**(a) Relief in Equity.*

1940. General rule.]—Relief against forfeiture of a copyhold might be given in equity.—POORE v. OXENBRIDGE (1602), Toth. 104; 21 E. R. 137.

1941. Wilful forfeiture—For voluntary waste—No relief.]—THOMAS v. PORTER (1668), 1 Cas. in Ch. 95; 22 E. R. 711.

Annotations:—*Refd.* Cox v. Higford (1710), 2 Vern. 664. *Mentd.* Bracebridge v. Buckley (1816), 2 Price, 200.

1942. — — —.]—The copyholder preferred his bill to be relieved against a forfeiture for cutting timber:—*Held*: if the waste were voluntary the ct. would not relieve; & an issue at law was directed, whether he cut the trees with an intent to do waste.—WORCESTER (BP.) v. ONE OF HIS COPYHOLDERS (circa 1667–72), Freem. Ch. 137; 22 E. R. 1112.

1943. — For lease without licence—No relief.]—No relief against a voluntary forfeiture of copyhold estate, as by making a lease without licence from the lord; but it is otherwise where the forfeiture was only intended by way of security for sums due. As to a fine or rent, upon payment of what is due, with interest, equity will relieve. *Qu.*: whether working a quarry in a copyhold which had been first opened on the freehold, or lopping trees, or grubbing up hedges are legal forfeitures of a copyholder's estate.—PEACHY v. SOMERSET (DUKE) (1721), 1 Stra. 447; Prec. Ch. 568; 93 E. R. 626, L. O.

Annotations:—*Consd.* Dench v. Bampton (1799), 4 Ves. 700. *Refd.* R. v. Mildmay (1833), 5 B. & Ad. 254. *Mentd.* Whetstone v. Sainsbury (1722), Prec. Ch. 591; Bracebridge v. Buckley (1816), 2 Price, 200; Hills v. Rowland (1853), 22 L. J. Ch. 964; Protector Loan Co. v. Grice (1880), 5 Q. B. D. 592; Law v. Redditch L. B., [1892] 1 Q. B. 127; *Re* Dixon, Heynes v. Dixon, [1900] 2 Ch. 561.

1944. When forfeiture by way of security for payment of sums due—Relief granted—On payment with interest.]—PEACHY v. SOMERSET (DUKE), No. 1943, *ante*.

Sect. 1.—Determination: Sub-sect. 2, J. (a) & (b); sub-sect. 3, A. (a), (b) & (c), B. & C.]

1945. For cutting trees—By undertenant of infant—Relief granted.]—An infant copyholder was admitted, & the lord committed the custody to the mother of the infant, whose undertenant cut down timber, which being presented, the lord seized the land for the forfeiture (during still the minority) & kept it till he died, & it descended to the heir:—*Held*: inasmuch as the copyholder moved suit twenty-nine years before which was revived, & the forfeiture was taken during his minority, he would be restored to his possession till the lord should recover it for the forfeiture by the common law.—**LITTON'S CASE** (1599), Cary, 6; 21 E. R. 4.

Annotation:—**Consd. Andrews v. Hulse** (1858), 4 K. & J. 392.

1946. For refusal of suit—& service—By Quaker—Relief granted.]—**CUDMORE v. RAVEN** (prior to (1710), cited in 2 Vern. 664; 23 E. R. 1032.

Annotation:—**Reid. Cox v. Higford** (1710), 2 Vern. 664.

1947. Failure to repair—During twenty years—Services also neglected—No relief.]—Equity will not relieve against forfeiture of a copyhold for not repairing, where the neglect to repair has lasted for 20 years, & there has for the same time been neglect to do suit to service.—**COX v. HIGFORD** (1710), 2 Vern. 664; 23 E. R. 1032.

Annotation:—**Reid. Bracebridge v. Buckley** (1816), 2 Price, 200.

1948. Lord prosecuting legal rights—Not restrained on interlocutory application—In suit by tenants to establish alleged custom.]—Upon an interlocutory appln. at the suit of the copyhold tenants in a bill to establish certain customs disputed by the lord:—*Held*: the lord of a manor would not be restrained from prosecuting his legal rights against one of such tenants in respect of an alleged forfeiture.—**SEFTON (LORD) v. SALISBURY (LORD)** (1859), 33 L. T. O. S. 27; 7 W. R. 272.

(b) Other Cases.

1949. Tenant ousted without cause—Trespass.]—**BROWN'S CASE**, No. 627, *ante*.

SUB-SECT. 3.—ESCHEAT.

A. Occasion of.

(a) On Death of Cestui que trust.

1950. Death of cestui que trust without customary heir—Trustee retains for his own benefit—No escheat to lord.]—Lands were held by descent from a paternal ancestor, & the *cestui que trust* died without heirs *ex parte paternā*:—*Held*: the trustee should retain them for his own benefit as well against the heir *ex parte maternā* as against the lord claiming by escheat. A trust estate was not liable to escheat.—**BURGESS v. WHEATE** (1759), 1 Wm. Bl. 123; 96 E. R. 67; *sub nom.* **BURGESS v. WHEATE, A.-G. v. WHEATE**, 1 Eden, 177.

Annotations:—**Consd. Middleton v. Spicer** (1783), 1 Bro. C. C. 201. **Expld. Williams v. Lonsdale** (1798), 3 Ves. 752. **Consd. Dolder v. Bank of England** (1805), 10 **Expld. A.-G. v. Leeds** (1833), 2 My. & K. 343. **Distd. Doe d. Shelley v. Edlin** (1836), 4 Ad. & El. 582; **Downe v. Morris** (1844), 3 Hare, 394. **Consd. Taylor v. Haygarth** (1844), 14 Sim. 8. **Follid. Davall v. New River Co.** (1849), 3 De G. & Sm. 394. **Distd. Onslow v. Wallis** (1849), 1 Mac. & G. 606. **Consd. Beale v. Symonds** (1853), 16 Beav. 406. **Follid. Cox v. Parker** (1856), 25 L. J. Ch. 873. **Distd. Barrow v. Wadkin** (1857), 24 Beav. 1. **Consd. Re Gosman** (1880), 16 Ch. D. 67; **Gallard v. Hawkins** (1884), 27 Ch. D. 298. **Reid. Barclay v. Russell** (1797), 3 Ves. 424; **Crauford v. Hunter** (1798), 8 Term Rep. 13; **Gordon v. Gordon** (1821), 3 Swan. 400; **Langley v. Sneyd** (1822), 1 L. J. O. S. Ch. 14; **Masulipatam Collector v. Cavalry Vencata Narrainapah** (1861), 8 Moo. Ind. App. 529; **Sweeting v. Sweeting** (1863), 3 New Rep. 240; **Delacherols**

v. Delacherols (1864), 4 New Rep. 501; **Re Van Hagan Sperling v. Rochfort** (1880), 16 Ch. D. 18; **Re Bond, Panes v. A.-G.** (1900), 82 L. T. 612; **Talbot v. Jevens**, (1917) 2 Ch. 363. **Mentd. Mackreth v. Symmons** (1808), 15 Ves. 329; **Cholmondeley v. Clinton** (1820), 2 Jac. & W. 1; **Re Reay** (1847), 8 L. T. O. S. 478; **Wythes v. Lee** (1855), 3 Drew. 396; **Haywood v. Cope** (1858), 25 Beav. 140; **Brookman v. Smith** (1871), 40 L. J. Ex. 161; **Bradlaugh v. Clarke** (1883), 8 App. Cas. 354.

1951. Death of testator without customary heir—After devise to trustee to raise sum for charitable & other purposes—Charitable purposes void—Devisee entitled to void proportion.]—Devise of copyhold land in fee upon condition that the devisee within one month pay £2,000 to testator's exor., to be applied, after payment of debts & legacies, to charitable purposes.

Testator died without leaving any customary heir or next of kin:—*Held*: the proportion of the £2,000 which was void by the Charitable Uses Act, 1735 (c. 36), was to be considered as real estate undisposed of, & the devisee & not the Crown was entitled to it.—**HENCHMAN v. A.-G.** (1834), 3 My. & K. 485; 40 E. R. 185, L. C.

Annotations:—**Consd. Rittson v. Stordy** (1855), 3 Sm. & G. 230. **Reid. Taylor v. Haygarth** (1844), 14 Sim. 8.

1952. — & failure of trusts of will—Heiress of surviving trustee takes for own benefit—As against lord.]—Testatrix who died in 1851 devised her copyhold property to trustees in trust for K. for life, & after her death to certain purposes which were void. Testatrix died without heirs. The surviving trustee devised his trust estate to two trustees, neither of whom was admitted. The survivor of these trustees made no devise of his trust estates & died leaving his youngest daughter J. his customary heiress according to the custom of the manor. The tenant for life under the will died in 1883:—*Held*: J. was entitled to be admitted as tenant for her own benefit as against the lord of the manor.—**GALLARD v. HAWKINS** (1884), 27 Ch. D. 298; 53 L. J. Ch. 834; 51 L. T. 689; 33 W. R. 31.

See Intestates Estates Act, 1884 (c. 71), ss. 4, 7. *See, also*, Part IX., Sect. 11, sub-sect. 3, *ante*.

(b) On Death of Trustee.

1953. Death of trustee without heir—Escheat to lord—Subject to trust in equity.]—A trustee of land died without heir:—*Held*: though the lord by escheat would have the land at law yet it would be subject to the trust in equity.—**EALES v. ENGLAND** (1702), Prec. Ch. 200; 1 Eq. Cas. Abr. 384, pl. 1; 24 E. R. 96; *on appeal, sub nom.* **EELLES v. ENGLAND** (1704), 2 Vern. 466.

Annotations:—**Consd. Burgess v. Wheate** (1759), 1 Eden. 177. **Reid. Pierson v. Garnet** (1786), 2 Bro. C. C. 38; **Malim v. Keightley** (1795), 2 Ves. 529. **Mentd. Harding Glyn** (1739), 1 Atk. 469; **Bull v. Vardy** (1791), 1 Ves. 270.

1954. Death of trustee intestate & without heir—Vesting order under Trustee Act, 1850 (c. 60)—In favour of person absolutely entitled.]—**Re GODFREY'S TRUSTS**, No. 1001, *ante*.

See Trustee Act, 1893 (c. 53), s. 26.

(c) On Death of Mortgagee.

1955. On death of mortgagee intestate & without heirs—No escheat to lord—Mortgagor entitled to redeem.]—**WEAVER v. MAULE**, No. 1004, *ante*.

1956. — Personal representative entitled to mortgage debt—Lord not entitled.]—**WEAVER v. MAULE**, No. 1004, *ante*.

1957. — Where no condition expressed in surrender—Escheat to lord.]—**A.-G. v. LEEDS (DUKE)** (1833), 2 My. & K. 343; 39 E. R. 974. *Annotation*:—**Consd. Gallard v. Hawkins** (1884), 27 Ch. D. 298.

See Trustee Act, 1893 (c. 53), ss. 29, 50, 51.

B. Effect of.

1958. Copyholds escheated—Granted by lord on lease—By or without deed—Cannot again be granted by copy.]—FRENCH'S CASE, No. 676, *ante*.

1959. — Retained by lord—Can be regranted by copy.]—FRENCH'S CASE, No. 676, *ante*.

1960. — Granted by lord at will—Can be regranted by copy.]—FRENCH'S CASE, No. 676, *ante*.

1961. — Whether passing by voluntary grant—By any person having lawful interest—Though under personal disability.]—(1) The heir of a copyholder may enter, & maintain trespass before admittance, & so may his heir if he die before admittance. If such heir die before admittance his heir may enter & take profits.

(2) Every person having a lawful interest in a manor, whether in fee, in tail, dower, curtesy, for life, years, as guardian, or at will, etc., may make voluntary grants of copyholds escheated, or come to their hands, rendering the ancient rents & services, though under personal disabilities. But lords by defeasible title, as disseisees, etc., cannot make voluntary grants to bind the rightful owner, though it is otherwise as to admittances.—CLARKE v. PENNIFATHER (1584), 4 Co. Rep. 23 b; 76 E. R. 923.

Annotations.—As to (1) *Consd.* Heyden v. Smith (1610), 2 Brownl. 323. *Refd.* Eyliff v. Chopley (1610), 1 Bulst. 42; Doe d. Hamilton v. Clift (1840), 12 Ad. & El. 566. As to (2) *Refd.* Doe d. Hamilton v. Clift (1840), 12 Ad. & El. 566; R. v. Venn (1875), 44 L. J. Q. B. 158. *Generally*, *Mentd.* Barnes v. Corke (1691), 3 Lev. 308.

1962. — By lord having defeasible title—To bind rightful lord.]—CLARKE v. PENNIFATHER, No. 1961, *ante*.

1963. — Granted by husband of seignoresse—Customary grant by copy not destroyed—After death of husband.]—Upon evidence:—*Held*: if the husband of a lady of a manor granted an escheated copyhold the wife after his death might grant it by copy, & the husband's grant would not destroy the custom as to the *feme*.—CONESBIE v. RUSKY (1596), Cro. Eliz. 459; 78 E. R. 713.

Annotation.—*Refd.* *Re* London & South Western Railway Act, 1856, *Ex p.* Henley (1861), 29 Beav. 311.

1964. — Are part of manor.]—ANON. (1697), 12 Mod. Rep. 138; 88 E. R. 1219.

Annotation.—*Consd.* Delacherols v. Delacherols (1864), 4 New Rep. 501.

1965. — Liable for debts of tenant.]—Under Administration of Estates Act, 1833 (c. 104), the estate of a lord of a manor by escheat is assets for payment of the debts of the tenant who dies without heirs.—EVANS v. BROWN (1842), 5 Beav. 114; 11 L. J. Ch. 349; 6 Jur. 380; 49 E. R. 520.

Annotations.—*Consd.* Downe v. Morris (1844), 3 Hare, 394. *Distd.* Spyer v. Hyatt (1855), 25 L. T. O. S. 20. *Consd.* *Re* Hyatt, Bowles v. Hyatt (1888), 38 Ch. D. 609.

1966. — —.]—Bill, by the personal representative of the surviving trustee of a marriage settlement for the purpose of recovering some of the trust funds comprised in the settlement:—*Held*: under Stat. 4 & 5 Will. 4 (c. 23), s. 4, trust money might be followed into land against the lords of the fee, & if it were otherwise, the estate in the hands of the lord by escheat would be liable to the debts of the person whose estate had escheated.—HUGHES v. WELLS (1852), 9 Hare, 749; 20 L. T. O. S. 136; 16 Jur. 927; 68 E. R. 717.

Annotations.—*Mentd.* Vaughan v. Vanderstegen (1853), 2 Drew. 165; Campbell v. Ingilby (1857), 29 L. T. O. S. 287; Johnson v. Gallagher (1861), 3 De G. F. & J. 494; Shattock v. Shattock (1866), 14 L. T. 452; London Chartered Bank of Australia v. Lempiere (1873), L. R. 4 P. C. 573; *Re* Harvey's Estate, Godfrey v. Harben (1879), 13

Ch. D. 216; *Re* Armstrong; *Ex p.* Gilchrist (1886), 17 Q. B. D. 521; *Re* Whitaker, Ainley v. Ainley (1897), 41 Sol. Jo. 209.

1967. — Subject to term by way of mortgage—Lord entitled in equity to redeem.]—The lord of a manor took by escheat, on the death of a tenant without heirs, the fee simple of lands holden of the manor, but subject to a demise by way of mtge. for a term of years created by the tenant:—*Held*: he was entitled in equity, as against the mtgee., to redeem the term.—DOWNE (VISCOUNT) v. MORRIS (1844), 3 Hare, 394; 13 L. J. Ch. 337; 3 L. T. O. S. 72; 8 Jur. 486; 67 E. R. 435.

Annotations.—*Consd.* Beale v. Symonds (1853), 16 Beav. 406; Barrow v. Wadkin (1857), 24 Beav. 1. *Appvd.* *Consd.* *Re* Hyatt, Bowles v. Hyatt (1888), 38 Ch. D. 609.

1968. Escheat of part of tenement—Suit of court not destroyed—In respect of remainder.]—If three acres were held by suit of ct. & the lord purchased of them or granted over his seignior in one the suit is gone for all; yet if one escheat or it be aliened in mortmain & the lord therefore enter the suit shall remain for the residue (PIRRYAM, J.).—KNIGHT'S CASE (1585), Moore, K. B. 199; 72 E. R. 530.

Annotations.—*Refd.* Delacherols v. Delacherols (1864), 11 H. L. Cas. 82. *Mentd.* Anon. (1599), Cro. Eliz. 652; Stukeley v. Butler (1615), Hob. 168; Havergill v. Hare (1616), 3 Bulst. 250; Beare v. Woodley (1629), Cro. Car. 154; Field v. Boethsy (1658), 2 Sid. 137; Hornbee's Petition (1691), Freem. K. B. 331; Ward v. Everet (1699), 1 Ld. Raym. 422; Orby v. Mohun (1706), 1 Freem. Ch. 291; A.-G. v. Allgood (1743), Park. 1; R. v. Cotton (1751), Park. 112; Doe d. Hayne v. Redfern (1810), 12 East, 96; Twynam v. Pickard (1818), 2 B. & Ald. 105; Evans v. Robins (1863), 12 W. R. 604; Hyde v. Warden (1877), 3 Ex. D. 72.

1969. Claimant as lord by escheat—Admitted as defendant—In ejectment against tenant in possession—By lessee claiming as heir-at-law.]—*Semble*: one claiming as lord by escheat shall be admitted a deft. in ejectment brought against the tenant in possession by the lessee of one claiming as heir-at-law.—FAIRCLAIM v. GOWER (EARL) (1762), 1 Wm. Bl. 357; 96 E. R. 200; *sub nom.* FAIRCLAIM v. SHAM-TITLE, 3 Burr. 1290.

Annotations.—*Consd.* Pluck v. Digges (1831), 5 Bll. N. S. 31. *Mentd.* Butler v. Meredith (1855), 11 Exch. 85.

Common appurtenant—Granted with escheated copyhold.]—*See* COMMONS & RIGHTS OF COMMON, Vol. XI., p. 28, No. 361.

C. Rights of Crown.

1970. Copyholds—No escheat to Crown.]—Testator directed money to be laid out in manors lands tenements tithes & hereditaments or very long terms, with limitations applicable to real estate. The money was not laid out:—*Held*: the Crown, on failure of heirs, had no equity against next of kin to have it laid out in real estate, in order to claim by escheat, for copyhold cannot escheat to the Crown.—WALKER v. DENNE (1793), 2 Ves. 170; 30 E. R. 577, L. C.

Annotations.—*Consd.* Henchman v. A.-G. (1834), 3 My. & K. 485; Taylor v. Haygarth (1844), 14 Sim. 8. *Refd.* Barrow v. Wadkin (1857), 24 Beav. 1; Sharp v. St. App. 343; Talbot v.

Mentd. Swann v. Fonnereau (1796), 3 Ves. 41; v. Partridge (1803), 8 Ves. 227; Curtis v. Hutton (1808), 14 Ves. 537; Hereford v. Ravenhill (1842), 5 Beav. 51.

1971. Land held of manor—Found by inquisition to have reverted to Crown—For want of heirs—Leave granted to lord to traverse.]—Upon the petition of a lord of a manor:—*Held*: it would be ordered that he should be at liberty to traverse an inquisition under which it had been found that certain hereditaments held of the manor had reverted to the Crown for want of heirs.—*Re* PARRY, *Ex p.* BEAUFORT (DUKE) (1866), L. R.

Sect. 1.—Determination: Sub-sect. 3, C. & D. Sect. 2. Part XX. Sect. 1: Sub-sects. 1, 2 & 3.]

2 Eq. 95; 35 L. J. Ch. 651; 14 L. T. 617; 12 Jur. N. S. 699.

Annotation:—Mentd. Hill v. Clifford, Clifford v. Timms, Clifford v. Phillips, [1907] 2 Ch. 236.

D. Loss of Right.

1972. Acceptance of rent—From heir of disseisor—Lord's right barred.]—If a tenant dies without heirs the acceptance of rent from the heir or feoffee of the disseisor bars the lord of his escheat (COKE, C.J.).—**MARCH v. BRACE** (1613), 2 Bulst. 151; 80 E. R. 1025.

Annotation:—Refd. Wadham v. Marlow (1784), 4 Doug. K. B. 54.

1973. — From feoffee of disseisor—Lord's right barred.]—**MARCH v. BRACE**, No. 1972, *ante*.

SECT. 2.—SUSPENSION.

1974. Marriage of copyholder with lady of manor—Copyhold suspended.]—**ANON.**, No. 1795, *ante*.

1975. Lease for years of copyholds—Accepted by tenant for life—Accepted later by remainderman—Estate of tenant for life determined—Estate of remainderman not determined.]—B. was seised of a manor, within which there were divers customary lands demisable by copy for three lives. The lord of the manor demised some of those lands to three sisters, *habendum* to them for their lives successive, for the fine of £100 by them paid. They being seised the eldest sister, who was tenant in possession, took to husband one C., after which the lord by indenture leased the same land to the eldest sister, remainder to the husband, remainder to the second sister. No agreement was made thereto by the second sister by deed

before or after the making of the indenture, but four days after the lease she agreed to it, & then took to husband D., & they entered claiming the land. Upon this entry the action was brought. The point was, that when the lease by indenture was made to the eldest sister, at which time no agreement was made by the second sister who was in remainder, yet when after she agreed, if by that agreement her right to the copyhold was extinct or not, so that the interest of the eldest sister being gone by the acceptance of the estate by the indenture, the second sister might come & claim her customary interest, as it were paramount the interest of the eldest sister, which she claimed by the indenture.

Held: (1) if an estate was lawfully made to a copyholder but for years his whole interest in the copyhold would be determined; (2) if the second sister, at the time of the making the indenture, had agreed to it, it had been a full extinguishment, but by an agreement afterwards it was not good.—**CURTISE & COTTEL'S CASE** (1586), 2 Leon. 72; 74 E. R. 368.

See, also, No. 1778, ante.

1976. Conveyance of customary tenements—To tenant for life of manor—Customary estates suspended only—On death of lord descend to heir.]—A lord, being tenant for life of the manor, took a conveyance of the customary tenements to himself in fee:—*Held:* the customary estates were only suspended & not extinguished, & on his death the customary tenements so acquired by him would descend to his heir, & would not go to the remainderman, who was entitled to the manor.—**BINGHAM v. WOODGATE** (1829), 1 Russ. & M. 32; Taml. 183; 8 L. J. O. S. Ch. 46; 39 E. R. 13; *subsequent proceedings* (1831), 1 Russ. & M. 750, L. C.

Annotations:—Mentd. Graham v. Jackson (1845), 6 Q. B. 811; *Thompson v. Hardinge* (1845), 1 C. B. 940.

Part XX.—Enfranchisement.

SECT. 1.—AT COMMON LAW.

SUB-SECT. 1.—WHO MAY ACCEPT.

1977. Tenant in tail.]—Where a copyholder in tail takes a conveyance of the freehold in fee, the copyhold is merged.—**PARKER v. TURNER** (1687), 1 Vern. 458; 23 E. R. 584, L. C.

Annotation:—Refd. Re Hart, Ex p. School Board for London (1889), 41 Ch. D. 547.

1978. —.]—A. is a copyholder in tail, the lord grants the freehold of the copyhold to him in fee; the copyhold, though entailed, is extinct.—**DUNN v. GREEN** (1724), 3 P. Wms. 9; 24 E. R. 946, L. C. *Annotations:—Folld. Re Hart, Ex p. School Board for London* (1889), 41 Ch. D. 547. *Refd. Crosswell v. Hawkins* (1857), 3 Jur. N. S. 407.

1979. Heir before admittance.]—The heir of a copyholder may accept an enfranchisement before admittance. *Qu.*: whether the surrenderee or devisee of copyhold lands can accept an enfranchisement before admittance. *Semble:* power to a tenant for life, lord of a manor, to enfranchise, & for that purpose to convey the freehold to the customary or copyhold tenants, authorises a conveyance of the freehold to one who is equitably entitled, & has been erroneously admitted without a previous surrender by his trustee.—**WILSON v. ALLEN** (1820), 1 Jac. & W. 611; 37 E. R. 501.

Annotations:—Consd. Minton v. Kirwood (1868), 3 Ch. App. 614. *Refd. Cooper v. Norfolk Ry.* (1849), 3 Exch. 546; *Ecol. Comrs. v. L. & S. W. Ry.* (1854), 2 C. L. R. 1796. *Mentd. McNico v. Kay* (1856), 28 L. T. O. S. 20; *Flood v. Pritchard* (1879), 40 L. T. 873.

1980. Equitable tenant—Previously admitted without surrender by trustee.]—**WILSON v. ALLEN**, No. 1979, *ante*.

1981. Coparceners admitted as tenants in common—One only beneficially entitled—Other is trustee—Within Trustee Act, 1850 (c. 60).]—Where two persons, of whom both were legally entitled as coparceners to copyholds, but one only had any beneficial interest therein, were admitted as tenants in common, & the lord afterwards enfranchised to both, their heirs & assigns:—*Held:* the other was solely seised upon trust under the Trustee Act, 1850 (c. 60), s. 9.—**McMURRAY v. SPICER** (1868), L. R. 5 Eq. 527; 37 L. J. Ch. 505; 18 L. T. 116; 16 W. R. 332.

Annotations:—Mentd. Webb v. Hughes (1870), L. R. 10 Eq. 281; *McGrory v. Alderdale Estate Co.*, [1918] A. C. 503.

Appointee under power.]—*See* No. 1554, *ante*.

SUB-SECT. 2.—WHAT OPERATES AS ENFRANCHISEMENT.

1982. Not feoffment to use of another.]—Where the lord did enfeof the copyholder to the use of others:—*Held:* the copyhold estate by the saving of the Statute of Uses was preserved.—**ISED'S CASE** (1585), cited in 7 Co. Rep. 39 a; 77 E. R. 468. *Annotation:—Mentd. Lillingston's Case* (1607), 7 Co. Rep. 38 a.

1983. Purchase of freehold in name of trustee—

Customary estate not extinguished.]—(1) A copyholder for life, where the custom was, that the wife should have the estate of which the husband died seised during her widowhood, purchased the freehold & inheritance of his copyhold, & had it conveyed to A. & his heirs during his life, with remainder to himself in fee, & then married. The wife's dower was not extinguished by this purchase & conveyance, for the husband's customary estate remained undestroyed, out of which the wife's title was excrement.

(2) The lord of a manor cannot destroy the copyholds & widow's estates in the manor, which are created & continued by the custom of the manor.—**WALDOE v. BERTLET** (1620), Cro. Jac. 573; Palm. 111; 79 E. R. 490; *sub nom.* **HOWARD v. BARTLET**, Hob. 181; *sub nom.* **WALTER v. BARTLET**, 2 Roll. Rep. 178.

Annotations:—Generally, Mentd. **Thomas v. Sorrel** (1673), 3 Keb. 184; **Hill v. Good** (1674), Freem. K. B. 167; **Abraham or Kennesley v. Bird** (1699), Freem. K. B. 511.

See Nos. 1977, 1978, *ante*.

See, also, No. 1985, *post*.

Acquisition by lord of tenant's estate.]—See Part XIX., Sect. 1, sub-sect. 1, B.

Acquisition of manor by tenant.]—See Part XIX., Sect. 1, sub-sect. 1, C.

SUB-SECT. 3.—EFFECT OF ENFRANCHISEMENT.

1984. On tenant's estate—Not rendered liable to contribute to repair of bridges—For which lord liable *ratione tenuræ*.]—**RICH v. BARKER**, No. 2, *ante*.

1985. — Devisable—Though enfranchisement taken in name of trustee.]—A copyholder in fee took an enfranchisement in the name of a trustee, & devised the lands to his younger son, who sold them:—*Held*: the devise extended to the whole estate of testator, both at law & in equity & the purchaser was entitled as against the heir at law.—**DANCER v. EVETT** (1885), 1 Vern. 392; 23 E. R. 538, L. C.

See, also, No. 1983, *ante*.

1986. — — —.]—DOE d. REAY v. HUNTINGTON, No. 606, *ante*.

1987. — Grant saving all seignorial rights—Release of all rights not specifically reserved.]—**DOE d. REAY v. HUNTINGTON**, No. 606, *ante*.

1988. — Enfranchisement by appointee under power—Can sell—Concurrence of customary heir question of conveyance only.]—**MINTON v. KIRWOOD**, No. 1554, *ante*.

1989. — Reservation of all mines & minerals—Includes bed of china clay—Though existence unknown to parties at time.]—The lord of the manor granted the freehold in a copyhold tenement to the copyholder, reserving all mines & minerals within & under the premises, with full & free liberty of ingress, egress, & regress, to dig & search for, & to take, use, & work the excepted mines & minerals, the deed not containing any provision for compensation. Under the tenement was a bed of china clay, the existence of which did not appear to have been contemplated by either party at the time, no china clay having ever been gotten out of the lands of the duchy, though the existence of tin was well known. It was admitted in the cause that china clay could not be gotten without totally destroying the surface:—*Held*: the china clay was included in the reservations, but the surface owner was entitled to an injunction to restrain the owner of the minerals from getting it in such a way as to destroy or seriously injure the surface.

When a landowner sells the surface, reserving to

himself the minerals with power to get them, he must, if he intends to have power to get them in a way which will destroy the surface, frame the reservation in such a way as to show clearly that he is intended to have that power.

The deed granted the property by the description of "All that copyhold tenement called G., consisting of a house with divers parcels of land, containing 103 acres (that is to say)" then followed parcels, concluding with "a parcel of land running with G. moor, containing twenty-seven acres, which tenement, called G., is now held for the life of H. by copy of ct. roll":—*Held*: on the construction of this grant, a piece of uninclosed land, containing twenty-seven acres, & forming part of the waste of the moor, & proved never to have been a part of the copyhold tenement, did not pass, although there was nothing else to answer the twenty-seven acres mentioned in the deed, & the 103 acres could not be made up without it.—**HEXT v. GILL** (1872), 7 Ch. App. 699; 41 L. J. Ch. 761; 27 L. T. 291; 20 W. R. 957, L. J.J.

Annotations:—Consd. **A.-G. v. Tomline** (1877), 5 Ch. D. 750. *Refd.* **Eardley v. Granville** (1876), 24 W. R. 528; **Hall v. Byron** (1876), 4 Ch. D. 667; **I. R. Comrs. v. Joicey**, [1913] 2 K. B. 580; **Consett Waterworks Co. v. Ritson**, [1922] 2 Ch. 187, n. *Mentd.* **Aspden v. Seddon** (1874), 10 Ch. App. 396, n.; **A.-G. for Isle of Man v. Mylchreest** (1879), 4 App. Cas. 294; **Newington L. B. v. Cottingham L. B.** (1879), 12 Ch. D. 725; **Gill v. Dickinson** (1880), 5 Q. B. D. 159; **Hedley v. Bates** (1880), 49 L. J. Ch. 170; **Davis v. Treharne** (1881), 6 App. Cas. 460; **Loosemore v. Tiverton & North Devon Ry.** (1882), 22 Ch. D. 25; **Mid. Ry. v. Haunchwood Brick & Tile Co.** (1882), 20 Ch. D. 552; **Pountney v. Clayton** (1883), 11 Q. B. D. 820; **Tucker v. Linger** (1883), 8 App. Cas. 508; **Love v. Bell** (1884), 9 App. Cas. 286; **Robinson v. Milne** (1884), 53 L. J. Ch. 1070; **Elwes v. Brigg Gas Co.** (1886), 33 Ch. D. 562; **A.-G. v. Welsh Granite Co.** (1887), 35 W. R. 617; **Shafte v. Bolokow, Vaughan** (1887), 34 Ch. D. 725; **Glasgow v. Farie** (1888), 13 App. Cas. 657; **Consett Waterworks v. Ritson** (1889), 22 Q. B. D. 318; **Jersey v. Neath Grdns.** (1889), 22 Q. B. D. 555; **Phillips v. Thomas** (1890), 62 L. T. 793; **Westmoreland v. New Sharlston Colliery Co.** (1898), 79 L. T. 716; **Re Constable & Cranswick** (1899), 80 L. T. 164; **Johnstone v. Crompton**, [1899] 2 Ch. 190; **G. W. Ry. v. Blades**, [1901] 2 Ch. 624; **Greville v. Hemingway** (1902), 87 L. T. 443; **Re Todd, Birlestone & N. E. Ry.**, [1903] 1 K. B. 603; **Leckhampton Quarries Co. v. Ballinger & Cheltenham R. D. C.** (1904), 68 J. P. 464; **Butterknowle Colliery Co. v. Bishop Auckland Industrial Co-op. Co.**, [1906] A. C. 305; **G. W. Ry. v. Carpalla United China Clay Co. & Clifden** (1908), 99 L. T. 869; **Butterley Co. v. New Hucknall Colliery Co.**, [1909] 1 Ch. 37; **Skey v. Parsons** (1909), 101 L. T. 103; **N. B. Ry. v. Budhill Coal & Sandstone Co.**, [1910] A. C. 116; **Dickens v. National Telephone Co., National Telephone Co. v. Hythe Corpn.** (1911), 75 J. P. 557; **Thornhill v. Weeks**, [1913] 1 Ch. 438; **Thomson v. St. Catharine's College Cambridge, etc.**, [1919] A. C. 468; **Welldon v. Butterley Co.** (1919), 121 L. T. 535; **Westhoughton U. C. v. Wigan Coal & Iron Co.**, [1919] 1 Ch. 159; **Welldon v. Butterley Co.**, [1920] 1 Ch. 130.

1990. — Grant of parcel of moor "now held by copy"—Parcel of waste never part of copyhold tenement does not pass.]—**HEXT v. GILL**, No. 1989, *ante*.

1991. On estates in remainder—Estate within 11 Hen. 7, c. 20.]—If a copyhold estate be converted into a freehold, it is within the protection of 11 Hen. 7, c. 20.—**STOCKBRIDGE'S CASE** (1584), Cro. Eliz. 24; 78 E. R. 290.

See, now, Abolition of Fines & Recoveries Act, 1833 (c. 74), ss. 16, 17.

1992. — Custom of freebench destroyed.]—A grant of a copyhold to the copyholder in fee destroys the custom of freebench.—**LASHMER v. AVERY** (1606), Cro. Jac. 126; 79 E. R. 110.

1993. — — — Unless enfranchisement taken in name of trustee.]—**WALDOE v. BERTLET**, No. 1983, *ante*.

See, also, No. 1985, *ante*, & generally, Part Sect. 9, *ante*.

1994. — Bargain & sale of freehold to tenant for life—Estate in remainder not barred.]—A copyhold estate was granted to one for life, with

Sect. 1.—At common law: Sub-sects. 3, 4 & 5.
Sect. 2: Sub-sects. 1 & 2.]

remainder to another for life. The first tenant for life accepted a bargain & sale of the freehold from the lord, & afterwards levied a fine with proclamations & five years passed:—*Held*: the estate in remainder was not barred.—*BICKNEL v. TUCKER* (1612), 2 Brownl. 153; 123 E. R. 869.

1995. — **Enures for benefit of all.]**—Enfranchisement of a copyhold estate, by a person having only a particular interest, is for the benefit not only of himself, but of all the persons in remainder. Recovery suffered by one not in possession, has no operation.—*WYNNE v. COOKES* (1780), 1 Bro. C. C. 515; 28 E. R. 1269.

Annotation:—*Mentd.* Doe d. Newby v. Jackson (1823), 2 Dow. & Ry. K. B. 514.

1996. — **Bars entail.]**—Tenant for life of a copyhold, remainder to his first & other sons in tail, took a conveyance in fee from the lord. The premises descended upon his eldest son; who by will charged all his real estate with debts & legacies; & devised it to his brother for life with various remainders:—*Held*: the estates in the copyhold were barred.—*CHALLONER v. MURHALL* (1795), 2 Ves. 524; 30 E. R. 757, L. C.

Annotations:—*Foll.* *Re* Hart, *Ex p.* School Board for London (1889), 41 Ch. D. 547. *Mentd.* Brydges v. Brydges (1796), 3 Ves. 120.

1997. — **Bars conditional fee.]**—*ROE d. CLEMENT v. BRIGGS*, No. 713, *ante*.

1998. — **Enfranchisement by trustees—Subsequent conveyance to sole beneficiary—Entail barred.]**—The tenant in tail in possession of copyhold land, held of a manor by the custom of which an entail could be created, devised all the real estate of or to which he should be seised or entitled at the time of his death to two trustees, their heirs & assigns, upon certain trusts declared by the will. After the death of testator the trustees were, as such devisees, admitted tenants of the copyhold land, to hold to them, their heirs & assigns, upon the trusts of the will. The lord of the manor afterwards executed an enfranchisement, not under the Copyhold Acts, to the trustees, & they executed a conveyance to the only daughter of testator his heiress in tail in fee. Under the trusts of the will the daughter had become solely beneficially entitled to the real estate which passed under the devise to the trustees:—*Held*: the effect of the enfranchisement, & the subsequent conveyance by the trustees, was to bar the entail, & made the daughter owner of the land in fee simple.—*Re HART, Ex p. SCHOOL BOARD FOR LONDON* (1889), 41 Ch. D. 547; 58 L. J. Ch. 752; 60 L. T. 817; 38 W. R. 61.

See, also, Nos. 768, 1977, 1978, *ante*.

On rights of common.]—*See* COMMONS & RIGHTS OF COMMON, Vol. XI., pp. 54, 803–810.

On rights of way.]—*See* EASEMENTS & PROFITS A PRENDRE.

SUB-SECT. 4.—WHEN PRESUMED.

1999. **Land treated as freehold for long time—Sufficient—Even against Crown.]**—The enfranchisement of a copyhold may, upon proper evidence, be presumed even against the Crown. Where a surrender had been made to churchwardens & their successors in 1636, without naming any rent, but in 1649 the parliamentary survey charged the churchwardens with 6d. rent under the head of freehold rents, & there was no evidence of any different rent having been paid since that time, & receipts had been given for it, as for a freehold

rent, by the steward of the manor:—*Held*: this was evidence to be submitted to a jury, on which they might presume a grant of enfranchisement, although the manor had continued out in lease from before 1636 to 1804, & though a tablet of parochial benefactions, at least as old as 1656, which was suspended in the parish church, noticed the gift of the copyhold by surrender, but did not notice any enfranchisement of it.—*ROE d. JOHNSON v. IRELAND* (1809), 11 East, 280; 103 E. R. 1011.

Annotations:—*Distd.* *Turner v. West Bromwich Union Grdns.* (1861), 3 L. T. 662. *Re* *Harrison v. Powell* (1894), 10 T. L. R. 271. *Mentd.* *Goodtitle v. Baldwin* (1809), 11 East, 488; *A.-G. v. Horner*, [1913] 2 Ch. 140.

2000. — **Land anciently copyhold** was for upwards of 100 years treated as freehold without any claim being made on the part of the lord of the manor, & the only intimation that the land was copyhold was in recitals to that effect & a covenant to surrender contained in deeds of recent date to which the lord was neither party nor privy. A contract having been entered into for sale of the land as freehold:—*Held*: under the circumstances, an enfranchisement must be presumed, & the purchaser was therefore not entitled to require the vendors to obtain the enfranchisement of the land.—*Re LIDIARD & JACKSON'S & BROADLEY'S CONTRACT* (1889), 42 Ch. D. 254; 58 L. J. Ch. 785; 61 L. T. 322; 37 W. R. 793.

Annotations:—*Consd.* *Beighton v. Beighton* (1895), 64 L. J. Ch. 796. *Re* *Eccl. Comrs. for England v. Parr*, [1894] 2 Q. B. 420.

2001. **Recital in mortgage of contract for purchase of fee simple—Not sufficient.]**—(1) In ejectment brought by a mtgee. against the widow of the mtgor. the lessor of pltf. proved an assignment by way of mtge., of copyhold premises by lease & release, & not by any surrender to the lord:—*Held*: the lessor of pltf. had only an equitable interest, & he could not maintain the action.

(2) Where a mtge. of copyhold premises by lease & release recited, that by indentures of lease & release, the mtgor. a copyholder for lives, had contracted with the Bishop of R. for the absolute purchase of the inheritance, in fee simple of the copyhold premises, & that the Bishop of R. had granted & released the same parcel of the manor of the prebend of W., to hold the same to the mtgor., his heirs & assigns for ever; & the mtge. deed then witnessed that the mtgor. granted & released the premises in fee, subject to the usual proviso for redemption:—*Held*: there was no sufficient evidence furnished by the recital that there had been any enfranchisement of the copyhold. *Qu.*: whether the above recital was evidence, by way of estoppel, against the widow in possession of the mtgor.—*DOE d. NORTH v. WEBBER* (1837), 3 Bing. N. C. 922; 3 Hodg. 203; 5 Scott, 189; 6 L. J. C. P. 319; 132 E. R. 666.

2002. **Forbearance by lord to levy small fines—Not sufficient.]**—The conditions of sale had described the property to be sold as freehold. Subsequently, after the purchaser had paid his consideration money, but before the final completion of the conveyance, it turned out to be copyhold:—*Held*: the purchaser was entitled to have his contract for purchase rescinded, & money repaid with interest.

The lords of the manor had forborne for nearly 100 years to receive certain small money payments in lieu of fines, heriots, etc., which had been commuted & payable so long as the premises should be retained as a workhouse:—*Held*: in the absence of evidence adverse to the lord of the manor's rights, the ct. would not presume that the land had been enfranchised.—*TURNER v. WEST*

BROMWICH UNION GUARDIANS (1860), 8 L. T. 662; 9 W. R. 155.

SUB-SECT. 5.—OTHER CASES.

2003. Construction of agreement to enfranchise—Tenant not bound to pay—Until assurance made.]—The lord of a manor covenanted with his copyholder to assure to him & his heirs the freehold & inheritance of the copyhold, & the copyholder in consideration of the same performed, did covenant to pay a certain sum:—*Held*: copyholder not tied to pay before the assurance made & the covenant performed.—*BROCCUS' CASE* (1588), 2 Leon. 211; 74 E. R. 480; *sub nom.* *BROCAS' CASE*, 3 Leon. 219.

2004. Ancient services cannot be reserved.]—*BRADSHAW v. LAWSON*, No. 325, *ante*.

2005. Enfranchisement of copyholds in Middlesex—Must be registered.]—A deed of enfranchisement of copyholds in Middlesex:—*Held*: was not within the exception of copyhold estates in the Middlesex Registrn. Act, 1708 (c. 20), s. 17, & must be registered.—*R. v. MIDDLESEX COUNTY DEEDS REGISTRAR* (1888), 21 Q. B. D. 555; *sub nom.* *R. v. TRURO (LORD)*, 57 L. J. Q. B. 577; 59 L. T. 242; 36 W. R. 775; 4 T. L. R. 647, C. A.

See, generally, SALE OF LAND.

SECT. 2.—UNDER COPYHOLD ACTS.

SUB-SECT. 1.—THE RIGHT OF ENFRANCHISEMENT.

2006. Enfranchisement required by lord—Discretion of commissioners on questions of fact—Binding on court.]—*REYNOLDS v. WOODHAM WALTER (LORD OF THE MANOR)*, No. 2015, *post*.

2007. Enfranchisement required by tenant—Death of tenant before confirmation of award—Right of successor to continue proceedings—On admittance & fine.]—A copyhold tenant died after proceedings instituted by him for a compulsory enfranchisement under the Copyhold Act, 1858 (c. 94), & before the confirmation of the award by the comrs.:—*Held*: (1) the lord was entitled to have a new tenant on the roll & to a fine on his admittance; (2) the proceedings did not abate by the death of the first tenant.—*MYERS v. HODGSON* (1876), 1 C. P. D. 609; 45 L. J. Q. B. 603; 34 L. T. 881; 24 W. R. 827.

SUB-SECT. 2.—ASSESSMENT OF COMPENSATION.

2008. Appointment of valuer—Infant lord of manor—Legal estate outstanding in trustees—Guardian of infant appoints.]—Where a female infant was tenant for life in possession of a manor, but subject to a legal term of 1,000 years vested in trustees for securing annuities, & also subject to a provision for the receipt by the same trustees of the rents during the minority, & for the application of a certain limited sum thereout for her maintenance:—*Held*: (1) she was the lady of the manor; (2) although the trustees had the usual power of sale, on notice given by tenants to apply for enfranchisement, her guardian was the proper person, & not the trustees, to appoint a valuer.—*GRIGGS v. GIBSON, MAYNARD v. GIBSON* (1866), 35 L. J. Ch. 457; 14 W. R. 819.

2009. Basis of assessment—Joint tenants liable on alienation to single heriot only by special custom—Compensation assessed on basis of custom.]—*PADWICK v. TYNDALE*, No. 1246, *ante*.

2010. ——— Increased value by enfranchisement

—Restrictions in lord's favour terminated by enfranchisement—Lord entitled to equivalent compensation.]—The lord of the manor of H., with the consent of the homage, granted a piece of the waste of the manor to C., to be held by copy of ct. roll, on condition that no buildings should be erected or trees or shrubs planted, & reserving power to the lord & to certain copyholders to enter & remove any building erected or trees planted thereon. This reservation to the copyholders was without consideration. C. assigned the piece of land to B.; B. gave to the lord a notice under Copyhold Act, 1852 (c. 51), s. 2, of his wish to enfranchise:—*Held*: after the enfranchisement, B. would have an estate of freehold discharged from the conditions; & the lord was entitled to equivalent compensation.—*BRABANT v. WILSON* (1865), L. R. 1 Q. B. 44; 6 B. & S. 979; 35 L. J. Q. B. 49; 13 L. T. 319; 30 J. P. 7; 12 Jur. N. S. 24; 14 W. R. 28; 122 E. R. 1454.

2011. ———.]—If land in a manor where the tenant has only a restricted power of leasing be enfranchised under Copyhold Act, 1852 (c. 51), it is a question of fact, & not of law, whether the tenant could have availed himself of facilities for improvement with the powers of transfer which he had before the enfranchisement, or whether he would have been prevented from so doing either altogether or so beneficially, by reason of his restricted power of leasing; & if the enfranchisement in fact remove an obstructive right of the lord, which practically existed & made a practical difference, this should be considered in a valuation made under the Act, s. 16, which provides, that the valuer shall take into account facilities for improvement; & it is immaterial to consider whether or not the lord of the particular manor has a remedy by forfeiture for an excess by the tenant of his power of leasing, because, if the enfranchisement enable the tenant to apply the land to a more beneficial use by granting longer leases, & practically adds to the value of his estate, this additional value is due to the removal of a restraint incident to the tenure from which he is freed.—*LINGWOOD v. GYDE; GYDE v. LINGWOOD* (1866), L. R. 2 C. P. 72; 16 L. T. 229; 15 W. R. 311; 36 L. J. C. P. 10.

Annotations:—*Apprvd.* *Arden v. Wilson* (1872), L. R. 7 C. P. 535. *Mentd.* *Hall v. Byron* (1876), 4 Ch. D. 667.

2012. ——— Restrictions on power of leasing terminated by enfranchisement.]—In assessing the amount of compensation payable to the lord on a compulsory enfranchisement of a copyhold tenement under Copyhold Act, 1852 (c. 51), regard is to be had, not only to the capability of the land for future improvements, but also to any present obstacles which may stand in the way of improvements.

Where copyhold lands were the subject of a settlement, by will, which precluded the granting of leases for more than twenty-one years, & a portion of them was at the time of the enfranchisement held by a third person under a lease granted with the licence of the lord, & the other portion could have no frontage to a public road pending such lease:—*Held*: (1) in assessing the compensation payable to the lord, the valuers were not bound by the mode in which the property was then enjoyed, *viz.* as a private residence, but might take into consideration the capacity of the land for improvement by applying it to building purposes; (2) they were also bound to take into their consideration the impediments standing in the way of it being presently used as building land.—*ARDEN v. WILSON* (1872), L. R. 7 C. P. 535; 41 L. J. C. P. 273; 26 L. T. 887.

Sect. 2.—Under Copyhold Acts: Sub-sects. 2 & 3, A. & B.; sub-sects. 4 & 5.]

2013. ——— Subject to existing impediments.]

—*ARDEN v. WILSON*, No. 2012, *ante*.

2014. ——— Value of land for building purposes—Though let as private residence.]—*ARDEN v. WILSON*, No. 2012, *ante*.

2015. ——— Full fine paid on admission of tenant for life—Enuring for benefit of remainderman—Need not be considered.]—The lord of a manor has rights in respect of the timber on the copyhold properties, for which rights he was upon a commutation under Copyhold Act, 1841 (c. 35), & is upon an enfranchisement under Copyhold Act, 1852 (c. 51), & Copyhold Act, 1858 (c. 94), entitled to compensation. Upon an appeal against a decision of the copyhold comrs. awarding compensation to the lord, upon a compulsory enfranchisement, in respect of timber growing on the land, if there be any evidence of a special custom entitling the lord to a fine upon the grant of a licence to fell timber, it is the exclusive province of the comrs. to determine, as a question of fact, whether such evidence proved the existence of the custom; Copyhold Act, 1852 (c. 51), s. 8, giving an appeal only upon a question of law.

The tenant having upon her admission paid a full fine assessed at two years' improved value of the land, which admission, according to the custom of the manor, enured as an admission of the tenant in remainder, no other fine except on alienation would become payable to the lord until after the deaths of both tenant for life & tenant in remainder:—*Held*: the valuers, upon a compulsory enfranchisement at the instance of the lord, were not bound to take the fine so paid as the basis of the computation of the rent-charge; nor to state in their award what proportion of the rent-charge should, under Copyhold Act, 1841 (c. 35), s. 28, or Copyhold Act, 1852 (c. 51), s. 35, be deferred until the next act or event on which a fine would become payable to the lord, or to state such particulars as might enable the comrs. to defer payment of the whole or any part of the rent-charge, so as to prevent the hardship or injustice which the tenant would otherwise suffer by the compulsory enfranchisement. — *REYNOLDS v. WOODHAM WALTER (LORD OF THE MANOR)* (1872), L. R. 7 C. P. 639; 41 L. J. C. P. 281; 27 L. T. 374; 36 J. P. 806.

See, generally, Part X., Sect. 1, sub-sect. 2, *ante*.

2016. Form of award—Valuers not bound to apportion rentcharge for deferred payment—Nor to state particulars to enable commissioners to apportion.]—*REYNOLDS v. WOODHAM WALTER (LORD OF THE MANOR)*, No. 2015, *ante*.

2017. Jurisdiction to review—Valuation appearing to be erroneous in amount—Refusal of valuer to amend—Commissioners have jurisdiction to determine value.]—The Copyhold Act, 1887 (c. 73), s. 11 enacts that valuers appointed under the provisions of the Copyhold Acts shall determine the value of the manorial & other rights & incidents, such value to be a gross sum of money, & their decision shall be in such form as the comrs. may prescribe, & they shall in every case deliver the details of the valuation to the comrs., & if it shall appear to the comrs. that the valuation is imperfect or erroneous, they may remit it for reconsideration or correction; & if the valuers neglect or refuse to amend the same, the comrs. may, after due notice to the lord & to the tenant, & after fully considering all the circumstances brought before them, determine the value of the manorial & other rights & incidents at such a sum as they may deem

just & reasonable. On a valuation of manorial rights under the Act it appeared to the comrs. that the valuation was erroneous in amount, & they remitted it to the valuer, who refused to amend. The comrs. thereupon proceeded to consider the circumstances with a view to themselves determining the value. On an application for a prohibition to restrain them from proceeding to determine the value except as appeared by the award:—*Held*: the comrs. were acting within their jurisdiction in proceeding to determine the value of the rights, as the authority given them by the Act applied where, in their opinion, the valuation is erroneous in amount.—*R. v. ENGLAND LAND COMRS.* (1889), 23 Q. B. D. 59; 58 L. J. Q. B. 313; 53 J. P. 773; 37 W. R. 538; 5 T. L. R. 445, C. A.

SUB-SECT. 3.—COMPENSATION PAID INTO COURT.

A. Payment Out.

2018. Payment out to trustees—Refused where no present intention of laying out money.]—*Re IMBERHORNE (MANOR OF)*, [1875] W. N. 30.

B. Investment.

See, now, 1894 Act, ss. 32, 33.

2019. Parties to petition—Copyhold Commissioners must be served.]—Upon an application for the investment of money paid into the bank in the name of the Accountant-General to the credit of the Copyhold Comrs. under the Copyhold Act, 1831 (c. 35), s. 73:—*Held*: (1) it was proper for petitioner to serve the Comrs. with notice of the application; & (2) notwithstanding the Act for the commutation of manorial rights in respect of copyholds makes no provision for the payment of any costs, petitioner must pay the costs of the Copyhold Comrs., & add them to his own; & all such costs should be paid to petitioner out of the fund, & this would be the rule for the future.—*Ex p. HEREFORD (BP.)*, *Ex p. SAYE & SELE (LORD)* (1852), 5 De G. & Sm. 265; 21 L. J. Ch. 608; 19 L. T. O. S. 28; 64 E. R. 1110.

2020. ———.]—Where a tenant for life of a manor, in which lands are enfranchised under the Copyhold Act, 1841 (c. 35), applies for the investment of the fund paid into ct. for the enfranchisement:—*Held*: it was proper to serve the Copyhold Comrs. with the petition, & the Comrs. costs were ordered to be paid by petitioner, such costs to be added to his own, & with them deducted out of the fund.—*Ex p. CANTERBURY (ARCHBP.)*, *Ex p. ST. PAUL'S (DEAN & CHAPTER)*, *Ex p. LONDON (BP.)* (1852), 19 L. T. O. S. 28.

2021. ——— Copyhold Commissioners need not be served.]—Petitions under Copyhold Acts for investment of moneys paid into ct. in respect of the enfranchisement of copyholds are not to be served on the Copyhold Comrs.—*TEMPLER v. SWETE* (1874), 22 W. R. 837.

See, now, R. S. O. Ord. 55, r. 11.

See, also, No. 2025, *post*.

2022. Costs of investment—Payable out of corpus.]—A petition for the investment of a sum of £1,500, which, with other moneys, had been paid into ct., being the consideration money for the purchase of a certain copyhold manor or manorial rights belonging to the see of S., & for payment of the dividends, as they should become due, to the Bishop of S. for the time being, until further order. The money had been paid in under the Copyhold Act, 1841 (c. 35), this Act containing no provision for the payment of the costs of the investment. As the investment was for the sole

benefit of the see of S., & the payment of dividends was to be made to the succeeding bishops for the time being as well as to the present bishop:—*Held*: the costs were to be paid out of the fund.—*Re SALISBURY (BP.)* (1850), 16 L. T. O. S. 122.

2023. — Including costs of Commissioners.]—*Ex p. HEREFORD (BP.)*, *Ex p. SAYE & SELE (LORD)*, No. 2019, *ante*.

2024. — — — — —.]—*Ex p. CANTERBURY (ARCHBP.)*, *Ex p. ST. PAUL'S (DEAN & CHAPTER)*, *Ex p. LONDON (BP.)*, No. 2020, *ante*.

2025. — — — — — Costs of Commissioners limited to costs of appearance.]—A fund payable for the enfranchisement of copyholds having been paid, under the Copyhold Act, 1852 (c. 51), into the bank, in the name of the Accountant-General, to an account "*Ex p. the Copyhold Comrs.*," the petition of the lord of the manor for the investment of the fund, pursuant to the Act, was served upon the Comrs., who appeared thereupon, but only to ask for their costs:—*Held*: they were entitled to the costs of their appearance.—*Re COPYHOLD COMRS. & COPYHOLD ACT, 1852*, *Ex p. QUEEN'S COLLEGE, CAMBRIDGE (PRESIDENT & FELLOWS)* (1857), 27 L. J. Ch. 178; 30 L. T. O. S. 268; 22 J. P. 240; 4 Jur. N. S. 19; 6 W. R. 9.

SUB-SECT. 4.—LIABILITY FOR COMPENSATION-MONEY.

2026. Tenant for life paying compensation—With consent of tenant in tail—Entitled to charge.]—*ISAAC v. WALL* (1877), 6 Ch. D. 706; 46 L. J. Ch. 576; 37 L. T. 227; 25 W. R. 844.

2027. Recovery of arrears of rentcharge—By personal judgment against occupant—In whose occupancy arrears due accrued.]—A copyhold tenant of a manor is under an obligation to keep the boundaries of his tenement distinct; & if he neglects to do so the ct. will direct an inquiry for ascertaining the boundaries, & if that should be impossible, will order land of equal value to be set in substitution. If the tenement is enfranchised the obligation to preserve the boundaries ceases, but the tenant is still liable for default which had happened before the enfranchisement.

The lord of a manor obtained the enfranchisement of a copyhold tenement under Copyhold Act, 1852 (c. 51), reserving a rentcharge to himself. The boundaries had become confused before the enfranchisement, but the lord did not avail himself of the power given by the Act, s. 24, to have the boundaries ascertained. The rentcharge having fallen into arrear, the grantee of the rentcharge brought an action to ascertain the boundaries of the land charged with the rentcharge, & if that could not be done, to have land of equal value set out in substitution:—*Held*: (1) the lord & those claiming under him did not lose their rights by reason of the lord's omission to have the boundaries ascertained under the Act, & pltf. was entitled to the relief prayed, the costs of the inquiry being reserved; (2) pltf. was entitled to a personal judgment against the tenant for the arrears of rentcharge accrued during his occupancy of the land. The powers given to the owner of a rentcharge by Copyhold Act, 1887 (c. 73), s. 16, did not preclude him from enforcing his other remedies for recovering his rentcharge.—*SEARLE v. COOKE* (1890), 43 Ch. D. 519; 59 L. J. Ch. 259; 62 L. T. 211, C. A.

Annotations:—Generally, *Mentd. Re Herbage Rents, Greenwich, Charity Comrs. v. Green*, [1896] 2 Ch. 811; *Pertwee v. Townsend*, [1896] 2 Q. B. 129.

SUB-SECT. 5.—EFFECT OF ENFRANCHISEMENT.

2028. Vendor of copyhold enfranchised under Copyhold Act, 1852 (c. 51)—Not bound to show lord's title.]—*KERR v. PAWSON*, No. 1410, *ante*.

2029. Lunatic tenant—Enfranchisement under order of court—Enfranchised copyholds ordered to descend to customary heir.]—On sanctioning proceedings for carrying into effect enfranchisement of copyhold estate belonging to a lunatic the rules of descent of which were different from those as to the descent of freeholds:—*Held*: in event of the lunatic dying intestate as to the enfranchised property his heir-at-law would stand seised thereof in trust for the persons who would have been entitled thereto as his heirs, according to the custom of the manor if it had not been enfranchised.—*Re RYDER (A LUNATIC)* (1882), 20 Ch. D. 514; 30 W. R. 417, C. A.

Annotations:—*Mentd. A.-G. v. Allesbury* (1887), 12 App. Cas. 672; *Re Alston, Sinclair v. Willes*, [1917] 2 Ch. 226.

2030. As to profits à prendre—All "rights of fishing" expressly extinguished—Lord precluded from granting new right—As against owner of enfranchised copyhold.]—An owner of land formerly copyhold of the manor of C., but now enfranchised, brought an action claiming on behalf of himself & other owners & occupiers of ancient copyhold tenements, & ancient tenements formerly copyhold of the manor, but now enfranchised, a right of fishing in a portion of a river which formed one of the boundaries of the manor, & as incident thereto a right of way over deft.'s land which adjoined the river, & was formerly copyhold of the manor. In 1845 the lords of the manor enfranchised defts. tenements to the intent that the copyhold tenure, & all "rights of fishing" might be extinguished. Pltfs. tenements were enfranchised subsequently in 1845. The homage of the manor had for many years made a presentment of the right of copyhold tenants of the manor to fish in the river between certain points, & there was evidence showing that from 1823 down to 1885, when deft. had taken steps to stop the fishing from his land, the copyhold tenants of the manor & the owners of enfranchised tenements had fished in the river, & for the purpose of fishing had been accustomed to pass along the banks of the river over deft.'s land. The tenants of the manor held upon leases for lives with no right of renewal:—*Held*: the effect of the enfranchisement deed of 1845 was to preclude the lords of the manor from granting as against deft. any right of fishing, & so far as the user was inconsistent with the deed, no legal origin for it could be assumed.—*TILBURY v. SILVA* (1890), 45 Ch. D. 98; 63 L. T. 141, C. A.

Annotations:—*Consd. Derry v. Sanders*, [1919] 1 K. B. 223. *Mentd. Ercyrd v. Coulthard*, [1898] 2 Ch. 358; *City of London Land Tax Comrs. v. Central London Ry.*, [1913] A. C. 364.

2031. — Lord may grant right of common over waste—By special custom—As against commoner in respect of enfranchised copyhold.]—A custom existed in a manor for the lord, with the consent of the homage, to make grants of portions of the waste to be held on copyhold tenure. Although a sufficiency of common was not left:—*Held*: such a grant might be made against a commoner although his tenement had been enfranchised under Copyhold Act, 1852 (c. 51), s. 45.—*RAMSEY v. CRUDDAS*, [1893] 1 Q. B. 228; 62 L. J. Q. B. 269; 68 L. T. 364; 57 J. P. 406; 4 R. 218, C. A. *Annotation*:—*Consd. Broome v. Wenham* (1893), 68 L. T. 651.

2032. Owner of enfranchised copyhold—Liable for confusion of boundaries—Prior to enfranchisement.]—*SEARLE v. COOKE*, No. 2027, *ante*.

Sect. 2.—Under Copyhold Acts: Sub-sect. 5. Sect. 3. Part XXI.]

Agreement to enfranchise—On sale of copyholds.]
—See No. 1410, *ante*.

SECT. 3.—ON COMPULSORY PURCHASE.

See, generally, COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., pp. 273 et seq.

Proceedings to obtain conveyance.]—See COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., p. 235, Nos. 1250, 1257, 1258.

Reinvestment of proceeds.]—See COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., p. 262, Nos. 1776, 1779.

Right to production of court rolls after enfranchisement.]—See No. 445, *ante*.

Part XXI.—Stamp Duties.

See, generally, REVENUE.

2033. Enrolment of heir—Taking customary freehold passing by lease & release by lord's licence—Not admittance under Stamp Act, 1815 (c. 184), sched. part 1.]—Estates of inheritance in a manor were held at the will of the lord according to the custom of the manor, subject to fines on the death of the lord or tenant, & on alienation, & to other dues. The tenant might aliene by customary bargain & sale with the licence of the lord indorsed. Ots. were held twice a year, at which new tenants on death or alienation were bound to appear & have their names entered on a roll, paying a shilling to the steward. On default made, the lord might seize *quousque*:—*Held*: such enrolment was not an admittance within the Stamp Act, 1815 (c. 184), which laid a duty on customary estates passing by surrender & admittance, or by admittance only, & not by deed; but in case of alienation, the estates passed by the conveyance, licensed by the lord; & where the lands descended, the heir became entitled as in case of freehold, & consequently, a person taking as heir was not bound, on enrolment, to receive a stamped admittance from the steward.—*DOE d. CARLISLE (EARL) v. TOWNS* (1831), 2 B. & Ad. 585; 9 L. J. O. S. K. B. 278; 109 E. R. 1260.

Annotation:—*Mentd. Graham v. Jackson* (1845), 6 Q. B. 811.

2034. Surrender to lord by way of transfer of mortgage—With declaration of trust—Ad valorem mortgage stamp not required.]—An indenture recited that, in consideration of £400, part of £500 agreed to be advanced by pltf. to deft., paid to S. R. & P. by pltf. in discharge of all principal & interest owing to them as mtgees. by virtue of a certain other surrender, they, S. R. & P., surrendered into the hands of the lord certain lands, to the intent that the lord might re-grant them to pltf. in trust to sell them & retain the sum of £500.

The indenture then stated that deft. covenanted with pltf. to pay him the sum of £500 with interest on a certain day, & that, in default of payment, pltf. might enter upon & enjoy the land. The indenture was stamped with two stamps of £1 15s. & £1 5s.:—*Held*: this was not a declaration or deed for defeating or making redeemable or qualifying any conveyance, etc. intended as a security within the meaning of the Stamp Act, 1815 (c. 184), sched. part 1, "Mortgage," but a mere declaration of trust of the second surrender; & it did not require an *ad valorem* stamp.—*HAYWOOD v. BIBBY* (1843), 11 M. & W. 812; 1 Dow. & L. 290; 12 L. J. Ex. 404; 1 L. T. O. S. 316; 152 E. R. 1032.

2035. Surrender by way of mortgage—Collateral deed of same date giving power of sale—Deeds treated as forming one security.]—*SELLICK v. TREVOR*, No. 1416, *ante*.

2036. Sale by five tenants in common—Purchaser's admittance requires five stamps.]—*R. v. ETON COLLEGE*, No. 1078, *ante*.

2037. Indenture securing further advance—No covenant for fresh surrender—Ad valorem stamp sufficient.]—An indenture recited a previous indenture of mtge. of copyhold property, & a covenant of surrender therein, the non-payment of the money secured, & a further advance, with a covenant for repayment of the further advance, but contained no covenant for a fresh surrender to meet the further advance:—*Held*: it was within the case of a further sum added to the principal sum already secured under the Stamp Act, 1815 (c. 184), sched. part 1, "Mortgage," & the *ad valorem* stamp on the added sum was sufficient without a deed stamp.—*RUSHBROOK v. HOOD* (1847), 5 C. B. 131; 17 L. J. C. P. 58; 10 L. T. O. S. 88; 11 Jur. 931; 136 E. R. 824.

Whether stamp required on copies of court roll—To be used as evidence.]—*See Nos. 465, 466, ante.*

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Trade Marks and Designs „ TRADE MARKS, TRADE NAMES, AND DESIGNS.

NOTE.—The Act now in force in England is Copyright Act, 1911 (c. 46), herein referred to as 1911 Act. In considering the cases set out in this title regard must be had to their date, the Act under which they were decided and the effect of subsequent Acts.

Part I.—Nature of Copyright.

SECT. 1.—IN GENERAL.

See, now, 1911 Act, s. 1 (2).

1. At common law—Unpublished works—Sole right of publication.]—(1) The copyright of books is only under the Copyright Act, 1709 (c. 19), whereby the sole right of printing & disposing of copies is vested in the author, or his assigns, for fourteen years from the first publication, but if the author be living at the expiration of that term, then the right returns to him for another term of fourteen years. This law does not extend to either of the Universities of Oxford or Cambridge, or to the Colleges of Eton, Westminster, or Winchester, who have a perpetuity in all copies belonging to them.

(2) At common law an author of any book or literary composition has the sole right of first printing or publishing the same for sale, & may bring an action against any person who prints, publishes or sells the same without his consent.

(3) The law does not take away his right upon the printing & publishing of such book or literary composition, & no person may afterwards reprint & sell for his own benefit such book or literary composition against the will of the author.

(4) Such right is taken away by the Copyright Act, 1709 (c. 19).

(5) At common law the author of any literary composition & his assigns has the sole right of printing & publishing the same in perpetuity.

(6) This right is restrained & taken away by the Copyright Act, 1709 (c. 19).—DONALDSON v. BECKETT (1774), 2 Bro. Parl. Cas. 120; 4 Burr. 2408; 1 E. R. 837, H. L.

Annotations:—As to (1) *Consd.* Beckford v. Hood (1798), 7 Term Rep. 620; Jefferys v. Boosey (1854), 4 H. L. Cas. 819. *Refd.* Colburn v. Simms (1843), 2 Hare, 543; Reade v. Conquest (1861), 9 C. B. N. S. 755; Toole v. Young (1874), 43 L. J. Q. B. 170. As to (2) *Consd.* Prince Albert v. Strange (1848), 2 De G. & Sm. 652; Boosey v. Jefferys (1851), 6 Exch. 580; Palmer v. Dewitt (1870), 23 L. T. 823. *Fold.* Mansell v. Valley Printing Co., [1908] 2 Ch. 441. *Refd.* Novello v. Sudlow (1852), 12 C. B. 177. As to (4) *Refd.* Chappell v. Purday (1841), 4 Y. & C. Ex. 485; Chappell v. Purday (1845), 14 M. & W. 303; Boucicault v.

DeLafield (1863), 1 Hem. & M. 597. As to (5) *Refd.* Monckton v. Gramophone Co. (1912), 106 L. T. 84. *Generally, Mentd.* Mannors, Miller & Buchan v. King's Printers (1826), 2 State Tr. N. S. 215.

2. ——— Includes ownership of manuscript.]—JEFFERYS v. BOOSEY, No. 164, *post*.

3. ——— Published works—Sole right of printing in perpetuity.]—DONALDSON v. BECKETT, No. 1, *ante*.

4. ——— Does not exist.]—Authors are only secured in their copyright under the Copyright Act, 1709 (c. 19).—MILLAR v. TAYLOR (1769), 4 Burr. 2303; 98 E. R. 201.

Annotations:—*Consd.* Colburn v. Simms (1843), 2 Hare, 543; Jefferys v. Boosey (1854), 4 H. L. Cas. 815; Caird v. Sime (1887), 12 App. Cas. 326. *Refd.* Boulton v. Bull (1795), 2 Hy. Bl. 463; Beckford v. Hood (1798), 7 Term Rep. 620; Whittingham v. Wooller (1817), 2 Swan. 428; Abernethy v. Hutchinson (1825), 1 H. & Tw. 28; Chappell v. Purday (1845), 14 M. & W. 303; Prince Albert v. Strange (1848), 2 De G. & Sm. 652; Novello v. Ludlow (1852), 12 C. B. 177; Cumberland v. Copeland (1861), 7 H. & N. 118; Roade v. Conquest (1861), 9 C. B. N. S. 755; Palmer v. Dewitt (1870), 23 L. T. 823; Philip v. Pennell, [1907] 2 Ch. 577; Mansell v. Valley Printing Co., [1908] 2 Ch. 441; Monckton v. Gramophone Co. (1912), 106 L. T. 84; Moore Filter Co. v. Great Boulder Proprietary Gold Mines (1921), 38 R. P. C. 239. *Mentd.* Barnett v. Glossop (1835), 1 Scott, 621; Rhondda's Claim (1922), 38 T. L. R. 759.

5. ——— ———.]—JEFFERYS v. BOOSEY, No. 164, *post*.

6. ——— Does not extend to musical idea.]—The common law has never recognised any property in an idea, expressed not in language but in some system of musical notation, after it has once been made public; & no right is thereby conferred to restrain a person from making use of such a musical idea.

Where defts., without any authorisation from pltf., transcribed the music of a song of which the pltf. was the composer to sheets of vulcanised indiarubber by a system of notation which enabled the music to be reproduced mechanically by the use of their gramophones:—*Held*: pltf. was not entitled to an injunction to restrain the making, selling, publishing, or using of such sheets.—

PART I. SECT. 1.

a. At common law—A natural right—Entitled to protection.]—Copyright is not the mere creature of statute, but a natural & civil right entitled to protection at common law.—TENNYSON v. FORRESTER (1871), 43 Sc. Jur. —SCOT.

1 i. ——— Unpublished works—Picture—Right to prevent copies.]—At common law, the owner of a picture has a right, before publication, to prevent any copy being made of it.—TURNER v. ROBINSON (1860), 10 L. Ch R. 510.—IR.

Press graphic Agency in N.Z. employing agents in various parts of the world to transmit to them telegraphic summaries of daily news, supplied these telegrams to newspapers whom the agency had licensed to publish them. Copies of the telegrams after they had appeared in other newspapers were published by A. without license from the agency:—*Held*: as the property had merely a prospective existence there could be no copyright in it.—HOLT v. WEBB, 4 J. R. N. S. 34.—N.Z.

Proprietary right.]—

There is no right of action at common law for the innocent printing or publication of unpublished matter in which another has a common-law right of property.—COOKSLEY v. JOHNSON & SONS (1905), 25 N. Z. L. R. 834.—N.Z.

4 i. ——— Published works—Does not exist.]—As soon as author or publisher or painter gave the world what he had written or created it became public property & there was no right at common law which protected his works being copied by any one who chose so to do.—VASUDEO GANESH v.

MONCKTON v. GRAMOPHONE Co., LTD. (1912), 106 L. T. 84; 28 T. L. R. 205; 56 Sol. Jo. 270, C. A.

7. ——— No right to restrain reproduction — Otherwise than by copies.]—MONCKTON v. GRAMOPHONE Co., LTD., No. 6, *ante*.

8. By statute—In published work—Species of property.]—A copyright in a published work is a species of property.—ANON. (1832), 2 L. J. Ex. 8.

9. ——— Distinguished from patent rights.]—LANDEKER & BROWN v. WOLFF & Co., LTD. (1907), 52 Sol. Jo. 45.

10. ——— Sole right of multiplying copies — Includes right to prevent others from printing.]—CHAPPELL v. PURDAY, No. 173, *post*.

11. ——— ———.]—BOOSEY, No. 164, *post*.

12. ——— ———.]—WALTER v. LANE, No. 194, *post*.

13. ——— Article contributed to periodical — Includes right to restrain separate publication.]—The author of an article contributed to a periodical, is entitled to restrain the separate publication of such article, by the proprietor of the periodical. The republication of the Christmas number of a periodical under a different title, form, & price, is a separate publication of an article contained in such number, which the author is entitled to restrain.

Where the general merits of *pltf.*'s bill, praying an injunction to restrain the infringement of *pltf.*'s copyright have not been displaced by the defence, *pltf.* will be entitled to his costs for bringing such cause to a hearing to obtain a perpetual injunction after an interim injunction has been obtained in such cause.—MAYHEW v. MAXWELL (1860), 1 John. & H. 312; 9 W. R. 118; 70 E. R. 766; *sub nom.* MURRAY v. MAXWELL, 3 L. T. 466.

Annotations:—*Consd.* Smith v. Johnson (1863), 4 Giff. 632; Cox v. Land & Water Journal Co. (1869), L. R. 9 Eq. 324; Aflalo v. Lawrence & Bullen, [1903] 1 Ch. 318. *Refd.* Clark v. Bishop (1872), 25 L. T. 908.

14. ——— Right to prevent appropriation of author's labour—Not absolute monopoly.]—Under 1911 Act, as under the former law, no absolute monopoly is given to authors analogous to that conferred on inventors of patents; that is to say, if it could be shown as a matter of fact that two precisely similar works were in fact produced wholly independently of one another, the author of the work published first would not be entitled to restrain the publication by the other author of that author's independent & original work. What is given is the merely negative right to prevent the appropriation of the labours of an author by another. (SARGANT, J.).—CORELLI v. GRAY (1913), 29 T. L. R. 570; *affd.* 30 T. L. R. 116, C. A.

15. ——— Under Fine Arts Copyright Act, 1862 (c. 68)—Confined to United Kingdom.]—The above Act confers on British subjects & persons resident in British dominions copyright in pictures, drawings, & photographs. It extends to the whole of the United Kingdom, but does not extend to any part of the British dominions outside the United Kingdom.—GRAVES & Co., LTD. v. GORRIE,

[1903] A. C. 496; 72 L. J. P. C. 95; 89 L. T. 111; 52 W. R. 113; 19 T. L. R. 652, P. C.

SECT. 2.—SPECIFIC RIGHTS.

See 1911 Act, s. 1 (2).

To produce the work or part thereof.]—*See* Sect. 1, *ante*.

To reproduce the work or part thereof.]—*See* Sect. 1, *ante*.

To perform in public the work or part thereof.]—*See* Part XIII., Sect. 1, sub-sects. 4, 5, *post*.

To deliver in public a lecture, address, speech, or sermon, or part thereof.]—*See* Part II., Sect. 3, sub-sect. 9, *post*.

To publish an unpublished work or part thereof.]—*See* Part II., Sect. 8, *post*.

To produce, reproduce, perform, or publish, translations.]—*See* Part II., Sect. 3, sub-sect. 5, *post*.

To convert the work into a novel or non-dramatic work.]—*See* Nos. 490, 491, 492, *post*.

To dramatise the work.]—*See* Nos. 429, 430, 432, *post*.

To make records of the work.]—*See* No. 485, *post*.

To make perforated rolls by which the work may be performed.]—*See* Nos. 120, 487, *post*.

To make cinematograph films of the work.]—*See* No. 55, *post*.

To authorise any right in respect of the work.]—*See* Part V., Sect. 2, sub-sect. 1, *post*.

SECT. 3.—SUBSTITUTED COPYRIGHT.

16. Picture—Not registered under Fine Arts Copyright Act, 1862 (c. 68)—At commencement of 1911 Act—Owner entitled to substituted copyright under 1911 Act, sched. 1.]—Where a picture was assigned with all copyrights, but not registered under the Fine Arts Copyright Act, 1862 (c. 68), at the time of the commencement of the 1911 Act, the owner of the picture had such a copyright as would enable him to receive the substituted & enlarged copyright given to owners of copyright in substitution for their existing rights by the 1911 Act, s. 5, & sched. 1.

The only memorandum of an assignment of copyright inclusive was a receipt for a sum paid for "Five original card designs inclusive of all copyrights. Subjects: four golfing subjects: one Teddy Bear painting":—*Held*: (1) parol evidence was admissible to identify the designs intended; (2) the memorandum was sufficient within the Fine Arts Copyright Act, 1862 (c. 68), s. 3; (3) *pltf.* whose copyright was infringed had a right to an order of the ct. restraining the infringement, & was not prevented from exercising his rights by an offer of the infringer before action that he would promise not to do it again & would

ANUPRAM & Co. (1920), I. L. R. 44 Bom. 720.—IND.

g. By statute—In published work — Includes exclusive right of representation of dramatic work—Fine Arts Copyright Amendment Act, 1879.]—*Ex p.* DOBSON & KENNEDY (1892), 12 N. Z. L. R. 171.—N.Z.

i. ——— Copyright Ordinance, 1842.]—The copyright, given by above Ordinance, comes into existence only on publication of the work in question & does not relate back, on publication,

so as to make an act done before publication an infringement.—COOKSLEY v. JOHNSON & SONS (1905), 25 N. Z. L. R. 834.—N.Z.

g. ——— Copyright Act, 1842—Extends to all parts of India.]—The above statute extends to all parts of India.—MACMILLAN v. KHAN BAHADUR SHAMSUL ULAMA ZAKA (1895), I. L. R. 19 Bom. 557.—IND.

h. ——— ——— Protects holder throughout British Dominions.]—The

above Act protects the holder of the English copyright throughout the entire British Dominions.—BOOSEY & Co. v. SIMMONDS (1903), 20 S. C. 632.—S. AF.

k. ——— Under Imperial Fine Arts Copyright Act, 1862—Confined to United Kingdom.]—The above Act does not extend to any part of British Dominions outside United Kingdom.—VASUDEO GANESH v. ANUPRAM & Co. (1920), I. L. R. 44 Bom. 720.—IND.

Sect. 3.—Substituted copyright. Part II. Sects. 1, 2 & 3: Sub-sect. 1.]

pay such damages as might be agreed upon; (4) if such an offer was repeated after writ issued, with the addition of an offer to submit to an order & pay costs to date, pl'tfs. might be deprived of any subsequent costs.

There is evidence to this effect, that newsagents some time after the full knowledge of defts. that the copyright was being infringed were in possession

of several copies of the infringing document. One copy was subsequently sold. The newsagents dealt with defts. on the usual terms of sale or return, & in my opinion the property at the time in question was vested in defts. (NEVILLE, J.).—SAVORY (E. W.), LTD. v. WORLD OF GOLF, LTD., [1914] 2 Ch. 566; 83 L. J. Ch. 824; 111 L. T. 269; 58 Sol. Jo. 707.

See, also, No. 108, post.

Part II.—Subject-Matter.

SECT. 1.—IN GENERAL.

of information—But individual work.]—Though copyright cannot subsist in an East India Calendar, or Directory, as a general subject, any more than in a map, chart, series of chronology, etc., it may in the individual work; & where it can be traced that another work upon the same subject is not original compilation but a mere copy with colourable variations it will be protected by injunction.

All human events are equally open to all who wish to add to or improve the materials already collected by others, making an original work. No

12 Ves. 270; 33 E. R. 103, L. C.

18. ———.]—An injunction was granted against pirating a Ct. Calendar; the individual work creating copyright, though the general subject, as in the case of a map or chart, was common.—LONGMAN v. WINCHESTER (1809), 16 Ves. 269; 33 E. R. 987, L. C.

*Annotations:—*Consd. Prowett v. Mortimer (1856), 27 L. T. O. S. 132; Splers v. Brown (1858), 31 L. T. O. S. 16. *Refd.* Moffatt & Paige v. Gill & Marshall (1902), 86 L. T. 465.

19. ——— **Passage in non-copyright authority—Though quoted in & suggested by copyright work.]**—PIKE v. NICHOLAS, No. 446, *post*.

See, also, Nos. 51, 85, 438, 443, post.

20. **Not general subject—But individual work.]**—Copyright exists in an individual work, not in a general subject, though from its nature the consequence may be close resemblance & considerable interference, as in the case of maps & road books.—WILKINS v. AIKIN (1810), 17 Ves. 422; 34 E. R. 163, L. C.

*Annotations:—*Consd. Bramwell v. Halcomb (1836), 3 My. & Cr. 737; Splers v. Brown (1858), 31 L. T. O. S. 16. *Apld.* Smith v. Chatto (1874), 31 L. T. 775. *Consd.* Walter v. Steinkopf, [1892] 3 Ch. 489; Moffatt & Paige v. Gill (1901), 84 L. T. 452. *Refd.* Whittingham v. Wooler (1817), 2 Swan. 428; Saunders v. Smith (1838), 7 L. J. Ch. 227; Dickens v. Lee (1844), 8 Jur. 183; Hotten v. Arthur (1863), 11 W. R. 934.

See, also, No. 440, post.

21. **Not article copied from prior work.]**—BARFIELD v. NICHOLSON, No. 291, *post*.

See, also, No. 85, post.

22. **Not form of words—Questions in simplest possible form.]**—A. published a book treating of scientific explanations of various common phenomena of life. A. afterwards published a work on similar subjects of which T. complained that the

name & plan were suggested by his own work & the arrangement & phraseology in many instances taken bodily from it:—*Held*: (1) if any person by pains & labour collected & reduced into the form of a systematic course of instruction those questions which he might find ordinary persons asking in reference to the common phenomena of life, with answers to those questions, & explanations of those phenomena, whether such explanations & answers were furnished by his own recollection of his former general reading or out of works consulted by him for the express purpose, the reduction of questions so collected, with such answers, under certain heads & in a scientific form, was sufficient to constitute an original work, of which

would be protected; (2) another person might originate another work in the same general form, provided he did so from his own resources & made the work he so originated a work of his own by his own labour & industry bestowed upon it; (3) in determining whether an injunction should be ordered the question, where the matter of pl'tf.'s work was not original, was how far an unfair or undue use had been made of the work; (4) if, instead of searching into the common sources & obtaining subject matter from thence, any one availed himself of the labour of his predecessor, adopted his arrangements & questions, or adopted them with a colourable variation, it would be an illegitimate use; (5) falsely to deny that he had copied or taken any idea or language from another work would be strong indication of *animus furandi*; (6) if the ct. was led to the conclusion that there had been piracy, it would not grudge any labour that might be requisite in order to ascertain how far the injunction should extend, where certain distinct parts of a work were unobjectionable & others contained piracies; (7) the method of communicating information by question & answer being of unknown antiquity pl'tf. could not claim any originality in the plan of his work; (8) questions of fundamental simplicity were not copyright.—JARROLD v. HOULSTON (1857), 3 K. & J. 708; 3 Jur. N. S. 1051; 69 E. R. 1294.

*Annotations:—*As to (2) *Consd.* Moffatt & Paige v. Gill & Marshall (1902), 86 L. T. 465. *Refd.* Splers v. Brown (1858), 6 W. R. 352. *Generally, Mentd.* Hotten v. Arthur (1863), 1 Hem. & M. 603; Chatterton v. Cave (1875), L. R. 10 C. P. 572.

—— **Name & address printed on index cards.]**—*See No. 40, post.*

23. **Form of expression—News.]**—Pl'tfs. sued to restrain infringement of an important literary newspaper article & three trivial news paragraphs.

PART II. SECT. 1.

17 i. **Not common source of information—But individual work.]**—HALL & Co. v. WHITTINGTON & Co. (1892), 18 V. L. R. 525.—AUS.

17 ii. ———.]—GARLAND v. GEMMILL (1887), 14 S. C. R. 321.—CAN.

21 i. **Not article copied from prior work.]**—The publisher of a work containing biographical sketches cannot copy them from a copyrighted work & have a copyright therein, even where he has applied to the subjects of such sketches & been referred to the copyrighted works therefor.—GARLAND v.

GEMMILL (1887), 14 S. C. R. 321.—CAN.

21 ii. ———.]—BAIN v. HENDERSON (1911), 17 W. L. R. 125.—CAN.

23 i. **Form of expression—Of news contained in telegrams.]**—A., a newspaper, received telegrams & published

Defts. offered an undertaking with costs not to publish again the first article, refusing to undertake as to the others, & pltfs. proceeded with the action:—*Held*: (1) pltfs. would be disallowed costs subsequent to defts.' offer; (2) the form of expression in which news was conveyed was subject of copyright; (3) a practice by newspapers to copy from other newspapers was no defence to a copyright action.

In *Cooper v. Whittingham*, No. 548, *post*, SIR GEORGE JESSEL laid it down that when a pltf. comes to enforce a legal right, & there has been no misconduct on his part, no omission or neglect which would induce the ct. to deprive him of his costs, the ct. had no discretion & cannot take away pltfs.' right to costs. It seems to me to be going directly in the teeth of the General Orders & Act of Parliament, which say that the judge has a discretion which he is to exercise, & is not bound by any hard & fast rule (NORTH, J.).—WALTER v. STEINKOPFF, [1892] 3 Ch. 489; 61 L. J. Ch. 521; 67 L. T. 184; 40 W. R. 599; 8 T. L. R. 633; 36 Sol. Jo. 556.

Annotation:—As to (2) *Reid*. Walter v. Lane (1900), 69 L. J. Ch. 699.

24. — Ideas or information.]—HOLLINRAKE v. TRUSWELL, No. 70, *post*.

Single word.]—See No. 132, *post*.

25. Not method of communicating information—If not original—Question & answer.]—JARROLD v. HOULSTON, No. 22, *ante*.

26. Matter.]—BARFIELD v. NICHOLSON, No. 291, *post*.

27. Arrangement.]—BARFIELD v. NICHOLSON, No. 291, *post*.

28. — Of questions & answers—Though simple in form—& on common subjects.]—JARROLD v. HOULSTON, No. 22, *ante*.

See, also, Nos. 73, 80, 85, *post*.

29. Not nature of magazine.]—Injunction was granted to restrain publishing a magazine as a continuation of pltf.'s magazine in numbers, & as to communications from correspondents received by deft. while publishing for pltf., not preventing the publication of an original work of the same nature, & under a similar title.—HOGG v. KIRBY (1803), 8 Ves. 215; 32 E. R. 336, L. C.

Annotations:—*Consd.* Longman v. Winchester (1809), 16 Ves. 269; Crutwell v. Lye (1810), 1 Rose, 123; Mawman v. Tegg (1826), 2 Russ. 385; Kelly v. Hutton (1868), 37 L. J. Ch. 297. *Reid*. Prowett v. Mortimer (1856), 27 L. T. O. S. 132; Borthwick v. Evening Post (1888), 37 Ch. D. 449. *Meatd.* Canham v. Jones (1813), 2 Ves. & B. 218.

30. Not prospective series of newspaper.]—PLATT v. WALTER, No. 317, *post*.

31. Not theory—Though propounded in copyright works.]—PIKE v. NICHOLAS, No. 446, *post*.

SECT. 2.—PARTS OF A WORK.

32. May exist in part—Though no copyright in whole.]—Several poems had been for many years before published, which were collected by

them. B., another newspaper, published the news therein contained not in the form in which they were published by A., but as items of intelligence, sometimes introducing them by the words "it is reported":—*Held*: A. had a copyright in the telegrams.—WILSON v. LUKE (1876), 1 V. L. R. 127.—AUS.

23 ii. — — —.]—JONES v. ATTACK (1890), 9 N. Z. L. R. 174.—N.Z.

24 i. — Ideas.]—The object of Copyright Act, 1911, is not to accord

protection to ideas but to the particular form of expression in which an author conveys his ideas or information to the world.—BLACKIE & SONS, LTD. v. LOTHIAN BOOK PUBLISHING CO. PROPRIETARY, LTD. (1921), 29 C. L. R. 396.—AUS.

24 ii. — — —.]—There is no copyright in ideas, merely in the representation of ideas; but an idea represented may be so commonplace that all representations of it must necessarily have much in common; & in such cases it

M. & published, with the addition of several new poems, but though he had not a property in the whole book yet deft., having copied the whole, the Lord Chancellor granted an injunction against him as to the publication with the additional pieces.—MASON v. MURRAY (circa 1771–78), cited in 1 East, 360; 102 E. R. 139, L. C.

Annotation:—*Reid*. Cary v. Longman (1801), 1 East, 358.

33. — — — Part of serial complying with British requirements.]—A., a citizen of the United States, published a work of which he was the author in the monthly parts, between Jan. & Dec. 1867, of a magazine published in the United States. In Oct. 1867, A. went to reside in Canada for the purpose of acquiring a British copyright, & during such residence, when the work wanted six chapters for completion in the magazine, an edition of the whole was published in London under an agreement between A. & pltf., an English publisher. A cheap reprint taken from the pages of the American magazine having been subsequently published in this country by deft.:—*Held*: the copyright was divisible & could be claimed for a portion of the book only, & accordingly the publication by deft. of the last six chapters of the work would be restrained by injunction.—LOW v. WARD (1868), L. R. 6 Eq. 415; 37 L. J. Ch. 841; 16 W. R. 1114.

34. — One musical composition—In collection.]—In declaration for pirating a book it was alleged that pltf. was the author of a book, being a musical composition, called A.:—*Held*: (1) this was well supported by showing him to be the author of a musical composition of that name comprised in & occupying only one page of a work with a different title, which contained several other musical compositions; (2) the Copyright Act, 1814 (c. 156), did not impose upon authors as a condition precedent to their deriving any benefit under that Act that the composition should be first printed, & therefore an author did not lose his copyright by selling his work in manuscript before it was printed.—WHITE v. GEROCH (1819), 2 B. & Ald. 298; 1 Chit. 24; 106 E. R. 376.

Annotations:—As to (1) *Distd.* Aflalo v. Lawrence & Bullen, [1903] 1 Ch. 318. As to (2) *Consd.* Macmillan v. Dent, [1907] 1 Ch. 107. *Generally, Reid.* Cumberland v. Planché (1834), 1 Ad. & El. 580.

See, also, Nos. 49, 50, *post*.

Work partly original, partly compilation.]—See No. 84, *post*.

SECT. 3.—LITERARY WORK.

SUB-SECT. 1.—ORIGINAL LITERARY WORK.

See, now, 1911 Act, ss. 1 (1), 35 (1).

35. Literary composition—Court will not define.]—Announcement of the horses which a newspaper had selected as winners:—*Held*: (1) this was not in the nature of a literary composition which could be protected under the Copyright Act, 1842 (c. 45), ss. 18, 19, & the publication of a race card giving lists of the horses selected by

may be impossible to hold that one representation is a copy or colourable imitation of another unless the reproduction is exact.—NATAL PICTURE CO. v. LEVIN (1920), W. L. D. 35.—S. AF.

m. Reprints where copyright expired—Additions from other works—New copyright.]—By publishing a reprint of a work of which the copyright has expired, with notes & illustrations from other works, a new copyright may be created.—BLACK v. MURRAY (1870), 9 Macph. (Ct. of Sess.) 341.—SCOT.

Sect. 3.—Literary work: Sub-sects. 1 & 2, A. & B.]

various papers was not an infringement of the copyright in the newspapers; (2) the ct. would not define in general terms what amounted to a literary composition; (3) although there was a novel & important question to be decided an *interim* injunction would be refused on the ground that no sufficient & immediate injury was shown.—**CHILTON v. PROGRESS PRINTING & PUBLISHING Co.**, [1895] 2 Ch. 29; 64 L. J. Ch. 510; 72 L. T. 442; 43 W. R. 456; 11 T. L. R. 329; 39 Sol. Jo. 380; 12 R. 381, C. A.

Annotation:—*Generally*. **Reid**. *Exchange Telegraph Co. v. Gregory*, [1896] 1 Q. B. 147.

36. — Envelope with card representing well known picture—& printed instructions—Not protected.—Pltf. claimed copyright in a certain book with a picture or design registered as “The Christograph.” The so-called book consisted of an envelope, on the outside of which the title was printed, & inside which was enclosed a piece of cardboard, so cut that when held up to the light it cast a shadow resembling the picture “*Ecce Homo*,” & a slip of paper, on which were printed some lines from Longfellow, which served as a key to the use of the piece of cardboard:—**Held**: there was nothing in the so-called book which could be the subject of copyright, pltf. being the inventor of a trick & not a literary work.—**CABLE v. MARKS** (1882), 52 L. J. Ch. 107; 47 L. T. 432; 31 W. R. 227.

Annotation:—**Reid**. *Hildesheimer & Faulkner v. Dunn* (1891), 64 L. T. 452.

37. — Form of application for correspondence lessons—May be.—**SOUTHERN v. BAILES** (1894), 38 Sol. Jo. 681.

38. — Not list of race horses—Selected by newspapers as winners.—**CHILTON v. PROGRESS PRINTING & PUBLISHING Co.**, No. 35, *ante*.

See, also, Sub-sect. 4, C., *post*.

39. — Not experimental writing under influence of alcohol.—Pltf., while in a state of intoxication, wrote down & published for scientific purposes a drunken scrawl, which was absolutely unintelligible. The jury found the document was not a literary production:—**Held**: a new trial would be refused.—**FOURNET v. PEARSON, LTD.** (1897), 14 T. L. R. 82, C. A.

40. “Original literary work” —Not card index system—Though name & address printed on cards.—Pltfs. invented an outfit consisting of a box in which cards of different colours & with different headings were inserted, the object being to enable an employer to get readily at the insurance card of a particular servant. The cards merely had on them the words “name” & “address” & other words that might be used by anybody:—**Held**: the cards were not an original “literary work” within s. 35 of the 1911 Act, & therefore were not subject of copyright within s. 1 of the Act.—**LIBRACO, LTD. v. SHAW WALKER, LTD.** (1913), 30 T. L. R. 22; 58 Sol. Jo. 48.

Annotation:—**Reid**. *Anderson v. Lieber Code Co.* (1917), 117 L. T. 361.

41. — Translation—Published as advertisement.—Pltf., who was permanently employed on the editorial staff of a newspaper, was specially

employed & paid by the proprietors of the paper to translate & summarise a speech, reported in a foreign language, for the purpose of publication as an advertisement in their paper for a foreign State, & this work was done entirely in his own time & independently of his ordinary duties. The summarised translation was published in the paper as an advertisement with the words “Translated from the Portuguese language by B.” printed at the end. Defts. saw this advertisement, obtained permission to publish it as an advertisement in their paper, & reproduced it *verbatim*. It was proved that it was the practice of newspaper managers, when they wished to publish an advertisement appearing in another paper, to ask the permission of the advertiser to do so & to act upon his instructions, but that the addition to an advertisement of such words as “translated by, etc.,” was quite unprecedented:—**Held**: (1) the translation was an “original literary work,” within the 1911 Act, s. 1, of which pltf. was the author; (2) pltf. was the owner of the copyright therein within s. 5 of the 1911 Act; (3) defts. were not innocent infringers within s. 8 of the 1911 Act who were not aware of, & had no reasonable ground for suspecting, the existence of copyright in the work, & pltf. was entitled to damages.—**BYRNE v. STATIST Co.**, [1914] 1 K. B. 622; 83 L. J. K. 625; 110 L. T. 510; 30 T. L. R. 254; 58 Sol. Jo. 340.

Annotations:—*As to* (1) **Reid**. *University of London Press v. University Tutorial Press*, [1916] 2 Ch. 601; *Tate v. Thomas*, [1921] 1 Ch. 503.

42. — Examination papers.—Examiners were appointed for a matriculation examination of the University of London, a condition of appointment being that any copyright in the examination papers should belong to the University. The University agreed with pltf. co. to assign the copyright, & by deed purported to assign it to them. After the examination deft. co. issued a publication containing a number of the examination papers including three which had been set by two examiners who were co-pltfs., with criticisms on the papers & answers to questions:—**Held**: (1) the copyright subsisted in the examination papers as “original literary work” within the meaning of the 1911 Act, s. 1 (1); (2) the copyright vested in the examiners; (3) the examiners were not “in the employment” of the University “under a contract of service” within the meaning of the 1911 Act, s. 5 (1), (b); (4) the examiners were subject to an obligation under their appointment to assign the copyright to the University or as the University might direct; (5) the University having assigned its rights to pltf. co., pltf. co. was equitably entitled to the copyright; (6) pltf. co., having joined two of the examiners as co-pltfs., could sue for infringement of copyright in the papers set by the two examiners, but must fail as to the papers set by the other examiners; (7) deft. co., having failed to bring itself within the protection of the 1911 Act, s. 2 (1) (i), had infringed the copyright in the papers set by co-pltfs.—**UNIVERSITY OF LONDON PRESS, LTD. v. UNIVERSITY TUTORIAL PRESS, LTD.**, [1916] 2 Ch. 601; 86 L. J. Ch. 107; 115 L. T. 301; 32 T. L. R. 698.

Annotation:—**Conrad**. *Performing Right Soc. v. London Theatre of Varieties*, [1922] 2 K. B. 433.

PART II. SECT. 3, SUB-SECT. 1.

n. “Original literary work.”—The word “original” in Copyright Act, 1911, s. 1, does not imply inventive originality; the expression “original work” has there the meaning which is connoted by the word “author” in s. 5 of above Act.—**ROBINSON v. SANDS & MACDOUGALL PROPRIETARY, LTD.**

(1917), 23 C. L. R. 49.—**AUS.**

o. — *Annotated edition of ancient religious work.*—Pltf. brought out a new & annotated edition of a well-known Sanskrit religious work with the assistance of Pundits who re-cast & re-arranged the work, introduced various passages from other old Sanskrit books & added foot-notes. Defts. printed &

published an edition of the same work, the text of which was identical with that of pltf.’s work, with the same foot-notes, with slight differences:—**Held**: pltf.’s work was such a new arrangement of old matter as to be original work.—**GANGAVISHNU SHRIKISONDAS v. MORESHYA BAPUJI HEGISHTHE** (1889), 1 L. R. 13 Bom. 358.—**IND.**

43. — **Telegraphic code.**—Pltfs. published a code of made up words considered suitable for cabling purposes. Each word, which of itself was meaningless, consisted of five letters only, & differed from every other word in the code in at least two out of the five letters. In the preparation of the code all words which were unpronounceable were eliminated as were also all those which might lend themselves to error in transmission:—*Held*: the code was an "original literary work" within the meaning of that expression in 1911 Act, s. 1 (1).—*ANDERSON (D. P.) & Co., LTD. v. LIEBER CODE CO.*, [1917] 2 K. B. 469; 86 L. J. K. B. 1220; 117 L. T. 361; 33 T. L. R. 420; 61 Sol. Jo. 545.

— **Based on common sources of information.**
—*See* Nos. 17, 18, *ante*, No. 446, *post*.

Maps, charts, plans, etc.—*See* Sub-sect. 3, *post*.

SUB-SECT. 2.—BOOKS.

A. In General.

44. **Illustrations forming part of copyright book.**—Pltf. published a book containing letterpress, illustrated by wood-engravings printed on the same paper at the same time. Defts. published a similar book with different letterpress, but containing pirated copies of the wood-engravings. Pltf., upon motion for an injunction, proved that he had complied with the requisitions of the Copyright Act, 1842 (c. 45), but he had not complied with the Engraving Copyright Act, 1734 (c. 13), by printing the date of publication & the name of the proprietor on each copy:—*Held*: the Copyright Act, 1842 (c. 45), extended to the wood-engravings equally with the letterpress, & the ct. would grant an injunction.

Semble: a book does not necessarily include every print design or engraving which forms part of the book as well as the letterpress therein.—*BOGUE v. HOULSTON* (1852), 5 De G. & Sm. 267; 21 L. J. Ch. 470; 18 L. T. O. S. 326; 16 Jur 372; 64 E. R. 1111.

Annotations:—*Consd.* *Bradbury v. Hotten* (1872), L. R. 8 Exch. 1; *Maple v. Junior Army & Navy Stores* (1882), 21 Ch. D. 369; *Comyns v. Hyde* (1894), 72 L. T. 250; *Marshall v. Bull* (1901), 85 L. T. 77; *Davis v. Benjamin*, [1906] 2 Ch. 491.

45. — **Physical connection unnecessary.**—In order to entitle the proprietor of a periodical registered under Literary Copyright Act, 1842, c. 45, to the copyright in a picture issued as a supplement thereto, it is not necessary that such picture should be physically connected with the periodical; but it is sufficient if it appears from a reference thereto in the periodical or otherwise that as a matter of fact the picture forms part thereof.

The coloured picture is clearly a part of pltf.'s publication, for not only is it referred to in the periodical as "our illustration," but it bears on its face a declaration that it is a supplement thereto (*STIRLING, J.*).—*COMYNS v. HYDE* (1895), 72 L. T. 250; 43 W. R. 266; 11 T. L. R. 167; 39 Sol. Jo. 201; 13 R. 382.

46. — **Copyright in a book of which A. is the proprietor will not protect drawings the art copyright of which is not vested in him, though such drawings furnish the illustrations of the book.**

—*PETTY v. TAYLOR*, [1897] 1 Ch. 465; 66 L. J. Ch. 209; 75 L. T. 545; 45 W. R. 299.

47. — **In Sept. 1898, pltfs., wholesale manufacturers of furs, mantles, etc., published a catalogue of designs containing twelve illustrations. E. & W., retail drapers, having obtained one of these catalogues requested pltfs. to sell them some of the electro blocks of the illustrations, which they did. E. & W. handed over these blocks to defts., P. & Sons, a firm of fashion printers, for production in E. & W.'s catalogue. P. & Sons at the same time purchased the blocks of E. & W. deducting the price from their charge for the catalogues supplied to E. & W. In Nov. 1898, P. & Sons printed for defts., B. & Co., another firm of retail drapers, a catalogue containing eight illustrations from the blocks in question, but with different names. Thereupon pltfs. brought an action against B. & Co., & P. & Sons claiming an injunction to restrain defts. from reproduction & sale of the illustrations & consequential relief. The action as against B. & Co. was stayed on certain terms.**

Defendants, P. & Sons, stated they had purchased the blocks of E. & W. without any conditions or restrictions, & contended, amongst other defences, that pltfs. had no copyright in the illustrations.

Held: (1) engravings published as part of a book were protected by the copyright of the book itself, & pltfs. had a copyright in the illustrations in question as part of their book; & the illustrations, being a substantial part of the book, there had been an infringement of the book itself; (2) defts., P. & Sons, had only licence to use the blocks for the particular purpose for which they were assigned & pltfs. were entitled to an injunction & to delivery up of the blocks.—*MARSHALL (W.) & Co., LTD. v. BULL (A. H.), LTD.* (1901), 85 L. T. 77; 17 T. L. R. 684, C. A.

See, also, Nos. 75, 76, *post*.

48. **Combination of incidents in novel.**—*CORELLI v. GRAY* (1913), 30 T. L. R. 116, C. A.

Copyright in title.—*See* Sect. 9, *post*.

B. Books with New Matter.

49. **Additions—Incorporated in existing work—Existing work copyright—Protection refused.**—

Pltf. published a book of roads of Great Britain comprising P.'s book, to the copyright of which pltf. was not entitled, with improvements & additions obtained by actual survey & otherwise:—

Held: an injunction to restrain a publication of an edition of P.'s book, comprising pltf.'s improvements & additions would be refused.—*CARY v. FADEN* (1799), 5 Ves. 24; 31 E. R. 453, L. C.

Annotation:—*Consd.* *Matthewson v. Stockdale* (1806), 12 Ves. 270.

50. — **Additions considerable—Additions copyright.**—If an author makes very considerable additions to a work before printed he obtains a copyright in the additions, & can maintain an action for an infringement of it.—*CARY v. LONGMAN* (1801), 1 East, 358; 3 Esp. 273; 102 E. R. 138, N. P.

Annotations:—*Consd.* *Matthewson v. Stockdale* (1806), 12 Ves. 270; *Mawman v. Tegg* (1826), 2 Russ. 385; *Walter v. Steinkopff*, [1892] 3 Ch. 489.

51. — **Annotated edition of Shakespeare play—Protected.**—Pltfs. were the proprietors of

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p. Additions—Annotated edition of Shakespeare play—Resort to prior works—Independent labour.—A book, being an annotated edition of one of Shakespeare's plays, first published in Gt.

Britain by pltf. in 1895, consisted of an introduction, the text of the play, notes thereon, & a glossary. In the preparation of the book resort was had to the accumulation of information due to the industry of prior commentators & scholars, but its prepara-

tion involved much independent labour & research, & it was not a mere copy of written matter already published:—*Held*: pltf. was entitled to copyright.—*BLACKIE & SONS, LTD. v. LOTHIAN BOOK PUBLISHING CO. PROPRIETARY, LTD.* (1921), 29 C. L. R. 396.—*AUS*

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the copyright in an annotated edition of one of Shakespeare's plays. Defts., G. & Sons, published an annotated edition of the same play, edited by deft. M. Pltfs. alleged that the book published by defts., G. & Sons, was a colourable imitation of their book, & an infringement of their copyright therein in respect to general arrangement, sketches of character, literary notes, & quotations:—*Held*: pltfs.' book was a subject-matter of copyright, the use which deft., M., had made of pltfs.' book was illegitimate & an infringement of their copyright therein, & they were entitled to an injunction.—*MOFFATT & PAIGE, LTD. v. GILL & SONS, LTD. & MARSHALL* (1902), 86 L. T. 465; 50 W. R. 528; 18 T. L. R. 547; 46 Sol. Jo. 463, C. A.

Annotation:—*Mentd.* Aflalo v. Lawrence & Bullen, [1903] 1 Ch. 318.

See, also, Nos. 32, 33, 34, *ante*.

Fair user of existing work.—*See* Part XIII., Sect. 1, sub-sect. 2, C., *post*.

Work based on common original sources.—*See* Nos. 17, 18, *ante*; No. 446, *post*.

Work partly original, partly compilation.—*See* No. 84, *post*.

C. Works Contrary to Public Policy.

52. General rule.—The ct. will not act either by giving an injunction or an account, even upon a submission in the answer, upon a publication of such a nature that an action could not be maintained.

Injunction applied for against an invasion of copyright depending upon the effect of an agreement:—*Held*: it would be refused till recovery in an action.—*WALCOT v. WALKER* (1802), 7 Ves. 1; 32 E. R. 1, L. C.

Annotation:—*Reid.* Southey v. Sherwood (1817), 2 Mer. 435.

53. —.—*SOUTHEY v. SHERWOOD*, No. 584, *post*.

54. Immoral works.—The publisher of a libellous or immoral work cannot maintain an action against any person for publishing a pirated edition.—*STOCKDALE v. ONWHYN* (1826), 5 B. & C. 173; 2 C. & P. 163; 7 Dow. & Ry. K. B. 625; 4 L. J. O. S. K. B. 122; 108 E. R. 65.

Annotation:—*Mentd.* Greville v. Chapman (1844), 8 Jur. 189.

55. —.—*Pltf.* brought an action for the alleged infringement of her copyright in a novel by the sale & exhibition of burlesque cinematograph films, substantial parts of which were alleged to be reproductions of her novel. She claimed an injunction, damages, or, alternatively, an account of profits, & the delivery up of all infringing films:—*Held*: (1) *pltf.*'s novel, being of a highly immoral tendency, was disentitled to the protection of the ct.; (2) the films themselves contained incidents of an indecently offensive character such as would have equally disentitled them to the protection of the ct., & inasmuch as *pltf.* in her action as framed was adopting & claiming the benefit derived from the films on this ground also the action failed; (3) the action would be dismissed without costs to either party; (4) in considering whether such a literary work as a novel had been infringed by such a thing as a cinematograph film, the true inquiry was whether,

keeping in view the idea & general effect created by a perusal of the novel, there was such a degree of similarity as would lead one to say that the film was a reproduction of incidents described in the novel or of a substantial part of it; (5) the action must have failed on account of the burlesque nature of defts.' film.—*GLYN v. WESTON FEATURE FILM CO.*, [1916] 1 Ch. 261; 85 L. J. Ch. 261; 114 L. T. 354; 32 T. L. R. 235; 60 Sol. Jo. 293.

See, also, No. 584, *post*.

56. Libellous works.—*STOCKDALE v. ONWHYN*, No. 54, *ante*.

57. Irreligious works.—Motion for an injunction to restrain deft. from publishing a pirated edition of Lord Byron's poem of Cain:—*Held*: motion would be refused on the grounds that it was doubtful whether the poem did not tend to impugn the doctrines of the Scriptures.—*MURRAY v. BENBOW* (1822), 1 Jac. 474, n.; 4 State Tr. N. S. 1409; 37 E. R. 929, L. C.

Annotation:—*Mentd.* Bowman v. Secular Soc., [1917] A. C. 406.

58. —.—*Injunction* to restrain the infringement of copyright in a work as to which it appeared doubtful whether it did not tend to impugn the doctrines of the Scriptures, refused.—*LAWRENCE v. SMITH* (1822), Jac. 471; 37 E. R. 928.

Annotations:—*Mentd.* Smith v. L. & S. W. Ry (1854), Kay, 408; Bowman v. Secular Soc., [1917] A. C. 406.

D. Dishonest Books.

59. Original work—Alleged to be translation from well known author—Not protected.—In case for infringement of copyright of a book entitled "Evening Devotions, etc., from the German of S.," defts. pleaded, that S. had written religious works in German which had been translated into English, & were much valued, that *pltf.* employed one H. to write the book mentioned in the declaration, & with intent to defraud & deceive the public, & to make them believe that the book was a translation of an original book written by S. fraudulently published it as & for a translation of an original work written in German by S.; & that he published with the book a false & fraudulent preface, the object of which was to induce the public to believe that the work was really a translation of a work written by S.:—*Held*: the matters stated in the plea were sufficient to negative the existence of a valid copyright in *pltf.*, & consequently to preclude him from maintaining any action for piracy.—*WRIGHT v. TALLIS* (1845), 1 C. B. 893; 14 L. J. C. P. 283; 5 L. T. O. S. 411; 9 Jur. 946; 135 E. R. 794.

60. Misleading trade catalogue—Articles falsely described as "patent"—Buildings falsely alleged to be in plaintiff's occupation—Catalogue not protected.—*SLINGSBY v. BRADFORD PATENT TRUCK & TROLLEY CO.*, [1906] W. N. 51, C. A.

See, also, No. 49, *ante*.

E. Other Books.

61. The Law List.—*STEVENS & SONS v. WATERLOW & SONS, LTD.* (1877), 41 J. P. 37.

62. The Lawyer's Companion.—*STEVENS & SONS v. WATERLOW & SONS, LTD.* (1877), 41 J. P. 37.

g. — Critical & explanatory notes.—A selection of songs & poems, composed by numerous well-known authors were arranged not in chronological order of their production, but in gradation of feeling & subject, & at the end of the book were given some critical & explanatory notes:—*Held*: such "selection" could be the subject-

matter of copyright.—*MACMILLAN v. SURESH CHUNDER DEB* (1890), 1 L. R. 17 Calc. 951.—*IND.*

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r. Grammar.—A copyright may be acquired by the compiler of a subject & matter is novel & has not

been employed in previous books of the same nature.—*GHAFFUR v. JWALA* (1921), 1 L. R. 43 All. 412.—*IND.*

s. Practical forms of writs & instruments.—A work purporting to be "An analysis of the Heritable Securities & Investment Acts with an Appendix, containing Practical Forms of the

63. Photograph album—With pictorial borders a "book"—Within Copyright Act, 1842 (c. 45).]—An album for holding photographs with pictorial borders containing views of castles with short descriptions attached, was entitled by pltf., who claimed to have been the first inventor, the "Castle Album," & had been sold by him under that name:—*Held*: (1) pltf. had not, in the absence of distinct evidence that such name had become generally accepted in the market as exclusively denoting pltf.'s album, acquired any exclusive right to the name as a trade name so as to be able to restrain the use of it by others to describe their albums similarly illustrated, but not shown to be pirated from that of pltf.; (2) the album was not a "book" within the Copyright Act, 1842 (c. 45), s. 1.—*SCHOVE v. SCHMINCKÉ* (1), 33 Ch. D. 546; 55 L. J. Ch. 892; 55 L. T. 212; 34 W. R. 700.

Annotation.—*Consd.* Hildesholmer & Faulkner v. Dunn (1907), 15 T. L. R. 100.

64. Printed instructions on money box—Not sheet of letterpress separately published—Within Copyright Act, 1842 (c. 45), s. 2.]—*WARREN v. FOSTER BROTHERS CLOTHING CO., LTD.* (1906), 51 Sol. Jo. 145.

65. Index of stations in monthly edition of railway guide—Index to new work—Not new edition of former indexes.]—In 1903 a co. held a picture competition in one of their papers. For the purpose of this competition they entered into an arrangement with the proprietors of Bradshaw's Railway Guide for the issue of what was in effect a reprint of their index of stations to be used in connection with the competition. In 1914 the co. desired to hold a similar competition. They entered into similar negotiations with the proprietors of Bradshaw's Railway Guide, but these negotiations were unsuccessful. The co. subsequently published a special list of railway stations for the purposes of their competition:—*Held*: inasmuch as each monthly edition of Bradshaw was a new book the index to Bradshaw's Guide of 1914 could not be treated as a new edition of the index of 1902, & the special list issued by the co. was an infringement of the copyright of the proprietors of Bradshaw in their railway guide.—*BLACKLOCK (H.) & CO., LTD. v. PEARSON (C. ARTHUR), LTD.*, [1915] 2 Ch. 376; 84 L. J. Ch. 785; 113 L. T. 775; 31 T. L. R. 526.

See, also, No. 85, *post*.

Trade advertisement—Consisting chiefly of illustrations—Sheet of letterpress & book—Within Copyright Act, 1842 (c. 45), s. 2.]—*See* No. 91, *post*.
Dictionary.]—*See* No. 442, *post*.

Road books.]—*See* Nos. 20, 49, *ante*; No. 448, *post*.

Law reports.]—*See* Nos. 123, 124, 220, 402, *post*.

Birthday book.]—*See* No. 515, *post*.

Phonographic record.]—*See* No. 121, *post*.

Rolls for mechanical organ.]—*See* No. 120, *post*.

Song.]—*See* No. 97, *post*.

Newspaper.]—*See* No. 83, *post*.

See, also, No. 36, *ante*.

Writs & Instruments thereby introduced."

Held: the subject of copyright because their preparation & adjustment necessitated much care & thought.—*ALEXANDER v. MACKENZIE* (1847), 9 Dunl. (Ct. of Sess.) 748.—*SCOT*.

t. Reports of judgments—Where cases specially selected & arranged.]—In the reports of judgments, the reporter generally has no copyright, but in the selection of cases & in the arrangements of the reporting, he is protected. The principle is that whilst all are entitled to resort to common

sources of information, none are entitled to save themselves trouble & expense by availing themselves for their own profit of other men's works, subject to copyright & entitled to protection.—*JOGESH CHANDRA CHAUDHURI v. MOHIM CHANDRA RAI* (1914), 18 C. W. N. 1078.—*IND*.

a. School books for teaching children to read.]—School books for teaching children to read are entitled to the protection of the law of copyright.—*LENNIE v. PILLANS* (1843), 5 Dunl. (Ct. of Sess.) 416; 15 Sc. Jur. 184.—*SCOT*.

SUB-SECT. 3.—MAPS, CHARTS AND PLANS.

See, now, 1911 Act, s. 35 (1).

66. Map—Though compiled from others.]—Pltf. stated that he had compiled & published, for his sole benefit, a map of the island of St. Domingo, & had employed several persons to assist him in drawing the same from the best authorities, & engraved the same at a considerable expense, that he had a right to sell the same in exclusion of all other parties, that S. had published "The History of the island of St. Domingo," & prefixed to it a map of the island wholly copied from pltf.'s map, & exactly of the same description, with no other variation than its being reduced to a smaller scale. Deft. insisted that pltf.'s map was compiled from a map called the St. Domingo Pilot & other foreign maps, & therefore that pltf. was not the sole proprietor. The usual injunction was obtained upon the affidavits of pltf. & his engraver. Upon the coming in of deft.'s answer on motion to dissolve the injunction:—*Held*: it should be continued.—*FADEN v. STOCKDALE* (1797), 2 Bro. C. C. 80, n., 1 C. C.

67. Bird's eye view—Of seat of war—Book—Within Copyright Act, 1842 (c. 45), s. 2.]—(1) A bird's eye view of a seat of war is a book within the meaning of s. 2 of the above Act.

(2) The costs of a successful appeal will not be given in the absence of misconduct on the part of resp.—*STANNARD v. LEE* (1871), 6 Ch. App. 346; 40 L. J. Ch. 489; 24 L. T. 459; 19 W. R. 615, L. JJ.

Annotations:—*As to* (1) *Consd.* *Stannard v. Harrison* (1871), 24 L. T. 570. *Generally, Refd.* *Davis v. Comitti* (1885), 54 L. J. Ch. 419.

68. — Of locality—Landscape—Within Engraving Copyright Act, 1766 (c. 38).]—(1) A person may be the designer & inventor of a plan or artistic design within the meaning of the above Act, although he may not himself be able to execute it.

(2) A bird's eye view of a locality is a landscape within the meaning of the above Act.—*STANNARD v. HARRISON* (1871), 24 L. T. 570; 19 W. R. 811.

Annotation:—*Refd.* *Hole v. Bradbury* (1879), 12 Ch. D. 886.

69. Face of barometer with special letterpress—Not book separately published—Within Copyright Act, 1842 (c. 45), s. 2.]—The face of a barometer, displaying special letterpress is not "a book separately published within s. 2 of the above Act.—*DAVIS & CO. v. COMMITTI* (1885), 54 L. J. Ch. 419; 52 L. T. 539; 1 T. L. R. 216.

Annotation:—*Refd.* *Hollinrake v. Truswell*, [1894] 3 Ch. 420.

70. Cardboard pattern sleeve—With scales for adapting to various sizes—Not map chart or plan—Within Copyright Act, 1842 (c. 45), s. 2.]—Pltf. claimed copyright in a cardboard pattern sleeve containing upon it scales, figures, & descriptive words for adapting it to sleeves of any dimensions:—*Held*: it was not capable of copyright as a map, chart or plan within s. 2 of the above Act.

The object of the above Act was to prevent any one publishing a copy of the particular form of expression in which an author conveyed ideas or

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b. Map—Compiled from best sources of information—& differing in detail from previous maps.]—A map produced by a cartographer applying his faculties to the best sources of information within his reach, & which is in no sense a copy but presents points of difference from previous maps according to the use to which he purposes to apply it, is entitled to copyright.—*ROBINSON v. SANDS & MACDOUGALL PROPRIETARY, LTD.* (1916), 22 C. L. R. 124.—*AUS*.

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information to the world. These may be retained by any one though the book, map, or chart which embodied them has passed out of his possession (LORD HERSCHELL, C.).—HOLLINRAKE v. TRUSWELL, [1894] 3 Ch. 420; 63 L. J. Ch. 719; 71 L. T. 419; 10 T. L. R. 663; 38 Sol. Jo. 706; 7 R. 568, C. A.

Annotations:—Consd. Boosey v. Whight, [1900] 1 Ch. 122; Warren v. Foster Clothing Co. (1906), 51 Sol. Jo. 145; McCrum v. Eisner (1917), 87 L. J. Ch. 99. **Refd.** Walter v. Lane, [1900] A. C. 539; Libraco v. Shaw Walker (1913), 30 T. L. R. 22; Anderson v. Lieber Code Co. (1917), 117 L. T. 361.

What constitutes infringement.]—See No. 66, *ante*; Nos. 439, 440, *post*.

See, also, Nos. 17, 18, 20, *ante*.

SUB-SECT. 4.—COLLECTIVE WORKS AND COMPILATIONS.**A. Catalogues.**

71. If more than mere list of names—Descriptive catalogue—Books.]—(1) A bookseller's sale catalogue containing, in addition to the mere titles, etc., of the books, original annotations descriptive of the nature of the works offered for sale, is a proper subject of copyright, & it is no defence to say that the pirated work is not offered for sale itself, but merely used to promote the sale of the books mentioned in it.

(2) Where deft. sets up the case that his work is a fair compilation from a number of others, & not a mere copy from any one it is of the highest importance that he should produce his original manuscript.—HOTTEN v. ARTHUR (1863), 1 Hem. & M. 603; 2 New Rep. 485; 32 L. J. Ch. 771; 9 L. T. 199; 27 J. P. 676; 11 W. R. 934; 71 E. R. 264.

Annotations:—As to (1) **Folld.** Grace v. Newman (1875), L. R. 19 Eq. 623. **Consd.** Maple v. Junior Army & Navy Stores (1882), 21 Ch. D. 369. **As to (2)** **Consd.** Maple v. Junior Army & Navy Stores (1882), 21 Ch. D. 369.

72. ——— Conjuring apparatus.]—BLAND v. HAM (1873), *Times*, Jan. 16.

73. ——— Medicines & chemicals—Arranged in particular way.]—A chemist prepared a catalogue of articles, medicines, & drugs sold by him, arranged under various headings & sub-headings, which contained under the heading "Drugs & Chemicals, including Veterinary Medicines & Photographic Chemicals," an alphabetical list of such articles with their prices, & under the heading "Patent Medicines & Proprietary Preparations. Any preparation not in stock will be procured with as little delay as possible," an alphabetical list of such remedies with their prices. A co. carrying on several businesses in the same town as pltf. added a drug & dispensing department, & inserted in their catalogue copies of the headings & lists from the chemist's catalogue, omitting two preparations only. They also copied from his catalogue several other entries. The copying was admitted. On motion for an injunction to restrain the co. from infringing the chemist's copyright in his catalogue it was contended that mere dry lists of articles for sale with their prices could not be the subjects of copyright:—

Held: the lists were subjects of copyright, & an injunction would be granted.—COLLIS v. CATER. STOFFELL & FORTT, LTD. (1898), 78 L. T. 613.

74. ——— List of brood mares.]—Pltfs. published in the "General Stud Book," a fresh volume of which appeared every four years, lists of all the thoroughbred brood mares at the stud in Great Britain. Defts. compiled a book called "Bruce-Lowe Figures to Stud Book, Vol. 21," which contained, without pltfs.' permission, practically the whole of the list of brood mares published in Vol. 21 of the Stud Book. Pltfs. brought an action for an injunction restraining defts. from infringing their copyright. Defts. alleged they had a right to make use of the list in question, & their book would be sure to benefit pltfs. by increasing the sale of the Stud Book:—

Held: (1) the lists were not such bare lists of names as to be incapable of copyright; (2) an unfair use might be made of one book in the preparation of another even if there was no likelihood of competition between the former & the latter; (3) an action to restrain infringement of copyright would lie though no damage was shown.—WEATHERBY & SONS v. INTERNATIONAL HORSE AGENCY & EXCHANGE, LTD., [1910] 2 Ch. 297; 79 L. J. Ch. 609; 102 L. T. 856; 26 T. L. R. 527.

75. Illustrated catalogue—Illustrations of furniture—Not protected—Accompanying letterpress protected.]—C. published a book entitled The Illustrated Furnishing Guide, containing illustrations of articles of furniture made by him, with estimates & remarks on furnishing. W. shortly afterwards published a similar book entitled F. W. & Co.'s Illustrated Furnishing Guide, in which many of the drawings of furniture had been copied direct from those in C.'s book, & certain portions of the letterpress of C.'s book were reproduced *verbatim*:—**Held:** pltf. was entitled to an injunction as to the pirated letterpress, but not as regarded the illustrations, as they were but illustrated advertisements of articles sold by W., which he had a perfect right to sell, & there could be no copyright in an advertisement.—CORBETT v. WOODWARD (1872), L. R. 14 Eq. 407; 41 L. J. Ch. 656; 27 L. T. 260; 20 W. R. 963.

Annotations:—Consd. Grace v. Newman (1875), L. R. 19 Eq. 623. **Overd.** Maple v. Junior Army & Navy Stores (1882), 21 Ch. D. 369.

76. ——— Protected—Though catalogue not for sale.]—Pltfs., who were upholsterers, published an illustrated catalogue of articles of furniture. The illustrations were engraved from original drawings made by artists employed by pltfs., but the book contained no letterpress of such a description as to be the subject of copyright, & it was not published for sale, but was used by the pltfs. as an advertisement. Defts. published an illustrated catalogue, many of the illustrations in which were copied from those in pltf.'s book:—**Held:** a collection of prints published together in a volume was a book within the meaning of the Copyright Act, 1842 (c. 45), s. 2, & the proper subject of copyright, though it contained no such letterpress as could be the subject of copyright, & it made no difference that the book was not published for sale but only used as an advertisement, & pltfs. were entitled to an injunction restraining defts. from publishing any catalogue containing illustrations copied from pltfs.' book:—

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c. Trade catalogue—Price lists.]—H., a manufacturer of belt pulleys, etc., published a trade catalogue, which was a combination of several circulars, separately published by him. Taken

together, they constituted a systematic & complete set of tables with prices. The catalogue was the first publication of its kind. The circulars & price lists were novel & original, & were the product of much independent research, etc. B., a rival manufacturer, issued

a trade catalogue & circulars, which were virtually the same as H.'s:—**Held:** H.'s catalogue & circulars & price lists were proper subjects of copyright.—HARPERS, LTD. v. BARRY, HENRY & Co., LTD. (1892), 20 R. (Ct. of Sess.) 133.—SCOT.

MAPLE & Co. v. JUNIOR ARMY & NAVY STORES (1882), 21 Ch. D. 369; 52 L. J. Ch. 67; 47 L. T. 589; 31 W. R. 70, C. A.

Annotations:—*Consd.* Hildesheimer & Faulkner v. Dunn (1891), 64 L. T. 452; Lamb v. Evans, [1892] 3 Ch. 462. *Foll.* Comyns v. Hyde (1894), 72 L. T. 250. *Dist.* Collis v. Cater, Stoffell & Fortt (1898), 78 L. T. 613. *Consd.* Stephenson, Blake v. Grant, Legros (1916), 86 L. J. Ch. 93. *Refd.* Hollinrake v. Truswell (1894), 7 R. 568; Exchange Telegraph Co. v. Gregory (1895), 73 L. T. 120; Marshall v. Bull (1901), 85 L. T. 77; Davis v. Benjamin, [1906] 2 Ch. 491; Millar & Lang v. Polak, [1908] 1 Ch. 433.

See, also, No. 47, *ante*.

77. — **Collection of designs—For monuments—Protected.**—Pltf., a cemetery stonemason, employed & remunerated a person to collect monumental designs, & published a book containing sketches of such designs, with scarcely any letterpress. Deft. offered, after notice of motion for an injunction, to cancel the unsold designs & destroy the stones from which they were taken, but claimed to be paid his costs, but pltf. refused such payment:—*Held*: (1) pltf. had copyright in the book, & was entitled to an injunction to restrain the publication of designs copied from it; (2) pltf., although not the author, was to be regarded as equitable assign of the author before publication within the meaning of the Copyright Act, 1842 (c. 45); (3) the injunction would be made perpetual with costs.—GRACE v. NEWMAN (1875), L. R. 19 Eq. 623; 44 L. J. Ch. 298; 23 W. R. 517.

Annotations:—*As to* (1) *Dist.* Cable v. Marks (1882), 52 L. J. Ch. 107. *Refd.* Maple v. Junior Army & Navy Stores (1882), 21 Ch. D. 369. *As to* (2) *Consd.* Petty v. Taylor, [1897] 1 Ch. 465; University of London Press v. University Tutorial Press, [1916] 2 Ch. 601; Performing Right Soc. v. London Theatre of Varieties, [1922] 2 K. B. 433.

Illustrated advertisements.—*See* Sub-sect. 6, *post*.

Fraudulent catalogue.—*See* No. 60, *ante*.

As infringement.—*See* No. 125, *post*.

B. Directorics.

78. **East India Calendar.**—MATTHEWSON v. STOCKDALE, No. 17, *ante*.

79. **Trades directory**—Though some subscribers pay for special insertions.—In a trades directory, those persons who chose to pay for the privilege got their names printed in capital letters, with additional description of their trade or business, called “extra lines”:—*Held*: such payment had not the effect of making the information common property, so as to enable the compiler of a rival directory to reprint it from slips cut from the first, even where the persons whose names were so printed had been applied to to verify the information contained in the first directory, & had not only authorised but had actually paid for the insertion of their names in the second, with the distinctive features of capital letters & extra lines, & an injunction would be granted, but not to extend to advertisements distinct from the body of the work.—MORRIS v. ASHBEE (1868), L. R. 7 Eq. 34; 19 L. T. 550; 33 J. P. 133.

Annotations:—*Dist.* Cox v. Land & Water Journal Co. (1869), L. R. 9 Eq. 324. *Expld. & Dist.* Morris v. Wright (1870), 5 Ch. App. 279.

80. — **Headings of classification—& mass of advertisement—Not individual advertisement.**—A trades directory consisted of advertisements furnished by tradesmen classified under headings denoting the different trades, which headings were composed by pltf., the proprietor, or by persons paid by him to compose them, but there

was no express evidence that they were composed on the terms that the copyright should belong to him:—*Held*: (1) pltf. had a copyright in the headings; (2) though it was necessary under the Copyright Act, 1842 (c. 45), s. 18, that they should have been composed on the terms that he should have the copyright, this condition was satisfied because the fair inference from the circumstances of the case was that they had been composed on those terms.

Semble: although pltf. could not have copyright in a single advertisement, inasmuch as the advertiser must be at liberty to insert it elsewhere, he had copyright in the mass of advertisements as arranged.—LAMB v. EVANS, [1893] 1 Ch. 218; 62 L. J. Ch. 404; 68 L. T. 131; 41 W. R. 405; 9 T. L. R. 87; 2 R. 189, C. A.

Annotations:—*As to* (2) *Consd.* Walter v. Lane, [1900] A. C. 539. *Apprvd.* Lawrence & Bullen v. Afiato, [1904] A. C. 17. *Refd.* Robb v. Green, [1895] 2 Q. B. 315. *Generally, Refd.* Worthington Pumping Engine Co. v. Moore (1902), 19 T. L. R. 84; Ashburton v. Pape, [1913] 2 Ch. 469. *Mentd.* Louis v. Smellie (1895), 73 L. T. 226; Trego v. Hunt, [1895] 1 Ch. 462; Measures v. Measures, [1910] 1 Ch. 336; London Electric Supply Corp. v. Westminster Electric Supply Corp. (1913), 11 L. G. R. 1046; Morris v. Saxelby, [1915] 2 Ch. 57; Alpertou Rubber Co. v. Manning (1917), 86 L. J. Ch. 377.

Right to title.—*See* No. 135, *post*.

Legitimate user—In compilation of new directory.—*See* No. 79, *ante*; Nos. 443, 447, *post*.

C. Newspapers.

81. **All contents.**—The proprietor of a newspaper sought to restrain the piracy of a list of hounds:—*Held*: (1) although the piracy might be established the list was liable to such frequent changes & a correct list was so easily obtained that it was not a case for an interlocutory injunction; (2) the proprietor of a newspaper had such a property in all its contents as would entitle him to sue in respect of a piracy.—COX v. LAND & WATER JOURNAL Co. (1869), L. R. 9 Eq. 324; 39 L. J. Ch. 152; 21 L. T. 548; 18 W. R. 206.

Annotations:—*As to* (1) *N.F.* Walter v. Howe (1881), 17 Ch. D. 708. *Generally, Refd.* Cate v. Devon & Exeter Constitutional Newspaper Co. (1889), 40 Ch. D. 500; Walter v. Lane, [1900] A. C. 539.

See, also, No. 35, *ante*.

82. **Articles, notes, etc.**—COX v. PARDON (1886), 3 T. L. R. 221.

83. **Periodical work—Or book—Within Copyright Act, 1842 (c. 45), s. 18.**—(1) A newspaper is a “periodical work” or “book” within the meaning of s. 18 of the above Act.

(2) In an action in respect of the piracy of any article therein, the proprietor must show that the article in question was composed on the terms that the copyright therein should belong to him & that he had paid the author for his services.—WALTER v. HOWE (1881), 17 Ch. D. 708; 50 L. J. Ch. 621; 44 L. T. 727; 29 W. R. 776.

Annotations:—*As to* (1) *Foll.* Cate v. Devon & Exeter Constitutional Newspaper Co. (1889), 40 Ch. D. 500. *Refd.* Trade Auxiliary Co. v. Middlesborough & District Tradesmen's Protection Assoc. (1889), 40 Ch. D. 425; Walter v. Lane, [1900] A. C. 539. *As to* (2) *Consd.* Afiato v. Lawrence & Bullen, [1903] 1 Ch. 318.

Prospective series.—*See* No. 317, *post*.

Form of expression of news.—*See* No. 23, *ante*.

Translations appearing in.—*See* No. 41, *ante*.

Report of speech—Ownership.—*See* No. 194, *post*.

Right of property in title.—*See* No. 141, *post*.

Right of proprietor to sue in respect of infringement.—*See* No. 631, *post*.

PART II. SECT. 3, SUB-SECT. 4.—B.

d. **Shipping list.**—MACLEAN v. MOODY (1858), 20 Dunl. (Ct. of Sess.) 1154.—SCOT.

Sect. 3.—Literary work: Sub-sect. 4, C. & D.; sub-sects. 5, 6, 7, 8 & 9. Sect. 4.]

Copyright in title—Magazines.]—See Nos. 132, 137, post.

—Newspapers.]—See Nos. 141, 142, post.

D. Other Compilations.

84. Compilations & selections from former works — Combined with original work.]—Deft. published a book consisting of matter pirated from pltf.'s work intermixed with original matter:—*Held*: he would be enjoined from publishing his book containing any articles pirated from pltf.'s work without waiting till the whole of the pirated parts could be ascertained; (2) a work consisting partly of compilations & selections from former works & partly of original compositions might be the subject of copyright.—*LEWIS v. FULLARTON* (1839), 2 Beav. 6; 8 L. J. Ch. 291; 3 Jur. 669; 48 E. R. 1081.

Annotations:—As to (1) Folld. Kelly v. Morris (1866), L. R. 1 Eq. 697; *Morris v. Ashbee* (1868), L. R. 7 Eq. 34; *Hogg v. Scott* (1874), L. R. 18 Eq. 444. *As to (2) Consd. Jarrold v. Houlston* (1857), 3 K. & J. 708. *Refd. Spiers v. Brown* (1858), 6 W. R. 352. *Generally, Refd. Morris v. Wright* (1870), 5 Ch. App. 279; *Moffatt & Paige v. Gill & Marshall* (1902), 86 L. T. 465.

Chronological works.]—See No. 17, ante, No. 438, post.

Encyclopædia.]—See Nos. 213, 214, 525, post.

Guide book.]—See No. 443, post.

Lists of bills of sale & deeds of arrangement.]—See No. 233, post.

85. Local time table—Copied from railway companies' tables — Not protected — Where no original work.]—The mere publication in any particular order of the time tables issued by railway cos. cannot be claimed as a subject-matter of copyright, if no more has been done than to copy them in their order, leaving out such stations as the author thinks fit. But abridged information of train service in connection with circular tours of a particular locality may be the subject-matter of copyright.

Applt., the proprietor of a monthly penny railway time table affecting the P. district, sought an injunction against resps., the publishers of a new P. railway time table, to restrain the sale of their time tables for July 1891, on the ground of infringement. He alleged that resps., instead of going to the common & public sources for materials, substantially copied his book, & thus took advantage of his skill & labour in condensing into a small space a huge mass of information, & that they had also copied his circular tour information. This latter charge was admitted. The circular tour information occupied only four pages out of about forty of applt.'s book:—

Held: (1) the applt. was entitled to an injunction

against the reproduction of his compilation of circular tours, it being an abridgment of information of a most useful description, &, although it occupied such a small space, it was to be treated as an independent work, & protected by copyright law; (2) applt. was not entitled to an injunction with respect to the railway time tables, for the books were not by any means identical, & it being only necessary for either party to copy such tables in order to provide the same information in his book as in that of the other party, substantial appropriation must have been shown before proceedings on the ground of infringement of copyright could be justified.—*LESLIE v. YOUNG & SONS*, [1894] A. C. 335; 6 R. 211, H. L.

Annotation:—As to (1) & (2) Consd. Walter v. Lane, [1899] 2 Ch. 749.

Railway Guide Index.]—See No. 65, ante.

86. Tables calculated by author—Protected—Through similar tables already published.]—*BAILY v. TAYLOR*, No. 593, post.

—Trade statistics.]—See No. 413, post.

Telegraphic code.]—See No. 43, ante; Nos. 399, 400, post.

Infringement of compilation.]—See No. 65, ante; Nos. 399, 400, 412, 413, 525, post.

Infringement by compilation.]—See No. 447, post.

SUB-SECT. 5.—TRANSLATIONS.

87. Protected.]—Pltf. was the proprietor of a periodical work called "The Repertory of Arts, Manufacture, & Agriculture." Defts. were publishers of another periodical work called "The Tradesman, or Commercial Magazine," which contained articles copied from pltf.'s work without his consent, being translations from the French & German languages & specifications of patents:—*Held*: (1) copyright in translation, whether produced by personal application & expense, or gift, would be protected by injunction; (2) there was no copyright in specifications of patents.—*WYATT v. BARNARD* (1814), 3 Ves. & B. 77; 35 E. R. 408.

Annotations:—As to (1) Consd. Walter v. Lane, [1899] 2 Ch. 749. *Generally, Mentd. Walter v. Steinkopf*, [1892] 3 Ch. 489.

88. Need not be literal.]—Pltf. was assigned rights by three out of four part owners of a pantomime, the fourth being dead:—*Held*: (1) he was entitled to sue for an infringement; (2) where a copyright had expired before the passing of the International Copyright Act, 1886 (c. 33), s. 6, that Act created no new right; (3) a translation of a foreign play, in order to be protected under the law of International Copyright, need not be absolutely literal, it would be sufficient if it was

PART II. SECT. 3, SUB-SECT. 4.—D.

e. Compilations of entries in Registrar-General's books—Where appropriate requisite.]—Pamphlets containing compilations or condensations of entries contained in the books of the Registrar-General (e.g. notices of intention to file Bills of Sale) accessible to everybody on payment of fees, may be the subject of copyright if such compilations or condensations require, besides the expenditure of considerable time & labour, some appreciable skill, however small.—*HALL & CO. v. WHITTINGTON & CO.* (1892), 18 V. L. R. 525.—**AUS.**

1. Industrial Societies' rules.]—General rules for Industrial Societies under Industrial, etc., Societies Act, 1876, had been copyrighted by an

official of pltf. society, which was subsequently registered under that Act. The copyright in the rules was afterwards assigned to the society, & a new edition was prepared & copyrighted in the name of the society, the date of the publication of the second edition being given as the date of the first publication of the work. The rules, had, by arrangement with pltf. society, been adopted by certain societies in Ireland. Deft. society was not a party to this arrangement, & had published rules practically identical with those used by the societies acting under the arrangement:—*Held*: pltf. were entitled to a declaration that the defts. had infringed the copyright in the later rules, which were a new work.—*CO-OPERATIVE UNION, LTD. v. KILMORE, AUGHRIM & KILLUCAN DAIRY SOCIETY, LTD.* (1912), 47 I. L. T. 7.—**IR.**

g. School circulars & entrance forms—Protection not ousted by commercial character of compilation.]—The purely commercial or business character of a compilation does not oust the right to protection of copyright, if time, labour & experience have been devoted to its production. Pltf., the proprietor of a school for the cure of stammering, had obtained copyright for publications consisting of: (1) "Applicant's Blank," a series of questions to be answered by entrants to the school; (2) "Information for Stammerers," an advertisement circular; (3) "Entrance Memorandum," an agreement to be signed by entrants; & (4) "Entrance Agreement," similar to No. 3, but more formal:—*Held*: the publications were the subject of copyright.—*CHURCH v. LINTON* (1894), 25 O. R. 131.—**CAN.**

substantially a translation.—*LAURI v. RENAD*, [1892] 3 Ch. 402; 61 L. J. Ch. 580; 67 L. T. 275; 40 W. R. 678; 8 T. L. R. 637; 36 Sol. Jo. 572, C. A.

Annotations:—As to (2) *Consd. Hanfstaengl Art Publishing Co. v. Holloway*, [1893] 2 Q. B. 1. *Generally, Mentd. West v. Gwynne* (1911), 80 L. J. Ch. 578; *Cescinsky v. Routledge*, [1916] 2 K. B. 325; *R. v. Southampton Income Tax Comrs.*, *Ex p. Singer*, [1916] 2 K. B. 249; *Gloucester Union v. Woolwich Union*, [1917] 2 K. B. 374; *Sharp & Knight v. Chant*, [1917] 1 K. B. 771.

Published as advertisement—In newspaper.—*See No. 41, ante.*

Work professing to be.—*See No. 59, ante.*

SUB-SECT. 6.—ADVERTISEMENTS.

89. Trade circulars & cards—Protected—Through trade name of goods advertised not subject of exclusive rights.—*NATIVE GUANO CO., LTD. v. SEWAGE MANURE CO.* (1887), 3 T. L. R. 693; 4 R. P. C. 473; *on appeal* (1888), 4 T. L. R. 372, C. A.; (1889), 8 R. P. C. 125, H. L.

90. Arrangement of—In trades directory—Protected—Not individual advertisement.—*LAMB v. EVANS*, No. 80, *ante.*

See, also, No. 79, ante.

91. Sheets of illustrations—With names of firms—& names & prices of articles—Protected.—A trade advertisement consisted of a sheet of illustrations with no letters except the name of the advertising firm & the names & prices of the articles:—*Held*: original illustrations on such a sheet would be entitled to protection even in a case where there was no original letterpress.—*DAVIS v. BENJAMIN*, [1906] 2 Ch. 491; 75 L. J. Ch. 800; 95 L. T. 671; 22 T. L. R. 702.

Annotation:—*Folld. Stephenson, Blake v. Grant, Legros* (1916), 86 L. J. Ch. 93.

Trade catalogues.—*See Nos. 75, 76, 77, ante.*

Translation of speech in newspaper.—*See No. 41, ante.*

See, also, Nos. 104, 107, post.

SUB-SECT. 7.—ABRIDGMENTS, ANTHOLOGIES, ENCYCLOPÆDIAS AND QUOTATIONS.

92. Selections from former works—Combined with compilations—& original compositions—Protected.—*LEWIS v. FULLARTON*, No. 84, *ante.*

See, also, No. 32, ante.

Abridgment—May be new work.—*See Nos. 422, 426, post.*

Whether amounting to infringement.—*See Nos. 124, 409, 422, 423, 426, 427, post.*

Anthology—Whether amounting to infringement.—*See No. 416, post.*

Quotations—Whether amounting to infringement.—*See Nos. 412, 413, 414, 417, post.*

SUB-SECT. 8.—UNPUBLISHED WORKS.

See Sect. 8, post.

SUB-SECT. 9.—LECTURES, SERMONS AND SPEECHES.

93. Lecture.—Where the ct. is called upon to restrain a publication, on the ground that it is a piracy of a composition which has been substantially reduced into writing, it is the duty of the ct. to see that pltf. produces his written composition, & an injunction will not be granted

to restrain an alleged piracy of lectures delivered orally, when no written composition substantially the same with these lectures is produced. Persons attending an oral lecture have no right to publish it for profit.

Qu.: whether there is any legal right of property in the sentiments & language of a lecture delivered orally, & which cannot be shown to have been reduced into writing.—*ABERNETHY v. HUTCHINSON* (1825), 1 H. & Tw. 28; 3 L. J. O. S. Ch. 209; 47 E. R. 1313, L. C.

Annotations:—*Distd. Nicols v. Pitman* (1884), 26 Ch. D. 374. *Consd. Caird v. Sime* (1887), 12 App. Cas. 326; *Lamb v. Evans*, [1893] 1 Ch. 218. *Refd. Prince Albert v. Strange* (1849), 1 Mac. & G. 25; *Morison v. Moat* (1851), 9 Hare, 241; *Walter v. Lane*, [1899] 2 Ch. 749; *Philip v. Pennell* (1907), 97 L. T. 386.

94. — Whether written or not—Audience admitted without payment—Protected.—*N.*, an author & a lecturer upon scientific subjects, delivered a lecture from memory, though it was in manuscript. The audience were admitted to the room by tickets issued gratuitously. *P.*, the author of a system of shorthand writing, & publisher of works intended for instruction in the art of shorthand writing, attended the lecture, & took notes, nearly *verbatim*, in shorthand of it, & afterwards published the lecture in his monthly periodical. On motion for an injunction to restrain the publication:—*Held*: where a lecture was delivered to an audience limited & admitted by tickets, the understanding between the lecturer & the audience was that, whether the lecture had been committed to writing beforehand or not, the audience were quite at liberty to take the fullest notes for their own personal purposes, but were not at liberty to use them afterwards for the purpose of publishing the lecture for profit, & the publication of the lecture in shorthand characters was not to be regarded as being different in any material sense from any other, & injunction accordingly.—*NICOLS v. PITMAN* (1884), 26 Ch. D. 374; 53 L. J. Ch. 552; 50 L. T. 254; 48 J. P. 549; 32 W. R. 631.

Annotations:—*Consd. Caird v. Sime* (1887), 12 App. Cas. 326. *Refd. Boosey v. Whight*, [1899] 1 Ch. 836; *Walter v. Lane*, [1899] 2 Ch. 749.

95. — By university professor—Students admitted on payment—Protected.—*Applt.*, a university professor, delivered lectures in his classroom as part of his ordinary course to students of the university, who were admitted on payment of the prescribed fees:—*Held*: such delivery of the lectures was not equivalent to a communication of them to the public at large, & *applt.* was entitled to restrain other persons from publishing them without his consent.—*CAIRD v. SIME* (1887), 12 App. Cas. 326; 57 L. J. P. C. 2; 57 L. T. 634; 36 W. R. 199; 3 T. L. R. 681, H. L.

Annotations:—*Consd. Exchange Telegraph Co. v. Gregory* (1895), 73 L. T. 120; *Walter v. Lane*, [1900] A. C. 539; *Mansell v. Valley Printing Co.*, [1908] 2 Ch. 441. *Refd. Macmillan v. Dent*, [1907] 1 Ch. 107; *Monckton v. Gramophone Co.* (1912), 106 L. T. 84.

Ownership of report.—*See No. 194, post.*

SECT. 4.—DRAMATIC WORKS.

96. Introduction to pantomime—“Dramatic entertainment.”—*LEE v. SIMPSON*, No. 506, *post.*

97. Song—Sung in character with gesture—“Dramatic piece” not “book.”—*Pltf.* was the proprietor with the right of singing it when & where he pleased, of the words of a comic song, which he sang to a well-known air for profit at public music halls, dressed in character, & accompanying his singing with gesture & expression. *Pltf.* had

Sect. 4.—Dramatic works. Sect. 5: Sub-sects. 1, 2 & 3. Sect. 6.]

not printed the song nor, otherwise than by singing it as above mentioned, had he ever published it. Deft., unknown to & without the consent of pltf., printed & published, in a penny book of songs, a song, the words of which closely resembled & imitated the words of pltf.'s song:—*Held*: pltf.'s song was not a "book" within the meaning of the Copyright Act, 1842 (c. 45), s. 2, but came within the definition of a "dramatic piece," as a "musical or dramatic entertainment," in the same sect.—*CLARK v. BISHOP* (1872), 25 L. T. 908.

Annotations:—*Consd.* Hardacre v. Armstrong (1905), 21 T. L. R. 189. *Refd.* Fuller v. Blackpool Winter Gardens & Pavillion Co., [1895] 2 Q. B. 429.

98. — Particular method of presentation— "Dramatic piece"—Not "musical composition."—*ROBERTS v. BIGNELL, ASHER & ROBERTSON* (1887), 3 T. L. R. 552.

Annotation:—*Consd.* Fuller v. Blackpool Winter Gardens & Pavillion Co., [1895] 2 Q. B. 429.

99. — — — — —.]—To bring a musical composition within the provisions of the Dramatic Copyright Act, 1833 (c. 15), it must have the characteristics of a dramatic piece, & whether it has such characteristics must be determined in each case by the nature of the composition itself. A song that does not require for its representation either dramatic effect or scenery is not a dramatic piece, although it is intended to be sung in appropriate costume on the stage of music halls.—*FULLER v. BLACKPOOL WINTER GARDENS & PAVILION CO.*, [1895] 2 Q. B. 429; 64 L. J. Q. B. 699; 73 L. T. 242; 11 T. L. R. 513; 14 R. 604, C. A.

Annotations:—*Consd.* Sarpy v. Holland, [1908] 1 Ch. 443. *Refd.* Tate v. Fullbrook, [1908] 1 K. B. 821. *Mentd.* Tillmanns v. S.S. Knutsford, [1908] 2 K. B. 385.

100. Sketch—Limited to something capable of being printed & published.]—A dramatic sketch in which there was copyright was, as regards the verbal composition, in substance entirely different from another dramatic piece alleged to constitute an infringement of that copyright:—*Held*: (1) the mere fact that accessorial matters, such as scenic effects, make-up of actors, or stage "business," in the latter piece as performed were similar to those employed in the performance of the former would not constitute an infringement of the copyright therein, such matters, taken by themselves, not being the subject of protection under the Dramatic Copyright Act, 1833 (c. 15), & the Copyright Act, 1842 (c. 45), though in cases where the verbal composition of the pieces was more or less similar such matters might be regarded as throwing light on the question whether there had been an infringement; (2) Dramatic Copyright Act, 1833 (c. 15), & the Copyright Act, 1842 (c. 45), contemplated as the subject of their protection something which could be printed & published.—*TATE v. FULLBROOK*, [1908] 1 K. B. 821; 77 L. J. K. B. 577; 98 L. T. 706; 24 T. L. R. 347; 52 Sol. Jo. 279, C. A.

Annotations:—*As to* (1) *Folld.* Bishop v. Viviana (1909), *Times*, Jan. 15. *Consd.* Karno v. Pathé Frères (1909), 100 L. T. 260; *Tate v. Thomas*, [1921] 1 Ch. 503. *As to* (2) *Consd.* Tate v. Thomas, [1921] 1 Ch. 503.

101. — Dance—Not protected.]—*BISHOP v. VIVIANA & CO.* (1909), *Times*, Jan. 15.

Copyright in title of play.]—*See* Nos. 139, 140, 193, *post*.

Infringement.]—*See* Part XIII., Sect. 1, sub-sect. 5, & No. 410, *post*.

What constitutes publication.]—*See* Nos. 130, 152, *post*.

SECT. 5.—ARTISTIC WORKS.

SUB-SECT. 1.—PICTURES, PRINTS, DRAWINGS, DESIGNS, ETC.

See, now, 1911 Act, s. 35 (1).

102. Not confined to works of invention—Anything already in nature included.]—The Engraving Copyright Act, 1734 (c. 13), is not merely confined to works of invention only, but means the designing or engraving anything that is already in nature.—*BLACKWELL v. HARPER* (1740), 2 Atk. 93; *Barn. Ch.* 210; 26 E. R. 458, L. C.

Annotation:—*Consd.* Newton v. Cowie (1827), 4 Bing. 234.

103. Prints engraved & printed abroad—Published in England—Not protected.]—Prints engraved & struck off abroad but published here are not protected from piracy.—*PAGE v. TOWNSEND* (1832), 5 Sim. 395; 58 E. R. 385.

Annotations:—*Refd.* D'Almaine v. Boosey (1835), 1 Y. & C. Ex. 288; *Chappell v. Purday* (1845), 14 M. & W. 303; *Cocks v. Purday* (1848), 5 C. B. 860; *Boosey v. Purday* (1849), 4 Exch. 145; *Jefferys v. Boosey* (1854), 4 H. L. Cas. 815.

See, now, 1911 Act, s. 1 (1) (a).

104. Title page of "Punch"—Headings on shop bills.]—Application on behalf of the proprietors of "Punch" for an injunction to restrain deft. from transferring to the title page of a periodical published by him the frontispiece or picture which was printed on the first leaf of each number of "Punch," & also from pirating the humorous letters in which pltf. inscribed the word "Punch" on their shop bills:—*Held*: the injunction should issue.—*BRADBURY v. MARSHALL* (1843), 1 L. T. O. S. 408.

105. Design on ballot papers—No artistic merit—Not protected.]—Pltfs. were a firm of printers. J., a member of the firm, conceived the idea of printing & publishing cards bearing a representation of a hand holding a pencil in the act of completing a cross within a square, with a view to such cards being used at parliamentary & other elections for the guidance & instruction of illiterate voters in the marking of their ballot papers. J., being unable to draw, employed an artist in the service of the firm to make, under his directions, a drawing of the representation above described. Subsequently defts. published similar cards with a hand holding a pencil in the act of completing a cross in a particular square of a voting paper. The hand on defts.' cards was in a slightly different position, but the idea was taken from pltf.'s cards. Neither pltf.'s nor defts.' drawings were of any artistic merit:—*Held*: an action for infringement of copyright could not be maintained, on the grounds that pltf.'s drawing was so far not the subject of copyright that it was not entitled to protection against an imitation which was not an exact reproduction.—*KENRICK & CO. v. LAWRENCE & CO.* (1890), 25 Q. B. D. 99; 38 W. R. 779.

Annotations:—*Consd.* Hildesheimer & Faulkner v. Dunn (1891), 64 L. T. 452. *Refd.* Melville v. Mirror of Life Co., [1895] 2 Ch. 531.

106. Stamped design—"Drawing"—Within Fine Arts Copyright Act, 1862 (c. 68).]—M., trading as M. & L., was the author of original drawings of designs for decorating Christmas cards. Dies of the drawings or designs were engraved & from such dies copies or reproductions of the drawings or designs were struck off or stamped generally in gold leaf & were then affixed to the cards. In Feb. 1905, M. contracted with the trustees of an intended co., to be called M. & L., Ltd., for the sale to the co., when incorporated of his business & the copyright of his drawings & designs, & on March 1, 1905, M. signed an instrument whereby he assigned to M. & L., Ltd., the copyright of all

his drawings & designs. On March 3, 1905, the co. was incorporated & afterwards executed the usual adoptive agreement. In an action by the co. against P. for infringing their copyright in the drawings:—*Held*: (1) M.'s drawings or designs were "drawings" within the Fine Arts Copyright Act, 1862 (c. 68), & the copyright extended to the right of multiplying copies or reproductions of them by the method above stated; (2) Mar. 1 was the true date of the assignment & the names of the parties thereto were truly stated as M. & L., & M. & L., Ltd., notwithstanding that the co. did not come into existence till Mar. 3.—*MILLAR & LANG, LTD. v. POLAK*, [1908] 1 Ch. 433; 77 L. J. Ch. 241; 98 L. T. 378; 24 T. L. R. 228.

107. Trade label.—*SMITH BROTHERS (WHITEHAVEN), LTD. v. REDFEARN* (1911), 131 L. T. Jo. 318.

108. Design for type face.—(1) Assuming that a design for a fount of type is registrable as a design, no user of the letters which together make up the design is an infringement unless it amounts to a copy or colourable imitation of the design as a whole.

(2) Drawings of letters for type faces or specimen sheets of letters illustrating type faces could be the subject-matter of copyright under Fine Arts Copyright Act, 1862, & Copyright Act, 1843, respectively, & the proprietors of such copyright can acquire copyright under the 1911 Act, s. 24, in substitution for their previously existing rights.—*STEPHENSON, BLAKE & CO. v. GRANT, LEGROS & CO.* (1916), 86 L. J. Ch. 93; 115 L. T. 666; 33 T. L. R. 24; 61 Sol. Jo. 55; 33 R. P. C. 406; *affd.* (1917), 86 L. J. Ch. 439, C. A.

Annotation:—*Generally*, *Mentd. Shaw v. Scottish Widows' Fund Life Assce. Soc. & Shaw & Co. (Limerick)* (1917), 117 L. T. 697.

.]—
specification.]—*See No.*

post.

Illustrations in catalogue.—*See Nos. 75, 76, 77, ante.*

Bird's eye view.—*See Nos. 67, 68, ante.*

Unpublished works.—*See Nos. 125, 128, post.*

Effect of limited assignment of copyright.—*See No. 289, post.*

What constitutes infringement.—*See Part XIII., Sect. 1, sub-sect. 3, A. & C., post.*

Registration of designs under Patents & Designs Act, 1907 (c. 29).—*See TRADE MARKS, TRADE NAMES, & DESIGNS.*

SUB-SECT. 2.—PHOTOGRAPHS.

109. Photographic portraits.—Pltf., a photographic artist, lent to T., the publisher of an illustrated newspaper, certain photographic portraits to be engraved & published in T.'s newspaper. T. having executed an assignment for the benefit of creditors, the newspaper & plant were sold by auction, & some of the original negatives & photographic portraits lent to him by pltf. were, among the other effects on the premises, sold by public auction & bought by deff., who made reduced copies, which he published & sold without the permission of pltf. Pltf. declared in trespass for taking the portraits, claiming damages from deff. for making & selling reduced & other copies of the same, & also in detinue for the portraits & negatives, & claimed a writ of injunction to re-

strain deff. from continuing to make & sell such reduced & other copies. Pltf. had a verdict for 40s. on the first count, & for £25 on the second count:—*Held*: pltf. was entitled to retain the verdict on both counts, & to the writ of injunction as claimed.—*MAYALL v. HIGREY* (1862), 1 H. & C. 148; 31 L. J. Ex. 329; 6 L. T. 362; 8 Jur. N. S. 622; 10 W. R. 631; 158 E. R. 837.

Annotation:—*Apld. Mansell v. Valley Printing Co.*, [1908] 1 Ch. 567.

110. Photograph of engraving of picture.—An information was laid by G. against W. charging that he, not being the proprietor of copyright in certain paintings & photographs, had unlawfully sold copies thereof. The photographs had been made for G. from engravings of which he was the proprietor:—*Held*: there might be copyright in a photograph taken from an engraving of a picture.—*GRAVES' CASE* (1869), L. R. 4 Q. B. 715; *sub nom. Re GRAVES, Ex p. WALKER*, 10 B. & S. 680; 39 L. J. Q. B. 31; *sub nom. Re WALKER & GRAVES*, 20 L. T. 877; *sub nom. Ex p. WALKER*, 33 J. P. 661; 17 W. R. 1018.

Annotations:—*Refd. Hantstaengl v. Empire Palace, Hantstaengl v. Newnes*, [1894] 3 Ch. 109. *Mentd. Troitzsch v. Rees* (1887), 3 T. L. R. 773; *Tuck v. Priester* (1887), 19 Q. B. D. 629.

Ownership of copyright.—*See Part IV., Sect. 1, sub-sect. 1, B. (a), post.*

What constitutes infringement.—*See Nos. 460, 561, post.*

SUB-SECT. 3.—SCULPTURE.

See, now, 1911 Act, s. 35 (1).

111. Model—Toy soldier—If displaying artistic skill & merit.—Metal models of mounted yeomen produced & sold as toys are, where there is evidence

producer, within the protection of the Sculpture Copyright Act, 1814 (c. 56).—*BRITAIN v. HANKS BROTHERS & CO.* (1902), 86 L. T. 764; 18 T. L. R. 525.

112. Cast—New & original cast of fruit & leaves—“Subject being matter of invention in sculpture”—*Sculpture Copyright Act, 1814 (c. 56).*—S. 1 of the above Act, which provides that every person who makes or causes to be made any new & original sculpture, model, copy, or cast of the human figure, or of any animal, or of any animal combined with the human figure, or of “any subject being matter of invention in sculpture” is to have the sole right & property in such sculpture, model, copy, or cast for a term of fourteen years, includes new & original casts of fruit & leaves.—*CAPRONI v. ALBERTI* (1891), 65 L. T. 785; 40 W. R. 235; 8 T. L. R. 146; 36 Sol. Jo. 125.

What constitutes infringement.—*See Nos. 480, 543, post.*

SECT. 6.—MUSICAL WORKS.

See Musical (Summary Proceedings) Copyright Act, 1902 (c. 15), s. 3, 1911 Act, s. 1 (1).

113. Musical composition—“Writing”—Within *Copyright Act, 1709 (c. 19).*—A musical composition is a “writing” within the above Act, for the encouragement of learning by vesting the copies of printed books in the authors or purchasers of such copies, during the times therein

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139; *Walter v. Ashton*, [1902] 2 Ch. 282. *As to (2) Consd.* *Weldon v. Dicks* (1878), 10 Ch. D. 247. *Reid. Bradbury v. Beeton* (1869), 18 W. R. 33. *Generally, Reid. Dixon v. Holden* (1869), L. R. 7 Eq. 488; *Kelly v. Byles* (1880), 13 Ch. D. 682; *Lee v. Gibbings* (1892), 67 L. T. 263. *Mentd.* *Springhead Spinning Co. v. Riley* (1868), L. R. 6 Eq. 551; *Levy v. Walker* (1879), 10 Ch. D. 436.

133. — Hackneyed phrase—Already used as title—Not protected.]—Pltf. published in numbers, in a weekly periodical, a tale intituled "Splendid Misery: or, East End & West End." Deft. subsequently commenced issuing in weekly parts, in a newspaper published by him, a tale by B. intituled "Splendid Misery." In an action to restrain deft. from continuing his publication of B.'s tale under the title of "Splendid Misery" it was proved that a novel which once had a large circulation had been published in 1801 under the title of "Splendid Misery," & that second-hand copies could still be met with:—*Held*: pltf. had no copyright in the title "Splendid Misery," for copyright can only exist in something original, & the mere adopting as a title a hackneyed phrase, which moreover had been used as the title of a novel many years before, & which for anything that appeared might have been copied from that novel, could not give any copyright in that title.—*DICKS v. YATES* (1881), 18 Ch. D. 76; 50 L. J. Ch. 809; 44 L. T. 660, C. A.

Annotations:—*Consd.* *Primrose Press Agency Co. v. Knowles* (1886), 2 T. L. R. 404. *Folld.* *Crotch v. Arnold* (1909), 54 Sol. Jo. 49. *Consd.* *Broad v. Meyer* (1912), 57 Sol. Jo. 145. *Reid.* *Licensed Victuallers' Newspaper Co. v. Bingham* (1888), 38 Ch. D. 139. *Mentd.* *Re Foster v. G. W. Ry.* (1882), 8 Q. B. D. 515; *Re Mills' Estate, Ex p. Works & Public Buildings Comrs.* (1886), 34 Ch. D. 24; *Lambton v. Parkinson* (1887), 35 W. R. 545; *Jones v. G. C. Ry.* (1901), 4 W. C. C. 23; *Andrew v. Grove*, [1902] 1 K. B. 625; *Leckhampton Quarries Co. v. Ballinger & Cheltenham R. D. C.* (1905), 93 L. T. 93; *Ashburton v. Gray*, [1916] 2 K. B. 353; *Ritter v. Godfrey* (1919), 89 L. J. K. B. 467.

See, also, No. 140, *post*.

134. — Must be generally accepted as exclusive.]—*SCHOVE v. SCHMINCKÉ*, No. 63, *ante*.

135. — "Post Office Directory"—No exclusive right.]—Pltf. was the proprietor of a directory entitled the "Post Office Directory of the West Riding of Yorkshire," & he had for several years published "Post Office Directories" of other counties. Defts. published a directory for the town of B., which is within the West Riding, intituled "The Post Office B. Directory," but it was not similar to the pltf.'s directory in price or appearance:—*Held*: pltf. had no right to the exclusive use of the words "Post Office Directory," & his claim for an injunction was refused.—*KELLY v. BYLES* (1880), 13 Ch. D. 682; 49 L. J. Ch. 181; 42 L. T. 338; 28 W. R. 585, C. A.

Annotations:—*Reid.* *Dicks v. Yates* (1881), 18 Ch. D. 76; *Maple v. Junior Army & Navy Stores* (1882), 47 L. T. 589.

— Infringement.]—*See* Nos. 514, 515, 516, *post*.

136. Of magazine—Not intended title—Though widely advertised—Publication necessary.]—*MAXWELL v. HOGG*, *HOGG v. MAXWELL*, No. 132, *ante*.

137. — Descriptive words—Not protected.]—Ptlf., the proprietors of a magazine called "Monthly Magazine of Fiction," which they had published since 1885, sought to restrain defts. from publishing a magazine which they called "Cassell's Magazine of Fiction & Popular Literature":—*Held*: (1) the action would fail as ptlfs. were not entitled to any monopoly in the words "Magazine of Fiction," which were purely descriptive; (2) the use of the words by defts. was not likely to lead to confusion in the minds of the

public.—*STEVENS (WILLIAM), LTD. v. CASSELL & Co., LTD.* (1913), 29 T. L. R. 272.

See, also, Nos. 29, 104, *ante*.

138. Of song—Title given to translation of foreign song.]—C. was the publisher in England of a foreign song called L. D. under the title of M. which had been adapted to a foreign tune, & on the title page of which C. placed a portrait of a popular singer of the song. S. published a song, the air of which was the same, but the words were the original words of the foreign song, while the air had symphonies & accompaniments, & entitled it "M. D." S. placed a portrait, slightly varied, of the same popular singer on his publication. Both publications stated on the face of them that the song was sung by Madame A. T. at J.'s concerts:—*Held*: an injunction would be granted to restrain the publication of S. on the ground that C. had appropriated the name "M." & that S. had stated his song to have been sung by Madame A. T. at J.'s concerts, which he had no right to do.—*CHAPPELL v. SHEARD* (1855), 2 K. & J. 117; 26 L. T. O. S. 3; 1 Jur. N. S. 996; 3 W. R. 646; 69 E. R. 717.

Annotation:—*Folld.* *Chappell v. Davidson* (1855), 2 K. & J. 123.

139. Of musical play.]—*ELKIN & Co. v. FRANCIS, DAY & HUNTER* (1910), *Times*, Oct. 27.

140. Of play—Common proverbial phrase—Not protected—Though used with special meaning.]—Pltf. was the owner of the copyright of a play entitled "Where There's a Will There's a Way." Deft., produced a play, entitled "Where There's a Will—" There was no allegation of an infringement of copyright with regard to the substance of the plays, but in each the progress of the plot gave to the word "will" in the title the peculiar meaning of testament:—*Held*: the peculiar significance of the words did not render a common phrase a subject of copyright.—*BROEMEL v. MEYER* (1912), 29 T. L. R. 148; *sub nom.* *BROAD v. MEYER*, 57 Sol. Jo. 145.

See, also, No. 133, *ante*.

141. Of newspaper—Owner's right of property not analogous to copyright.]—A suit was instituted between B. & H. as to the proprietorship of a newspaper, in which it was ultimately decided that they were entitled in equal moieties. During the suit B. assigned his share in the newspaper, & the right of publication, & the profits, to W. The assignment contained a recital of the proceedings in the suit, & a power of sale. Afterwards B. mortgaged the same share to his partner H. to secure sums due to H. in respect of that share. W. subsequently sold the mortgaged share to pltf. under his power of sale. Both W. & pltf. permitted the newspaper to be carried on by B. & H. jointly. On a bill filed by pltf. for a declaration that he was entitled to a moiety of the newspaper:—*Held*: there is nothing analogous to copyright in the name of a newspaper, but the proprietor had a right to prevent any other person from adopting the name, & this right was a chattel capable of assignment.—*KELLY v. HUTTON* (1868), 3 Ch. App. 703; 37 L. J. Ch. 917; 19 L. T. 228; 16 W. R. 1182, L. JJ.; *subsequent proceedings* (1869), 20 L. T. 201.

Annotations:—*Consd.* *Lee v. Haley* (1869), 21 L. T. 546. *Reid.* *Bradbury v. Beeton* (1869), 39 L. J. Ch. 57; *Walter v. Emmott* (1885), 54 L. J. Ch. 1059. *Mentd.* *Wh. Davey* (1885), 30 Ch. D. 574; *Watts v. Driscoll*, [1901] 1 Ch. 294.

142. —.]—*PRIMROSE PRESS AGENCY Co. v. KNOWLES* (1886), 2 T. L. R. 404.

— Resemblance amounting to passing off.]—*See, generally*, *PRESS & PRINTING*.

What constitutes infringement.]—See Part XIII., Sect. 1, sub-sect. 1, *post*.

SECT. 10.—OTHER CASES.

143. Specification of patent—Not subject of copyright.]—WYATT *v.* BARNARD, No. 87, *ante*.

144. — Engraving on reduced scale—May be subject of copyright.]—An engraving on a reduced scale of a specification of a new invention enrolled at the Patent Office may be the subject of copyright.—NEWTON *v.* COWIE (1827), 4 Bing. 234; 12 Moore, C. P. 457; 5 L. J. O. S. C. P. 159; 130 E. R. 759.

*Annotations:—*Apprvd. Brooks *v.* Cock (1835), 3 Ad. & El. 138. *Apld.* Rock *v.* Lazarus (1872), L. R. 15 Eq. 104.

145. Not cricket scoring sheet—Not a novelty.]—L. claimed ownership of the copyright in a cricketing scoring sheet, & P. having published the same thing, threatened an action. P. continued to publish, & on L. becoming bkpt., purchased it of the assignees for £20. W., who had bid £10, purchased the sheet of P. for some time, but ultimately printed & published & sold the left-hand half, containing the totals of runs, but not an analysis of bowling, which was on the right-hand half. On bill filed to restrain the alleged infringement of the copyright:—*Held*: there was no novelty or sufficient subject for copyright, & bill would be dismissed with costs.—PAGE *v.* WISDEN (1869), 20 L. T. 435; 17 W. R. 483.

146. Form of consignment note—Protected.]—Pltfs. had for many years traded both in & out of the United Kingdom as carriers. From 1890 they had done business at M., where in 1897 they appointed deft. V. to be their representative. In June, 1901, he left their service, but continued the business of a carrier at the same address as V., & from July, 1901, as V. & Co. He adopted a special form of consignment note which was practically identical with that of pltfs.:—*Held*: pltfs. were entitled, by way of interlocutory relief, to an injunction restraining deft. from so carrying on business as to lead to the belief that his business was that of the pltfs., & from infringing the copyright in the consignment note.—VAN OPPEN & CO., LTD. *v.* VAN OPPEN (1903), 20 R. P. C. 617.

147. News collected by news agency—Stock Exchange prices.]—Under a contract made between pltfs. & the committee of the London Stock Exchange, valuable information as to the prices of stocks & shares from time to time during the day was collected on the Stock Exchange, &

supplied to pltfs., & printed on tapes & sheets of letterpress in their office. Deft., having surreptitiously obtained such information, published it in the same form before its publication by pltfs.:—*Held*: pltfs. had a right of property at common law in the information, & were entitled to an injunction to restrain deft. from infringing that right by continuing to publish it.—EXCHANGE TELEGRAPH CO., LTD. *v.* GREGORY & CO., [1896] 1 Q. B. 147; 65 L. J. Q. B. 262; 74 L. T. 83; 60 J. P. 52; 12 T. L. R. 18, C. A.

Annotations:—Distd. Exchange Telegraph Co. *v.* Central News, [1897] 2 Ch. 48. *Consd.* Summers *v.* Boyce & Kimmond (1907), 97 L. T. 505; Fenning Film Service *v.* Wolverhampton, Walsall & District Cinemas, [1914] 3 K. B. 1171; Goldsoll *v.* Goldman, [1914] 2 Ch. 603. *Mentd.* National Phonograph Co. *v.* Edison-Bell Consolidated Phonograph Co., [1908] 1 Ch. 335; Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Said *v.* Butt, [1920] 3 K. B. 497.

148. — Racing news.]—Information which has been acquired by expenditure of labour & money & communicated to a limited number of persons upon certain conditions is valuable property in the hands of the person or co. acquiring the same, notwithstanding that such information may have been previously published to the world at some distant place.

Pltfs., by expenditure of labour & money, acquired racing news upon various racecourses, & transmitted it by special means to London, & thence to their subscribers upon certain terms. Deft. syndicate, who supplied racing information to defts. C., published for their own benefit information acquired from some subscriber of pltfs., with knowledge on the part of their manager that it was acquired contrary to the terms imposed on pltfs.' subscribers. Defts. C. published the same information as deft. syndicate. The racing news in question was published on a board erected on the racecourse. Defts. C. carried on their business independently of deft. syndicate save that the two defts. had a working agreement for the mutual supply of news, & were otherwise closely connected:—*Held*: the information transmitted by pltfs. to their subscribers had not been published to the world, & pltfs. had a right of property in it.—EXCHANGE TELEGRAPH CO., LTD. *v.* CENTRAL NEWS, LTD., [1897] 2 Ch. 48; 66 L. J. Ch. 672; 76 L. T. 591; 45 W. R. 595; 13 T. L. R. 408; 41 Sol. Jo. 529.

Annotation:—Consd. Exchange Telegraph Co. *v.* Howard & London & Manchester Press Agency (1906), 22 T. L. R. 375.

149. —.]—EXCHANGE TELEGRAPH CO., LTD. *v.* HOWARD & LONDON & MANCHESTER PRESS AGENCY, LTD. (1906), 22 T. L. R. 375.

Part III.—Publication.

SECT. 1.—WHAT IS.

See, now, 1911 Act, s. 1 (3).

150. First representation of play—Abroad—Publication—Under International Copyright Act, 1844 (c. 12), s. 19.]—By the International Copyright Act, 1844 (c. 12), s. 19, a British subject, who first publishes abroad, is, equally with a foreigner, deprived of any copyright save such as he may acquire under that Act; & if there be no treaty in force giving effect to the Act in his particular case, he has no copyright in this country; & in

reference to the right of dramatic representation, first representation abroad is a first publication abroad within the Act.

—, a British subject, brought out a drama in N. Y.; he afterwards represented it in this country. There being no arrangement in force between this country & the United States as to international copyright:—*Held*: B. had no exclusive right to perform his drama in this country.—BOUCICAULT *v.* DELAFIELD (1863), 1 Hem. & M. 597; 3 New Rep. 32; 33 L. J. Ch. 38; 9 L. T.

PART II. SECT. 10.

p. Railway ticket.]—A railway

*ticket is not a subject of copyright.—*GRiffin *v.* KINGSTON & PEMBROKE

Ry. Co. (1889), 17 Q. R. 660.—*CAN.*

Sect. 1.—What is. Sect. 2: Sub-sect. 1.]

709; 28 J. P. 53; 9 Jur. N. S. 1282; 12 W. R. 101; 71 E. R. 261.

Annotations:—Expld. Palmer v. Dewitt (1870), 23 L. T. 823. **Foll.** Boucicault v. Chatterton (1876), 5 Ch. D. 267. **Mentd.** Waterlow v. Sharp, Gardner v. Sharp (1869), 20 L. T. 903.

151. ————]—Pltf., a naturalised American, was the author of a drama which had been first represented in America, & subsequently, with pltf.'s consent, at deft.'s theatre in England. The drama had not been printed for publication. Deft. afterwards having proposed to represent the play again in London, without the consent of pltf., pltf. brought an action against him to restrain him:—**Held:** the drama had, within the International Copyright Act (c. 12), s. 19, been first published out of Her Majesty's dominions, & pltf. had, therefore, no exclusive right of representing it in England.—**BOUCICAULT v. CHATTERTON** (1876), 5 Ch. D. 267; 46 L. J. Ch. 305; 35 L. T. 745; 25 W. R. 287, C. A.

152. ——— In England—No publication.]—Injunction was granted to restrain publication in a magazine of a farce, occasionally suffered by the author to be acted, but never printed or published.—**MACKLIN v. RICHARDSON** (1770), Amb. 694; 27 E. R. 451.

Annotations:—Consd. Whittingham v. Wooler (1817), 2 Swan. 428; Prince Albert v. Strange, A.-G. v. Strange (1849), 12 L. T. O. S. 307; Boucicault v. Chatterton (1876), 5 Ch. D. 267; Caird v. Sime (1887), 12 App. Cas. 326. **Refd.** Walter v. Lane (1899), 81 L. T. 395.

153. Delivery of lecture at university—No publication.]—**CAIRD v. SIME**, No. 95, ante.

154. Transmission of news by news agency —To subscribers—No publication.]—**EXCHANGE TELEGRAPH CO., LTD. v. CENTRAL NEWS, LTD.**, No. 148, ante.

155. "First publication"—"Issue of copies to the public."]—A song, the words of which were composed in America by an American, was published simultaneously in New York & London on May 5, 1913. In Apr. 1913, the owners of the American copyright in the song had sent to pltf.s. twelve copies of the song with instructions to copyright the song in the United Kingdom on May 5. On that day pltf.s. sent one copy to the British Museum, one copy they filed for reference in their office, six copies they exposed for sale on the counter of their retail premises in London, & the next day they sent the remaining four copies to the agent for the universities. There was no immediate demand for the song, & after a fortnight pltf.s. placed the six copies amongst their general stock. The song was first sung in London in July, 1913, & was a great success, & pltf.s. then purchased the copyright in the song for the British Empire from the American owners, & made large sales. Subsequently defts. published a song which was based upon the words of the pltf.s.' song & was what was known as an answer or reply song:—

Held: (1) pltf.'s song was "first published" in London on May 5, 1913, & there had been "an issue of copies to the public" under the 1911 Act, but defts.' song, although a reply song, was not a colourable imitation of the pltf.s.' song & did not infringe their copyright therein.—**FRANCIS, DAY & HUNTER v. FELDMAN & CO.**, [1914] 2 Ch. 728;

83 L. J. Ch. 906; 111 L. T. 521; 59 Sol. Jo. 41, C. A.

Annotation:—Generally, Mentd. Glyn v. Weston Feature Film Co., [1916] 1 Ch. 261.

156. "Separately & singly"—Supplement to periodical—Obtainable separately.]—Where pltf. composed certain tales for deft. for publication in a journal, of which he was the proprietor:—**Held:** the subsequent publication of such tales in a weekly supplementary number, for sale with or without the current number, was a "publication separately" within Copyright Act, 1842 (c. 45).—**SMITH v. JOHNSON** (1863), 4 Giff. 632; 3 New Rep. 108; 33 L. J. Ch. 137; 9 L. T. 437; 9 Jur. N. S. 1223; 12 W. R. 122; 66 E. R. 859.

Annotations:—Refd. Johnson v. Newnes, [1894] 3 Ch. 663; Aflalo v. Lawrence & Bullen, [1903] 1 Ch. 318.

See, also, No. 64, ante.

157. Division or part of a volume separately published—Distinguishable part—Of separate volume.]—**JOHNSON v. NEWNES, LTD.**, No. 536, post.

See, also, Nos. 378, 481, 501, post.

SECT. 2.—EFFECT OF FIRST PUBLICATION.**SUB-SECT. 1.—IN COUNTRY WHERE COPYRIGHT CLAIMED.**

158. Work of foreign author—Whether residence necessary for copyright.]—If an alien resident abroad composes a work there, but publishes it first in this country, he is entitled to the protection of the laws of this country relating to copyright.—**BENTLEY v. FOSTER** (1839), 10 Sim. 329; 59 E. R. 641.

Annotations:—Consd. Chappell v. Purday (1845), 14 M. & W. 303; Cocks v. Purday (1848), 5 C. B. 860; Jefferys v. Boosey (1854), 4 H. L. Cas. 815. **Refd.** Boosey v. Purday (1849), 4 Exch. 145.

159. ———]—**CHAPPELL v. PURDAY**, No. 173, post.

160. ———]—A foreigner resident abroad may acquire copyright in this country in a work that is first published by him as author, or as author's assignee, in this country, which has not been made *publici juris* by a previous publication elsewhere. A contemporaneous publication abroad does not defeat such right.

By the law of Austria, which prevailed where A., the author of a musical composition, & B., his assignee, were respectively domiciled, the author has a copyright, & such copyright may be assigned by word of mouth. A. assigned his right to B., & B., before the publication of the work, sold his copyright to C.:—**Held:** there having been a sale valid by the law of Austria, the country in which the sale took place, the interest of the author had become vested in C. before publication, so as to make him an assignee within Copyright Act, 1842 (c. 45), s. 3, & to confer upon him a good derivative title.—**COCKS v. PURDAY** (1848), 5 C. B. 860; 17 L. J. C. P. 273; 11 L. T. O. S. 241; 12 Jur. 677; 136 E. R. 1118; *subsequent proceedings*, 6 C. B. 69.

Annotations:—Foll. Boosey v. Davidson (1849), 13 Q. B. 257. **N.F.** Boosey v. Purday (1849), 4 Exch. 145. **Consd.** Ollendorff v. Black (1850), 4 De G. & Sm. 209; Jefferys v. Boosey (1854), 4 H. L. Cas. 815.

PART III. SECT. 1.

a. "First publication"—Posting copies to subscribers at home & abroad.]—Copies of a newspaper printed & issued in U.S.A., deposited in the post office there, addressed to subscribers both in that country & England, cannot be considered to be

first published in England, so as to come within Copyright Act, 1842.—**GROSSMAN v. CANADA CYCLE CO.** (1902), 23 C. L. T. 48; 5 O. L. R. 55; 1 O. W. R. 846.—**CAN.**

r. Public exhibition of picture where copying it would not be permitted.]—The exhibition of a picture at a

public exhibition or gallery, where copying it would not be permitted is not a publication of the picture; nor is the exhibition of the picture, for the purpose of obtaining subscribers to an engraving of it.—**TURNER v. ROBINSON** (1860), 10 L. Ch. R. 510.—**IR.**

161. ———.]—A foreigner, though resident abroad, may have copyright in this country, if the first publication is in this country. On the trial of an action for piracy of musical copyright, a piece of music having been shown to a witness skilled in music, he was asked, for the purpose of proving that it was not first published in England, whether he had not seen printed copies of it for sale in a shop at M. at a given date sixteen years before the trial:—*Held*: (1) the question was irregular, as referring to the contents of a document not produced or accounted for; (2) a statement by the same witness, that he had heard the music produced in ct. sung by persons in private society with printed music before them, as if singing therefrom was not evidence that the music so printed was the same as the music in ct.—*BOOSEY v. DAVIDSON* (1849), 13 Q. B. 257; 18 L. J. Q. B. 174; 13 L. T. O. S. 137; 13 Jur. 678; 116 E. R. 1261.

Annotations:—*Generally*, *Reid*. *Boosey v. Purday* (1849), 4 Exch. 145; *Ollendorff v. Black* (1850), 20 L. J. Ch. 165; *Geralopulo v. Wieler* (1851), 10 C. B. 690; *Jefferys v. Boosey* (1854), 4 H. L. Cas. 815.

162. ———.]—A foreign author residing abroad, who composes a work abroad, & sends it to this country, where it is first published under his authority, acquires no copyright therein, neither does a British subject to whom such work is assigned by the foreign author gain any such right; but, assuming that a foreign author & his assigns to have by law a copyright where the author means to publish contemporaneously in England & abroad, he or his assigns are not disentitled to copyright by the actual publication in one place before the other, on the same day.—*BOOSEY v. PURDAY* (1849), 4 Exch. 145; 18 L. J. Ex. 378; 13 L. T. O. S. 529; 13 Jur. 918; 154 E. R. 1159.

Annotations:—*Consd. & Distd.* *Ollendorff v. Black* (1850), 4 De G. & Sm. 209. *Consd.* *Jefferys v. Boosey* (1854), 4 H. L. Cas. 815. *Reid*. *Novello v. Sudlow* (1852), 12 C. B. 177.

163. ———.]—An alien, resident abroad, may himself have copyright in a work written by him, & published for the first time in this country; at all events, if he was resident here at the time of publication.

Where the legal right is doubtful the mere existence of the doubt is not sufficient to prevent the ct. from granting an injunction (*KNIGHT BRUCE, V.-C.*).—*OLLENDORFF v. BLACK* (1850), 4 De G. & Sm. 209; 20 L. J. Ch. 165; 16 L. T. O. S. 257; 14 Jur. 1080; 64 E. R. 801.

Annotation:—*Reid*. *Jefferys v. Boosey* (1854), 4 H. L. Cas. 819.

164. ———.]—(1) The object of Copyright Act, 1709 (c. 19), was to encourage literature among British subjects, which description includes foreigners who, by residence here, owe the Crown a temporary allegiance; & any such foreigner, first publishing his work here, is an "author" under the Act, no matter where his work was composed, or whether he came here solely with a view to its publication. (2) Copyright commences by publication; if at that time the foreign author is not in this country, he is not a person whom the Act meant to protect. (3) An Englishman, though resident abroad, will have copyright in a work of his own first published in this country.

(4) B., a foreign musical composer, resident at that time in his own country, assigned to R., another foreigner, also resident there, according to the law of their country, his right in a musical composition of which he was the author, & which was then unpublished. The assignee brought the composition to this country, & before publication,

assigned it, according to the forms required by the law of this country, to an Englishman for publication in Great Britain & Ireland only. The first publication took place in this country:—*Held*: the foreign assignee had not, by the law of this country, any assignable copyright here in this musical composition.

(5) Copyright did not exist at common law; it is the creature of statute (*LORD BROUGHAM, & LORD ST. LEONARDS, C.*).

(6) No assignment of copyright under the Copyright Act, 1709 (c. 19), the benefit of which is claimed by the assignee, although from a foreigner, can be good in this country, unless it is in writing attested by two witnesses (*LORD ST. LEONARDS, C.*).

(7) The assignment being confined to copyright in Great Britain & Ireland was bad, for there cannot be a partial assignment of copyright (*LORD ST. LEONARDS, C.*).

(8) The term copyright may be understood in two different senses. The author of a literary composition, which he commits to paper belonging to himself, has an undoubted right at common law to the piece of paper on which his composition is written, & to the copies which he chooses to make of it for himself & others. The other sense of the word is the exclusive right of multiplying copies; the right of preventing all others from copying by printing or otherwise a literary work which the author has published (*PARKE, B.*).—*JEFFERYS v. BOOSEY* (1854), 4 H. L. Cas. 815; 24 L. J. Ex. 81; 23 L. T. O. S. 275; 1 Jur. N. S. 615; 3 C. L. R. 625; 10 E. R. 681, H. L.; *reversg.* *S. C. sub nom.* *BOOSEY v. JEFFERYS* (1851), 6 Exch. 580, Ex. Ch.

Annotations:—*As to* (1) *Consd.* *Boucicault v. Delafield* (1863), 1 Hem. & M. 597; *Routledge v. Low* (1868), L. R. 3 H. L. 100. *Reid*. *Buxton v. James* (1851), 18 L. T. O. S. 134; *Boucicault v. Chatterton* (1876), 5 Ch. D. 267. *As to* (5) *Reid*. *Novello v. Sudlow* (1852), 12 C. B. 177; *Reade v. Conquest* (1861), 9 C. B. N. S. 755; *Gambart v. Ball* (1863), 8 L. T. 426; *Caird v. Sime* (1887), 12 App. Cas. 326; *Tuck v. Continental Printing Co.* (1887), 3 T. L. R. 661; *Monckton v. Gramophone Co.* (1912), 106 L. T. 84. *As to* (7) *N.F.* *Cumberland v. Copeland* (1862), 1 H. & C. 194. *Consd.* *Layland v. Stewart* (1876), 46 L. J. Ch. 103. *As to* (8) *Reid*. *Morris v. Wright* (1870), 5 Ch. App. 279; *Tuck v. Priestor* (1887), 19 Q. B. D. 629. *Generally*, *Reid*. *Fairlie v. Boosey* (1879), 41 L. T. 73. *Mentd.* *Novello v. James* (1854), 5 De G. M. & G. 876; *Shepherd v. Conquest* (1856), 17 C. B. 427; *Walton v. Lavator* (1860), 8 C. B. N. S. 162; *Austria (Emperor) v. Day* (1861), 3 De G. F. & J. 217; *Taylor v. Neville* (1878), 47 L. J. Q. B. 254; *Trade Auxiliary Co. v. Middlesborough & District Tradesmen's Protection Assn.* (1889), 40 Ch. D. 425; *Macleod v. A.-G. for New South Wales*, [1891] A. C. 455; *Labouchere v. Hess* (1897), 77 L. T. 559; *Adam v. British & Foreign S.S. Co.*, [1898] 2 Q. B. 430; *Walter v. Lane* (1900), 83 L. T. 289; *Davidsson v. Hill*, [1901] 2 K. B. 606; *Mansell v. Valley Printing Co.*, [1908] 1 Ch. 567; *Krzus v. Crow's Nest Pass Coal Co.*, [1912] A. C. 590.

165. ———.]—**Residence within British Empire sufficient**—Though not entitled by law of colony of residence.]—An alien friend residing temporarily in any part of the British dominions, & during such residence publishing in England a work of which he is the author, acquires a copyright under the Copyright Act, 1842 (c. 45). This is the case although he may be residing in a British colony, with an independent legislature, under the laws of which he is not entitled to copyright.

The object of the Copyright Act, 1842 (c. 45), s. 6, was to obtain for the British Museum a copy of every book published anywhere under British rule, whether there be copyright in the book or not (*LORD CAIRNS*).—*ROUTLEDGE v. LOW* (1868), L. R. 3 H. L. 100; 37 L. J. Ch. 454; 18 L. T. 874; 16 W. R. 1081, H. L.; *affg.* *S. C. sub nom.* *Low v. ROUTLEDGE* (1865), 1 Ch. App. 42, L. JJ.

Annotations:—*Consd.* *Low v. Ward* (1868), L. R. 6 Eq. 415.

Sect. 2.—Effect of first publication: Sub-sects. 1 & 2.
Sects. 3 & 4. Part IV. Sect. 1: Sub-sect. 1,
A. &

Reid. Reid v. Maxwell (1886), 2 T. L. R. 790. **Mentd.**
 Mathieson v. Harrod (1868), L. R. 7 Eq. 270; Graves' Case (1869), L. R. 4 Q. B. 715; Collingridge v. Emmott (1887), 57 L. T. 864; Davidsson v. Hill, [1901] 2 K. B. 606.

166. ————.]—Low v. WARD, No. 33, ante.

167. Assignment from foreign author—Entitled to copyright.]—CHAPPELL v. PURDAY, No. 173, post.

168. ———— Sale valid by *lex loci contractus*.]—COCKS v. PURDAY, No. 160, ante.

169. ———— Not entitled to copyright.]—BOOSEY v. PURDAY, No. 162, ante.

170. ———— Assignment in England invalid.]—JEFFERYS v. BOOSEY, No. 164, ante.

SUB-SECT. 2.—ABROAD.

See, now, 1911 Act, ss. 1 (1), 29.

171. Work by foreign author—No copyright in England—In author or assignee.]—CLEMENTI v. WALKER, No. 262, post.

172. ————.]—Injunction against pirating a piece of music dissolved, it having been published abroad several years before publication here.—GUICHARD v. MORI (1831), 2 Coop. temp. Cott. 216; 9 L. J. O. S. Ch. 227; 47 E. R. 1134, L. C.

Annotations:—Consd. Boosey v. Jefferys (1851), 17 L. T. O. S. 110. **Reid.** Chappell v. Purday (1845), 14 M. & W. 303; Cocks v. Purday (1848), 5 C. B. 860; Boosey v. Purday (1849), 4 Exch. 145.

173. ————.]—A foreign author who has published a work abroad before any publication in this country, is not entitled to a copyright in England, in respect of that work, but a foreign author resident in this country, or his assignee who publishes his work here before any publication abroad, is entitled to a copyright in this country.

Copyright is the exclusive right of multiplying copies of an original work of composition & consequently preventing others from so doing (POLLOCK, C.B.).

Semble: neither a foreign author resident abroad, nor his assignee, whether a British subject or not, has at common law or by statute, a copyright in this country in works composed by such

303; 14 L. J. EX. 208; 5 L. T. O. S. 208, 209, 495; 153 E. R. 491.

Annotations:—Consd. Beard v. Egerton (1846), 3 C. B. 97; Cocks v. Purday (1848), 5 C. B. 860; Boosey v. Purday (1849), 4 Exch. 145; Jefferys v. Boosey (1854), 4 H. L. Cas. 145; Davidson (1856), 18 C. B. 297; Reid v. Maxwell (1886), 2 T. L. R. 790.

174. Work by English author—No copyright in

England—Apart from treaty.]—BOUCICAULT v. DELAFIELD, No. 150, ante.

175. ————.]—BOUCICAULT v. CHATTERTON, No. 151, ante.

176. ———— Serial completed abroad before completion in England.]—REID v. MAXWELL (1886), 2 T. L. R. 790, C. A.

See, also, No. 33, ante.

SECT. 3.—EFFECT OF CONTEMPORANEOUS PUBLICATION.

177. Work by foreign author—Does not defeat copyright here.]—COCKS v. PURDAY, No. 160, ante.

178. ———— Although prior publication on same day.]—BOOSEY v. PURDAY, No. 162, ante.

179. ———— Published on same day.]—An alien, resident abroad, composed three musical pieces in a foreign country, & sold the copyright in this country to pltf., a British subject, who published the work in London. The work was on the same day published in Prussia. On motion in a suit by the purchaser of the copyright against a person who had, without leave, published the three musical compositions in this country:—**Held:** the publication was within the Copyright Act, 1842 (c. 45); & the ct. granted an injunction restraining the unauthorised publication.

The copyright of a work of an alien was sold to a British subject, who published it in this country in 1844. The copyright was infringed in 1849; but the state of the law then rendered it very doubtful whether the copyright was protected, & the purchaser merely protested against the infringement; but, in 1851, within a reasonable time after the decision of a case in the Exchequer Chamber had established the general question of copyright in an alien, he filed his bill, & moved to restrain the publication of the pirated work:—**Held:** there had been no such delay as to disentitle him to an injunction.—BUXTON v. JAMES (1851), 5 De G. & Sm. 80; 18 L. T. O. S. 134; 16 Jur. 15; 64 E. R. 1027.

See, also, No. 155, ante.

SECT. 4.—PROOF OF PUBLICATION.

180. What questions to witness admissible—Not questions as to contents of documents not produced.]—BOOSEY v. DAVIDSON, No. 161, ante.

See, generally, EVIDENCE.

181. Sufficiency of proof—Song sung by persons with printed music—No proof that printed music music of song.]—BOOSEY v. DAVIDSON, No. 161, ante.

Part IV.—Ownership.

SECT. 1.—OF COPYRIGHT.

SUB-SECT. 1.—BY AUTHORSHIP.

A. In General.

See, now, 1911 Act, s. 5 (1).

182. Ownership in author—Notwithstanding private regulation—That compositions should belong to theatre where performed.]—The declaration stated that pltf. was composer of a musical air,

tune & writing & that it was reprinted by deft. within the 14 years limited by the Copyright Act, 1709 (c. 19). The composition was in fact a single sheet of paper, but no objection was taken on that ground. Deft. contended the song was composed to be sung by pltf.'s sister at the Italian Opera, & that all compositions so performed were the property of the house, not of the composer:—**Held:** this defence could not be supported; the

PART III. SECT. 4.

s. Sufficiency of proof—Work of

sculpture—Signature of sculptor on bust.]—The affixing of his signature by a sculptor to a bust made by him is

sufficient proof of publication.—BERNARD v. BERTONI (1888), 14 Q. L. R. 219.—CAN.

above Act vested the property in the author, & no such private regulation could interfere with the public right.—*STORACE v. LONGMAN* (1788), 2 Camp. 27, n.

183. — Not lost by sale of copies of manuscript—Before work printed & published.]—*WHITE v. GEROCH*, No. 34, *ante*.

184. — Dramatic piece or musical composition—Not lost by publication as book before performance.]—The publication in this country of a dramatic piece, or musical composition, as a book before it has been publicly represented or performed, does not deprive the author of such dramatic piece or musical composition, or his assignee, of the exclusive right of representing or performing it.—*CHAPPELL v. BOOSEY* (1882), 21 Ch. D. 232; 51 L. J. Ch. 625; 46 L. T. 854; 30 W. R. 733.

185. — Mining engineers report—Not lost by printing & circulation to syndicate for formation of company.]—A mining engineer, K., made a report upon a mining property & handed it to a person engaged with a syndicate in bringing out a co. It was agreed between them that the report might be printed & shown to the syndicate, & if they determined to proceed with the formation of the co. & published the report, K. was to be paid for it, but if the co. was not proceeded with, the report was to be returned to him. Some 100 copies of the report were printed & shown to the syndicate. Copies were given to some of the members of the syndicate & to one or two other persons. The proposed co. having been abandoned, deft. co. took up the property, & having obtained a copy of the report, made use of it in the prospectus issued by them:—*Held*: K. was entitled to an injunction against the co. to restrain them from publishing the report, which remained his property.—*KENRICK v. DANUBE COLLIERIES & MINERALS CO., LTD.* (1891), 39 W. R. 473.

Foreign author—Effect of publication.]—*See* Part III., Sects. 2, 3, *ante*.

Work published without author's name affixed.]—*See* No. 524, *post*.

B. Who is Author.

(a) Of Photographs.

See, now, 1911 Act, s. 5 (1) & (2).

186. General rule—Fine Arts Copyright Act, 1862 (c. 68), s. 1.]—A. & B. carried on business in copartnership as photographers under the firm of the L. co. They did not take photographs themselves, but employed managers & a large staff of photographic artists & assistants. One of their managers, thinking that the photograph of the Australian cricketers would sell well, arranged for the photographs to be taken without any payment being made for taking them, & sent one of the artists in the employ of the firm to take the negative. From this negative the photograph was in the usual way produced & sold by the firm in the ordinary course of business; & A. & B. registered themselves under the Fine Arts Copyright Act, 1862, in their individual names as the proprietors & authors of the photograph. In an action by the firm to restrain the pirating of their copyright in the photograph:—*Held*: that A. & B. were not the authors of the photograph.

Semble: the author of a photograph within the Fine Arts Copyright Act, 1862 (c. 68), s. 1, "the person on whose life the duration of the copyright depends" is the person who superintends the arrangement of the picture, the pose or grouping of the object or objects, & who is most nearly the effective cause of the photograph when com-

pleted; & who that person is, is a question of fact.—*NOTTAGE v. JACKSON* (1883), 11 Q. B. D. 627; 52 L. J. Q. B. 760; 49 L. T. 339; 32 W. R. 106, C. A.

Annotations:—*Consd.* *Wooderson v. Tuck* (1887), 4 T. L. R. 57; *Kenrick v. Lawrence* (1890), 25 Q. B. D. 99; *Melville v. Mirror of Life Co.*, [1895] 2 Ch. 531.

187. Person taking negative—Not owner of business.]—*WOODERSON v. TUCK (RAPHAEL) & SONS* (1887), 4 T. L. R. 57.

188. Person controlling operation—Not partner in firm—Not personally taking photographs.]—*NOTTAGE v. JACKSON*, No. 186, *ante*.

189. — Not manual operator—Acting under his direction.]—The author of a photograph within the Fine Arts Copyright Act, 1862 (c. 68), s. 1, is the person who generally controls the operation, & a person who performs the manual operations under his control & direction is not the author. A portrait taken on the terms that the photographer may sell copies, though without payment by the subject, is made for a good & valuable consideration within the proviso in the Act, s. 1; but where it is the intention of the parties that the negative shall be kept by the photographer as his own property, it is not made for or on behalf of the subject, & therefore the proviso does not apply.—*MELVILLE v. MIRROR OF LIFE CO.*, [1895] 2 Ch. 531; 65 L. J. Ch. 41; 73 L. T. 334; 11 T. L. R. 477; 13 R. 852.

Annotation:—*Dbtd.* *Boucas v. Cooke*, [1903] 2 K. B. 227.

(b) Of Collective Works.

See, now, 1911 Act, s. 5 (1).

In general.]—See No. 291, *post*.

Musical & dramatic works.]—*See* Nos. 190, 223, 224, 226, *post*.

(c) Of Musical and Dramatic Works.

See, now, 1911 Act, s. 5 (1).

190. Adaptation of words to old air—Accompaniment written by friend—Copyright of words & accompaniment in adapter.]—A. adapted words to an old air, & procured a friend to compose an accompaniment thereto:—*Held*: he acquired a copyright in both words & accompaniment; & his assignee, in declaring for an infringement, might describe himself as proprietor of the copyright in the whole composition.

A., the author of a musical composition, agreed in writing, not under seal, with B., for the sale of the copyright therein to him, undertaking to execute, when called upon, a proper assignment to B., his exors., etc., or as he or they should direct:—*Held*: this did not operate as an assignment to B., so as to render inoperative a subsequent regular assignment by A. to B. & C.—*LEADER v. PURDAY* (1849), 7 C. B. 4; 18 L. J. C. P. 97; 12 L. T. O. S. 218; 12 Jur. 1091; 137 E. R. 2. *Annotation*:—*Refd.* *Hatton v. Kean* (1859), 6 Jur. N. S. 226.

191. Arrangement of opera for pianoforte—Person making arrangement.]—*WOOD v. BOOSEY*, No. 119, *ante*.

192. Adaptation of dramatic piece—With substantial alterations—Adapter—Dramatic Copyright Act, 1833 (c. 15).]—*TREE v. BOWKETT*, No. 307, *post*.

— *By writer employed for purpose.]—See* No. 263, *post*.

193. Dramatic piece—By several collaborators—Commissioned by originator of name & plot—Originator not author.]—By an agreement dated Apr. 27, 1917, between pltf. T. & P., it was agreed that P. should commission T. to write the music of a play, & that the other two pltf.s., H. & V., should collaborate in the libretto & write the

Sect. 1.—Of copyright: Sub-sect. 1, B. (c) & (d), & C.; sub-sect. 2, A. & B.]

necessary lyrics. In consideration for this work P. agreed to make payments to T., to have the names of the authors & composer displayed on printed matters connected with the play, & also to pay a weekly royalty of £10 whenever the production was played. P. was the originator of the name of the play, of the leading characters therein, & arranged the scenic effects & supplied certain catch lines in the dialogue. On the completion of the work by the three pltf.s., P. claimed to be the author thereof & entitled to the ownership of the copyright. On Feb. 20, 1918, P. assigned to deft. co. all his rights in the revue in consideration of £250, & agreed to indemnify them in respect of any claims. On July 4, 1918, deft. co. gave a licence to the first deft., H. T., to produce a film of the play in consideration of a royalty. On the play bills, & in other agreements made by deft. co., pltf.s.' names appeared as the authors & composers of the play. In an action by pltf.s. against defts. for an injunction to restrain the infringement of the copyright:—*Held*: (1) inasmuch as P.'s contribution to the production of the play was not the subject-matter of copyright under the 1911 Act, he could neither be the sole author nor one of the joint authors of the play as a collective work within the meaning of that Act, & had no interest in the copyright of the play; (2) the agreement of Apr. 27, 1917, did not amount to an equitable assignment of the copyright to P., who had only the qualified right to introduce the play on the stage; & pltf.s. were entitled to the injunction claimed.—*TATE v. THOMAS*, [1921] 1 Ch. 503; 90 L. J. Ch. 318; 124 L. T. 722; 65 Sol. Jo. 327.

(d) Other Cases.

See, now, 1911 Act, s. 5 (1).

194. Verbatim report of speech—Transcribed from notes—Transcriber.]—A person who made notes of a speech delivered in public, transcribed them, & published in a newspaper a verbatim report of the speech:—*Held*: he was author of the report within the meaning of the Copyright Act, 1842 (c. 45), & entitled to the copyright in the report, & could assign the copyright.

Copyright is the right of multiplying copies of a published writing. There is no copyright in a speech though delivered on a public occasion, & on the other hand there is no copyright under the statute in a piece of writing until it has been published. There may, indeed, be a common law proprietary right in a speech or lecture (*LORD DAVEY*).—*WALTER v. LANE*, [1900] A. C. 539; 69 L. J. Ch. 699; 83 L. T. 289; 49 W. R. 95; 16 T. L. R. 551, H. L.

Annotations:—Refd. Lawrence, Bullen v. Aflalo (1903), 89 L. T. 569; *Phillip v. Pennell* (1907), 76 L. J. Ch. 663; *Byrne v. Statist Co.*, [1914] 1 K. B. 622.

195. Newspaper paragraph—Compiled by editor—From contributor's article—Editor.]—S., a journalist, contributed to a London morning newspaper an article containing an account of the escape from drowning of a distinguished ophthalmologist. The newspaper did not publish the article as written by S. but from the information contained in it the sub-editors of the newspaper compiled a paragraph containing the facts in an abbreviated form, & this paragraph was published in the newspaper. It was reprinted with slight

alteration in an evening newspaper of the same day. S. having demanded payment from the publisher of the evening newspaper, which was refused, commenced an action against him claiming an injunction restraining him from selling copies of S.'s article, or substantial parts of it:—*Held*: the paragraph was in substance a different statement of the facts in pltf.'s article or some of them; the true authors of the paragraph were the sub-editors of the morning newspaper; & the action therefore failed.—*SPRINGFIELD v. THAME* (1903), 89 L. T. 242; 19 T. L. R. 650.

196. Biographical notes—By compiler of golf annual—From answers to questions by players—Compiler.]—*NISBET & CO., LTD. v. GOLF AGENCY* (1907), 23 T. L. R. 370.

197. Translation of official statement—Of foreign official—In condensed form—Translator.]—*BYRNE v. STATIST CO.*, No. 41, *ante*.

C. Joint Authorship.

See, now, 1911 Act, ss. 5 (1), 16 (3).

198. General rule.]—One who employs another to write a play for him, & even suggests the subject, does not thereby become the proprietor of the copyright. In order to constitute a joint authorship of a dramatic piece or other literary work, it must be the result of a preconcerted joint design. Mere alterations, additions, or improvements by another person, whether with or without the sanction of the author, will not entitle such other person to claim to be joint author of the work.

Pltf., the lessee of a theatre, employed W. to write a play for him, suggesting the subject. W. having completed it, pltf. & some members of his co. introduced various alterations in the incidents & in the dialogue, to make the play more attractive, & one of them wrote an additional scene:—*Held*: the adaptations did not make pltf. joint author of the play with W.

The play being finished, a sum was paid to W. on account, & he signed a receipt, drawn up by pltf.'s attorney, as follows:—"Received of Mr. L. (pltf.) the sum of £4 15s. on account of 15 guineas for my share, title, & interest as co-author with him in the drama intituled, etc.; balance of 15 guineas to be paid on assigning my share to him." The balance was never paid, nor was any assignment executed by W.:—*Held*: no evidence that pltf. was either "joint author" or assignee of the author.—*LEVY v. RUTLEY* (1871), L. R. 6 C. P. 523; 40 L. J. C. P. 244; 24 L. T. 621; 19 W. R. 976. *Annotations:—Refd. Nottage v. Jackson* (1883), 52 L. J. Q. B. 760; *Eaton v. Lake* (1888), 57 L. J. Q. B. 227.

199. Dramatic piece—Altered or improved—With or without author's sanction—Adapter not joint author.]—*LEVY v. RUTLEY*, No. 198, *ante*.

See, also, No. 263, post.

200. — By several collaborators — Commissioned by originator of name & plot—Originator not joint author.]—*TATE v. THOMAS*, No. 193, *ante*.

See, also, Nos. 228, 456, post.

SUB-SECT. 2.—WHERE AUTHOR IN EMPLOYMENT.

A. In General.

See, now, 1911 Act, s. 5 (1).

201. Literary composition—General rule.]—A motion was made by pltf.s. to restrain infringement of copyright in a picture or publication which

PART IV. SECT. 1, SUB-SECT. 2.—A.

201 i. Literary composition—General rule.]—A person resident in England who procures a book for valuable con-

sideration, to be compiled for him, the compiler not reserving his rights, is the proprietor thereof, & entitled, either personally or through an agent in

Canada, to copyright under Copyright Act, R. S. c. 62.—*FROWDE v. PARRISH* (1896), 27 O. R. 520; 23 A. R. 728.—*CAN.*

consisted of a gloved hand painted on a card cut to the exact size, & showing the back & palm of the hand. The card opened bookwise, & on the inside was represented on the palm of the hand the lines of life of palmistry, & on the back of the hand some verses. The picture had been painted, & the verses written by different persons. The entire work was published in May, 1889, for circulation as a Christmas card. Defts. had issued a similar card with advertisements of their goods printed on it:—*Held*: (1) defts.' card was a copy of the pltf.'; (2) pltf. were entitled to an interim injunction to restrain defts. from printing, publishing, or distributing imitations or copies of pltf.' "work" until the trial or further order, the word "work" being used to avoid prejudicing the question at issue.

Semble: where a person has composed verses or other matter on behalf of another person, as his agent or servant, whether for pay or not, the person on whose behalf such verses or other matter are composed is the proprietor thereof, notwithstanding that there has been no assignment in writing, or indeed any assignment at all.—*HILDESHEIMER & FAULKNER v. DUNN & Co.* (1891), 64 L. T. 452.

B. Photographs.

See, now, 1911 Act, ss. 5 (1) (a), 21.

202. Commissioned by subject—Copy bought by subject—Photographer may not sell contract.]—A photographer who had taken a

copies for money was restrained from selling or exhibiting copies on the grounds that there was an implied contract not to use the negative for such purposes & such sale or exhibition was a breach of confidence.—*POLLARD v. PHOTOGRAPHIC* (1888), 40 Ch. D. 345; 58 L. J. Ch. 251; 60 L. T. 418; 37 W. R. 266; 5 T. L. R. 157.

Annotations:—*Appld.* *Stedall v. Houghton* (1901), 18 T. L. R. 126. *Apprvd.* *Boucas v. Cooke*, [1903] 2 K. B. 227. *Refd.* *Monson v. Tussaud*, *Monson v. Tussaud* (1894), 63 L. J. Q. B. 454. *Mentd.* *Merryweather v. Moore*, [1892] 2 Ch. 518; *Robb v. Green*, [1895] 2 Q. B. 1.

See, also, No. 576, *post*.

203. ——— Photographer may not exhibit—Implied contract.]—*POLLARD v. PHOTOGRAPHIC Co.*, No. 202, *ante*.

204. ——— Wife acting as husband's agent—Husband may prevent photographer from exhibiting.]—*STEDALL v. HOUGHTON* (1901), 18 T. L. R. 126.

See, also, HUSBAND & WIFE.

205. Whether commissioned by subject—Question of fact.]—*ELLIS v. OGDEN* (1894), 11 T. L. R. 50.

Annotation:—*Refd.* *Boucas v. Cooke*, [1903] 2 K. B. 227.

206. At invitation of photographer—Without payment by subject—Copyright in photographer.]—At the invitation of pltf., a photographer, an actress gave him a sitting for her photograph. He made no charge & in return for the sitting furnished her with a number of complimentary copies. He neither received nor expected payment, but reproduced & multiplied copies, which he sold:—*Held*: pltf. had a copyright in the photograph as author, & the mere permission of the sitter to take it did not constitute it a photograph executed for or on behalf of any other person for a good or valuable consideration within the Fine Arts Copyright Act, 1862 (c. 68), s. 1.

I give no damages, since they are but nominal. I have, according to the authorities, no alternative as to penalties, since each copy constitutes a separate offence (*CHARLES, J.*).—*ELLIS v. MARSHALL (HORACE) & SON* (1895), 64 L. J. Q. B. 757; 11 T. L. R. 522; 15 R. 561.

Annotations:—*Foll.* *Baschet v. London Illustrated Standard Co.*, [1900] 1 Ch. 73. *Consd.* *Nicholls v. Parker* (1901), 17 T. L. R. 482; *Stackmann v. Paton*, [1906] 1 Ch. 774. *Refd.* *Hildesheimer v. Faulkner*, [1901] 2 Ch. 552; *Boucas v. Cooke*, [1903] 2 K. B. 227.

207. ——— Permission of subject not sufficient consideration—Under Fine Arts Copyright Act, 1862 (c. 68), s. 1.]—*ELLIS v. MARSHALL (HORACE) & SON*, No. 206, *ante*.

208. When intention that negative be kept by photographer—As his own property—Copyright in photographer.]—*MELVILLE v. MIRROR OF LIFE CO.*, No. 189, *ante*.

209. Sufficient consideration—Under Fine Arts Copyright Act, 1862 (c. 68), s. 1—Permission for photographer to sell copies—Although no payment by subject.]—*MELVILLE v. MIRROR OF LIFE CO.*, No. 189, *ante*.

210. ——— Implied terms of payment by subject—Notwithstanding property of photographer in negative.]—Where a photographer takes a photograph at the request of the sitter upon the terms that the sitter will pay for taking it, or under circumstances which raise an implied promise to

right in the photograph is in the sitter, notwithstanding that the property in the negative, in the absence of any agreement for its purchase, may be in the photographer.—*BOUCAS v. COOKE*, [1903] 2 K. B. 227; 12 L. J. K. B. 741; 88 L. T. 452.

Annotation:—*Consd.* *Stackmann v. Paton*, [1906] 1 Ch. 774.

——— Permission of proprietors of photograph school.]—Pltf., a firm of photographers, sent a traveller to the proprietors of certain private boys' & girls' schools offering to take photographs of the schools entirely at their own risk. When leave was given a member of the firm attended the school, & took such photographs of the grounds & exterior of the schools & the interior of rooms & groups of pupils as the proprietors suggested or permitted. Proofs were afterwards submitted, & some copies were purchased by the proprietors. The proprietors sent copies of some of these photographs to defts. in order that they might be reproduced & inserted in "P.'s List of Schools," an advertising publication issued by defts., & they were reproduced & inserted accordingly:—*Held*: permitting the photographer to enter the school & take photographs, on the chance of selling copies to the proprietors, was a good consideration, & the photographs must be deemed to have been made or executed for or on behalf of the proprietors of the schools for a good or a valuable consideration within the Fine Arts Copyright Act, 1862 (c. 68), s. 1, & the copyright, therefore, belonged to the proprietors of the schools, & not to the author of the photographs.—*STACKMANN v. PATON*, [1906] 1 Ch. 774; 75 L. J. Ch. 590; 54 W. R. 466; 50 Sol. Jo. 390.

———.]—*See, also*, No. 206, *ante*.

PART IV. SECT. 1, SUB-SECT. 2.—B.

t. *As between photographer & customer—True test whether negative taken for valuable consideration.]—*In

an action by a photographer to establish his claim to the copyright in a photograph:—*Held*: the true test whether copyright is in the photographer or the customer is: "Was the

negative taken for or on behalf of the sitter for a valuable consideration."—*DAVIS v. BAIRD* (1904), 38 I. L. T. 23.—*IR.*

Sect. 1.—Of copyright: Sub-sect. 2, C. (a), (b), (c)

C. Collective Works.

(a) In General.

See, now, 1911 Act, s. 5 (1) (b).

212. Designer of plan of work—Composed by various contributors—Employed & paid by designer—Is author & proprietor of work—Within Copyright Act, 1709 (c. 19).]—*BARFIELD v. NICHOLSON*, No. 291, *post*.

Whether actual payment to contributor required—Before copyright vested in proprietor of work—Copyright Act, 1842 (c. 45), s. 18.]—*See* No. 83, *ante*, Nos. 216, 217, *post*.

See, also, No. 536, post.

(b) Contributions to Encyclopædia.

See, now, 1911 Act, s. 5 (1), (b).

213. Proprietor may not publish separately—Or otherwise than in encyclopædia—In absence of special agreement.]—The proprietor of an encyclopædia who employs a person to write an article for publication in that work cannot, without the writer's consent, publish the article in a separate form or otherwise than in the encyclopædia, unless the article was written on the terms that the copyright therein should belong to the proprietor of the encyclopædia for all purposes.—*HEREFORD (BP.) v. GRIFFIN* (1848), 16 Sim. 190; 17 L. J. Ch. 210; 10 L. T. O. S. 438; 12 Jur. 255; 60 E. R. 846.

Annotations:—Consd. Smith v. Johnson (1863), 4 Giff. 632.

Reid. Aflalo v. Lawrence & Bullen, [1903] 1 Ch. 318.

What is separate publication.]—*See* No. 156, *ante*.

214. Contributor employed & paid by proprietor—Right of proprietor to copyright—Depends on inference of fact.]—Where the proprietor of an encyclopædia employs & pays another person to compose articles for publication in the encyclopædia, the question whether the copyright in the articles belongs to the proprietor within the Copyright Act, 1842 (c. 45), s. 18, depends on an inference of fact, not law, to be drawn by a reasonable man from the nature of the contract & all the circumstances. The contract need not be in writing; no express words need be used; & the inference that the copyright was intended to belong to the proprietor may be fairly drawn where there are no special circumstances & the only material facts are the employment & the payment.—*LAWRENCE & BULLEN, LTD. v. AFLALO*, [1904] A. C. 17; 73 L. J. Ch. 85; 89 L. T. 569; 52 W. R. 369; 20 T. L. R. 42, H. L.

215. ——— Inferred—In absence of special circumstances.]—*LAWRENCE & BULLEN, LTD. v. AFLALO*, No. 214, *ante*.

See, also, Nos. 216–220, 291, post.

(c) Contributions to Newspapers and Periodicals.

See, now, 1911 Act, s. 5 (1), (b).

216. Condition precedent to copyright vesting in proprietor—Copyright Act, 1842 (c. 45), s. 18—Actual payment of contributor.]—Upon motion for an injunction to restrain the sale of a periodical containing articles copied from pltfs.' Gazette:—*Held*: pltfs. had not made out such a title to the copyright in the articles as was required by the Copyright Act, 1842 (c. 45), since it appeared that

although the editor was paid for supplying the articles & other contributions upon the terms that all copyright in the Gazette & in all literary matters supplied thereto should belong to pltfs., yet it was not stated that the contributors had been actually paid for their contributions.—*BROWN v. COOKE* (1846), 16 L. J. Ch. 140; 11 Jur. 77.

Annotation:—Reid. Aflalo v. Lawrence & Bullen, [1903] 1 Ch. 318.

217. ———.]—Pltfs. alleged (1) they were the proprietors & publishers of a periodical containing original articles; (2) all the articles had been composed for the use of pltfs. by persons employed by them on the terms that the copyright therein should belong exclusively to pltfs., & should be paid for by them; (3) pltfs. were entitled to the sole liberty of publishing the articles in the periodical, subject to the provisions of the Copyright Act, 1842 (c. 45), & such articles were their exclusive property:—*Held*: actual payment to the author by the publisher of a periodical was a necessary condition to the vesting of the copyright of any article in the publisher, but pltfs. had sufficiently alleged such actual payment.—*RICHARDSON v. GILBERT* (1851), 1 Sim. N. S. 336; 20 L. J. Ch. 553; 17 L. T. O. S. 48; 15 Jur. 389; 61 E. R. 130.

218. ——— & agreement that copyright to belong to proprietor.]—*WALTER v. HOWE*, No. 83, *ante*.

219. ———.]—To entitle the proprietor of a book or periodical to maintain an action for infringement of copyright in respect of articles, reports, or other contributions supplied to him by persons employed & paid by him for that purpose:—*Held*: he must, under Copyright Act, 1842 (c. 45), s. 18, prove that he has actually paid for such articles, reports, or other contributions.—*COLLINGRIDGE v. EMMOTT* (1887), 57 L. T. 864; 4 T. L. R. 99.

220. Reports of legal cases—Selected at discretion of contributor—Under agreement for payment by sheet—Copyright in proprietor.]—Pltfs. were the proprietors of a weekly paper called "The Jurist," which consisted principally of reports of decisions in the various superior cts. of law & equity, supplied by barristers employed by pltfs. for that purpose under a verbal arrangement to the effect that they should furnish reports of such cases as they thought desirable for publication in "The Jurist," upon the terms of being paid a given price per sheet, the reporters making no express reservation of a right to publish the cases themselves, & there being no express stipulation that the copyright should belong to pltfs., nothing, in fact, being said upon the subject. Attached to each report was a head-note consisting of a short or compendious statement of the decision in each case. Defts., the publisher & the proprietor of a work called "The Monthly Digest," a work published at the beginning of each month, & consisting of the side or marginal-notes of all the reports published during the preceding month, including those published in "The Jurist," analytically arranged under the appropriate heads or titles, copied therein certain of the head-notes of the reports in "The Jurist," as well as the marginal or side-notes of the other reports; the number of head-notes taken from "The Jurist" amounting to about one-twentieth of the whole of each monthly number of the Digest:—*Held*: (1) pltfs.

PART IV. SECT. 1, SUB-SECT. 2.—
O. (c).

a. Periodical Journal—Edited by employed—Under agreement for payment—Copyright in publisher.]—C.

undertook to publish a periodical work, to be called the "Edinburgh Philosophical Journal," to be edited by B. No regular agreement was written out; but the terms of payment,

etc., were set out in a memorandum:—*Held*: the copyright of the publication was the property of the publisher.—*CONSTABLE & CO. v. BREWSTER* (1824), 3 Sh. (Ct. of Sess.) 215.—*SCOT*.

had copyright in the reports so furnished to "The Jurist"; (2) defts. were guilty of piracy.—**SWEET v. BENNING** (1855), 16 C. B. 459; 24 L. J. C. P. 175; 25 L. T. O. S. 180; 1 Jur. N. S. 543; 3 W. R. 519; 3 C. L. R. 1448; 139 E. R. 838.

Annotations.—As to (1) *Consd.* **Cox v. Land & Water Journal Co.** (1869), L. R. 9 Eq. 324; **Lamb v. Evans**, [1893] 1 Ch. 218; **Chilton v. Progress Printing & Publishing Co.**, [1895] 2 Ch. 29. *Fold.* **Lawrence & Bullen v. Aflalo**, [1904] A. C. 17. *Reid.* **Hatton v. Kean** (1859), 29 L. J. C. P. 20; **Bradbury v. Hotten** (1872), 27 L. T. 450. As to (2) *Reid.* **Bradbury v. Hotten** (1872), 27 L. T. 450. *Generally.* *Reid.* **Shepherd v. Conquest** (1856), 17 C. B. 427; **Walter v. Steinkopff**, [1892] 3 Ch. 489; **Johnson v. Newnes**, [1894] 3 Ch. 663.

221. Right to publish story—Purchased from author—Without agreement that copyright to belong to proprietor—Copyright in author.—**JOHNSON v. NEWNES, LTD.**, No. 536, *post*.

Employment by joint owners.—*See* No. 233, *post*.

See, also, Nos. 213, 214, *ante*.

(d) Musical and Dramatic Works.

See, now, 1911 Act, s. 5 (1) (b).

222. Author employed by theatre proprietor—To adapt foreign play—Employer suggesting subject but taking no other part in work—Employer not author.—**SHEPHERD v. CONQUEST**, No. 263, *post*.

223. Composer employed by designer of dramatic entertainment—To compose music accessory to entertainment—On terms that designer had sole right of performing composition with entertainment—Designer is author & proprietor of whole entertainment.—*Deft.*, the manager of a theatre, verbally employed *pltf.* to compose music as part of the representation of a dramatic piece adapted to the stage by *deft.* with the aid of scenery, dresses, music & other accompaniments, the general design of which representation was formed by *deft.*, on the terms that, in consideration of reward paid by *deft.* to *pltf.*, the music composed by *pltf.* should become part of such dramatic piece as designed for representation by *deft.*, & that *deft.* should have the sole liberty of performing such music as part of the dramatic piece:—*Held*: under this contract, as between *pltf.* & *deft.* *deft.* had the sole liberty of performing such music as part of the dramatic piece without assignment or consent in writing from *pltf.*—**HATTON v. KEAN** (1859), 7 C. B. N. S. 268; 29 L. J. C. P. 20; 1 L. T. 10; 6 Jur. N. S. 226; 8 W. R. 7; 141 E. R. 819.

Annotations.—*Apprvd.* **Wallerstein v. Herbert** (1867), 16 L. T. 453. *Consd.* **Eaton v. Lake** (1888), 20 Q. B. D. 378; **Tate v. Fullbrook**, [1908] 1 K. B. 821. *Reid.* **Wood v. Boosey** (1867), 36 L. J. Q. B. 103; **Nottage v. Jackson** (1883), 52 L. J. Q. B. 760; **Aflalo v. Lawrence & Bullen** (1902), 87 L. T. 605.

224. ——— No copyright in composer.—*Pltf.* was engaged by B. at the J. Theatre as musical director, under which engagement he was to provide the music incidental to the dramatic performances, being either his original compositions or selected from the works of other composers. B. being about to bring out a drama at the theatre, *pltf.* composed the music for it, & it was brought out accordingly, the music being merely accessory to the drama for the purpose of increasing the effect of certain situations. B. having discontinued the management of the theatre, he was succeeded by *deft.*, to whom he

handed over the drama together with the music, which *deft.* subsequently performed without the consent of *pltf.* Upon an action brought by *pltf.* to recover from *deft.* the sum of 40s. for each of twenty-four performances of the drama with his music under the Dramatic Copyright Act, 1833 (c. 15), & the Copyright Act, 1842 (c. 45):—*Held*: *pltf.* had no copyright in the music.—**WALLERSTEIN v. HERBERT** (1867), 16 L. T. 453; 15 W. R. 838.

225. Author employed to write play—Subject suggested by employer—Copyright in author.—**LEVY v. RUTLEY**, No. 198, *ante*.

226. Musical composition for dramatic entertainment—By conductor of orchestra—Employed by theatre—May be independent work—Copyright in author.—*Pltf.* was employed by *deft.*, the proprietor of a music hall, as the conductor of the orchestra, at a weekly salary, & had been in the habit of composing the music for ballets performed there, receiving payments of varying amounts from *deft.* in respect of such compositions. *Pltf.* composed the music for a Christmas ballet, to be performed at *deft.*'s music hall, but while the piece was running he threw up his engagement as conductor, & took away the musical score & band-parts necessary for the performance of the music. It was subsequently arranged orally between *pltf.* & *deft.* that *pltf.* should give up the score & band-parts to *deft.* in consideration of a payment of £20 by *deft.* *Deft.* afterwards continued to perform the piece with *pltf.*'s music, & *pltf.* brought an action to recover penalties in respect of such subsequent performances under the Dramatic Copyright Act, 1833 (c. 15), s. 2, & the Copyright Act, 1842 (c. 45), ss. 20 & 21. The jury found that the music composed for the ballet by *pltf.* was a substantial, independent, musical composition, & that *pltf.* had not sold his rights therein to *deft.*:—*Held*: (1) an assignment of copyright in a musical composition had to be in writing; (2) in the absence of any assignment or consent to the representation of the composition in writing given by *pltf.* the performances were contrary to the right of the author, & the action was maintainable.—**EATON v. LAKE** (1888), 20 Q. B. D. 378; 57 L. J. Q. B. 227; 59 L. T. 100; 4 T. L. R. 230, C. A. *Annotation*.—*Generally.* *Reid.* **Tate v. Fullbrook** (1908), 98 L. T. 706.

D. Other Cases.

See, now, 1911 Act, s. 5 (1) (b).

227. Artistic design—Draftsman employed by inventor of design—Inventor unable to draw—Copyright in inventor.—**STANNARD v. HARRISON**, No. 68, *ante*.

228. Hymn book—Compiled for the Wesleyan Conference—Compilers not authors—Within Copyright Act, 1842 (c. 45), s. 4.—Seven persons acting under the direction of the Wesleyan Conference, compiled a hymn book, which was registered in their names, but was published in 1831 by & for the profit of the Conference. In 1873 the last of the seven compilers died, & in the following year *deft.* published a hymn book, which was to a great extent a copy of that published in 1831. On a bill by the exor. of the last survivor to restrain publication by *defts.*:—*Held*: *pltf.* had not obtained the benefit of the extended term of copyright

PART IV. SECT. 1, SUB-SECT. 2.—D.

b. Pamphlet compiled from public register—Compiler paid & employed by owner of pamphlet—Copyright in owner.—Where the owners of a pamphlet employed a clerk to take extracts from a public register & con-

dense or compile them in lists for publication in the pamphlet upon terms that the result of his labour was to be their property absolutely, the owners are entitled to the copyright therein as soon as his services are paid for.—**HALL & CO. v. WHITTINGTON & CO.** (1892), 18 V. L. R. 525.—**AUS.**

c. Selections for poses—Compiled for a Board of by one of its members.—The Board of Studies of A. University, prepared at the request of the convener a list of graduated selections from standard authors for the use of candidates for university examinations.

Sect. 1.—Of copyright: Sub-sect. 2, D.; sub-sects. 3 & 4. Sect. 2. Part V. Sect. 1: Sub-sect. 1, A. (a), (b) & (c).]

granted by the above Act as no minute of the consent of the authors had been entered in the book of registry as required by s. 4 of the Act, but the copyright ceased on the death of the last survivor of the seven compilers.—**MARZIALS v. GIBBONS** (1874), 9 Ch. App. 518; 43 L. J. Ch. 774; 30 L. T. 666; 22 W. R. 637, L. J.J.

229. Advertising catalogue—Compiler paid & employed by advertiser—Copyright in advertiser.]—**GRACE v. NEWMAN**, No. 77, *ante*.

230. Painting by foreign subject—Commissioned by British subject—For valuable consideration—No copyright in British subject.]—**GEISSENDÖRFER v. MENDELSSOHN** (1896), 13 T. L. R. 91.

231. Auditor's report—Made on instructions of client—Paid for by client—Copyright in client.]—**CHANTREY, CHANTREY & Co. v. DEY** (1912), 28 T. L. R. 499.

See, also, No. 185, *ante*.

232. Examination papers—Examiners to London University—Not “under a contract of service”—Under 1911 Act, s. 5 (1) (b).]—**UNIVERSITY OF LTD. v. UNIVERSITY TUTORIAL** 42, *ante*.

See, also, Nos. 80, 185, *ante*.

Joint employment.]—*See* No. 233, *post*.

SUB-SECT. 3.—CO-OWNERSHIP.

See, now, 1911 Act, s. 5 (1).

233. Several proprietors—Of several periodicals—Jointly employing contributor—Each proprietor has interest in copyright in contributions.]—The three several proprietors of three several periodicals jointly employed a person to compile for them lists of registered bills of sale & deeds of arrangement, on the terms that the copyright was to belong to the three proprietors. The compiling these lists required skill, & involved a good deal of labour & expense. The defendant association copied & circulated among their own members so much of these lists as related to their own neighbourhood, which was a very small part of the whole. The three proprietors sued to restrain this proceeding:—**Held**: the Copyright Act, 1842 (c. 45), s. 18, was not to be construed as confining the copyright of a proprietor of a newspaper to articles composed on the terms that the copyright should belong to & be paid for by him alone, each of the three proprietors had an interest in the copyright of the lists, & had a right to sue to restrain infringement, & deft. association could not escape on the ground that it had only copied a small portion of the lists.—**TRADE AUXILIARY CO. v. MIDDLESBOROUGH & DISTRICT TRADESMEN'S PROTECTION ASSOCN.** (1889), 40 Ch. D. 425; 58 L. J. Ch. 293; 66 L. T. 681; 37 W. R. 337; 5 T. L. R. 254, O. A.

Annotations:—**Consd.** **Exchange Telegraph Co. v. Gregory** (1895), 73 L. T. 120. **Refd.** **Walter v. Steinkopf**, [1892] 3 Ch. 489; **Collis v. Cater, Stoffell & Fortt** (1898), 78 L. T. 613.

Partial assignment.]—*See* Part V., Sect. 1, sub-sect. 1, C., *post*.

In preparing these he spent considerable labour, learning & skill. The Board adopted with slight modifications selections shown in the list as the subject for those examinations & published the lists for the information of the public generally.—**Held**: A. had

no copyright in the lists as by laying the result of his labours before the Board he placed the list unreservedly at the disposal of the University authorities.—**MUHAMMAD ABDUL JAILL v. RAM DAYAL** (1916), 1 L. R. 38 All. 484.—**JND.**

Licence by single co-owner.]—*See* No. 309, *post*.

SUB-SECT. 4.—DEVOLUTION ON DEATH.

234. Vests in personal representatives.]—R. had bought, from the exors. of Croke, J., the third part of his reports. S. was law patentee, & reprinted it without pltf.'s consent. R. brought an action of debt, as owner, & S. pleaded the King's grant. Upon which, pltf. demurred:—**Held**: (1) pltf. by purchase from the exors. of the author was owner of the copy at common law; (2) deft. might print the reports by force of his patent over law works.—**ROPER v. STREATER** (1672), cited in *Skin.* at p. 234; 4 Burr. at p. 2316; 1 Mod. Rep. at p. 257; 90 E. R. 107; *reversd.* on other grounds (1705), cited in 4 Burr. at p. 2316, H. L.

Annotations:—*As to* (1) **Consd.** **Millar v. Taylor** (1769), 4 Burr. 2303; **Jefferys v. Boosey** (1854), 4 H. L. Cas. 819. **Refd.** **Yarmouth v. Darrel** (1885), 3 Mod. Rep. 75. *As to* (2) **Consd.** **Stationers' Corp'n. v. Seymour** (1677), 3 Keb. 792.

SECT. 2.—OF SUBJECT-MATTER WHEN DISTINCT FROM COPYRIGHT.

235. Blocks for illustrations—Publishing agreement.]—The joint authors of a book, one of whom composed the letterpress, & the other sketched the drawings on blocks from which the illustrations were engraved, entered into a verbal agreement with a firm of publishers, by which the firm were to engrave the illustrations & to print & publish the book. If the publication resulted in a loss the firm were to bear the whole of it; if there was a profit, they were to pay half of it to the authors. The profits were to be ascertained after deducting the cost of the engraving, printing, & publication but without allowing any sum to the authors for the illustrations & letterpress. The book was published & the publication resulted in a profit:—**Held**: (1) the agreement was merely personal to the individuals then composing the publisher's firm, & the benefit of it could not, without the consent of the authors, be assigned by the publisher's firm to a firm which had succeeded to their business, but which contained none of the partners of the original firm; (2) on termination of the agreement, the blocks on which the author had drawn his sketches belonged to the author; (3) the ct. had power under its general jurisdiction to order delivery up for destruction of all articles created in violation of pltf.'s rights.—**HOLE v. BRADBURY** (1879), 12 Ch. D. 886; 48 L. J. Ch. 673; 41 L. T. 250; 28 W. R. 39.

Annotations:—*As to* (1) **Apprvd.** **Griffith v. Tower Publishing Co. & Moncrieff**, [1897] 1 Ch. 21. *As to* (2) **Consd.** **Warne v. Seeborn** (1898), 39 Ch. D. 73. **Generally, Consd.** **Chappell v. Columbia Graphophone Co.**, [1914] 2 Ch. 745.

Photographic negative—Whether ownership in photographer—Copyright in subject.]—*See* No. 210, *ante*.

See, also, No. 189, *ante*.

Letters—Property in recipient.]—*See* Nos. 355, 356, 357, 358, 360, *post*.

PART IV. SECT. 1, SUB-SECT. 4.

234 i. Vests in personal representatives.]—**M'CORMICK & CARNIE v. M'CUBBIN** (1822), 1 Sh. (Ct. of Sess.) 541.—**SCOT.**

Part V.—Assignment, Licence and Royalties.

SECT. 1.—ASSIGNMENT.

SUB-SECT. 1.—OF COPYRIGHT.

A. What operates as Assignment.

(a) In what Form Valid.

See, now, 1911 Act, s. 5 (2).

236. Must be in writing.]—(1) An assignment of copyright of a song must be in writing, in order to entitle the assignee to maintain an action on the case for pirating it.

(2) A parol agreement between the proprietor of the copyright in a work & another person that the latter, for a valuable consideration, shall have the exclusive publication & sale of it in England does not entitle him to maintain any action for pirating the work.—*POWER v WALKER* (1814), 3 M. & S. 7; 105 E. R. 514.

Annotations:—As to (1) Consd. *DAVIDSON v. Bohn* (1848), 6 C. B. 456; *Jefferys v. Boosey* (1854), 4 H. L. Cas. 819. *N.F. Cumberland v. Copeland* (1862), 1 H. & C. 194. *Reid. Clementi v. Walker* (1824), 2 B. & C. 861; *Barnett v. Glossop* (1835), 1 Scott, 621; *Leyland v. Stewart* (1876), 4 Ch. D. 419; *Re Casey's Patents, Stewart v. Casey*, [1892] 1 Ch. 104.

237. —.]—A. sued, as assignee, for the infringement of copyright in a song, under the Copyright Act, 1709 (c. 19), s. 1:—*Held*: there must have been an assignment of the copyright by an instrument in writing, attested by two witnesses, to entitle pltf. to maintain an action.—*DAVIDSON v. BOHN* (1848), 6 C. B. 456; 18 L. J. C. P. 14; 12 L. T. O. S. 127; 12 Jur. 922; 136 E. R. 1327.

Annotations:—Consd. *Jefferys v. Boosey* (1854), 4 H. L. Cas. 819. *Distd.* *Cumberland v. Copeland* (1862), 1 H. & C.

238. —.]—*JEFFERYS v. BOOSEY*, No. 164, *ante*.

239. —.]—The author of a song agreed verbally with S. to part with his copyright, & subsequently by instrument in writing assigned it to L.:—*Held*: an assignment of a copyright under the Copyright Act, 1842 (c. 45), had to be in writing, & L. could sustain an action to restrain S. from infringing his copyright.—*LEYLAND v. STEWART* (1876), 4 Ch. D. 419; *sub nom.* *LAYLAND v. STEWART*, 46 L. J. Ch. 103; 25 W. R. 225.

240. —.]—*EATON v. LAKE*, No. 226, *ante*.

241. —.]—Writing must be specially pleaded—*In action for price.]—Assumpsit* for the price of a copyright bargained & sold:—*Held*: a defence on the ground that the copyright was not assigned in writing would have to be specially pleaded.—*BARNETT v. GLOSSOP* (1835), 1 Bing. N. C. 633; 3 Dowl. 625; 1 Hodg. 94; 1 Scott, 621; 4 L. J. C. P. 174; 131 E. R. 1261.

Annotations:—Reid. *Hemming v. Trenory* (1839), 9 Ad. & El. 926; *Fricker v. Thomlinson* (1840), 1 Man. & G. 772; *Leaf v. Tuton* (1842), 10 M. & W. 393.

242. Under Copyright Act, 1709 (c. 19)—*Attestation by two witnesses.]—DAVIDSON v. BOHN*, No. 237, *ante*.

243. Made after Copyright Act, 1814 (c. 156)—*Before Copyright Act, 1842 (c. 45)—No attestation required.]—*As assignment of a copyright made after the Copyright Act, 1814 (c. 156), & before the Copyright Act, 1842 (c. 45), need not be attested.—*CUMBERLAND v. COPELAND* (1862), 1

H. & C. 194; 31 L. J. Ex. 353; 7 L. T. 334; 9 Jur. N. S. 253; 10 W. R. 581; 158 E. R. 856, Ex. Ch.

Assignment valid by foreign law.]—See No. 160, ante.

Assignment of copyright in registered design.]—See TRADE MARKS, TRADE NAMES, & DESIGNS.

(b) When Valid Assignment Presumed.

See, now, 1911 Act, s. 5 (2).

244. Statement by author—That copyright parted with.]—*POWER v. WALKER*, No. 236, *ante*.

245. Acquiescence in publication—Six years previously—No proof of assignment.]—(1) Evidence that pltf., in an action for pirating a musical work, acquiesced in deft.'s publication of it six years ago does not prove that pltf. has transferred his interest in the copyright.

(2) A receipt given by pltf. for money received by him as the price of the copyright will not preclude pltf. from maintaining the action.—*LATOUR v. BLAND* (1818), 2 Stark. 382.

Annotation:—As to (1) Reid. *Barnett v. Glossop* (1835), 1 Scott, 621.

246. Sale of works by author—Subsequent resale to another—No evidence as to form of first assignment—Valid assignment presumed.]—Injunction granted to restrain the performance of a comedy the copyright of which had been sold by the author to a purchaser who afterwards assigned them by writing to pltf., although it did not appear whether the original assignment was in writing.—*MORRIS v. KELLY* (1820), 1 Jac. & W. 481; 37 E. R. 451, L. C.

247. Evidence of long course of dealing—Assignment in writing presumed—After death of assignor.]—*DENNISON v. ASHDOWN* (1897), 13 T. L. R. 226.

248. Statement of account—"For copyright"—Sufficient proof.]—*ROBINSON v. ILLUSTRATED LONDON NEWS* (1907), *Times*, April 26.

(c) Publishing Agreement.

See, now, 1911 Act, s. 5 (2).

249. Delivery of copy for printing—By author to printer—No assignment—Only licence to print edition.]—An injunction was granted to restrain printing *Prideaux's "Directions to Church-Wardens"* against a person claiming under the printer.

The bare delivery of the copy by the author to be printed does not divest the right of the copy out of the author, but is only an authority to the printer to print that edition, & the author may afterwards grant the right of the copy to another person (*LORD MACCLESFIELD, C.*)—*KNAPLOCK & TONSON v. CURLE* (1722), 4 Vin. Abr. 278, pl. 3; 2 Eq. Cas. Abr. 523; 22 E. R. 442, L. C.

250. Agreement between author & publisher—To print & publish—On terms of dividing profits—Right of publisher to restrain publication by another.]—Deft., the author of a book about to be published, agreed with pltf., a bookseller, to publish it. Pltf. was to have a certain portion of the profits, besides interest for any sums which he

PART V. SECT. 1, SUB-SECT. 1.—A. (a).

236 i. Must be in writing.]—To create a perfect right under Copyright Act, 1875, there should be an assignment in writing of such parts of the book as the owner of the copyright

therein is willing to permit his licensee to publish.—*ALLEN v. LYON* (1883), 5 O. R. 615.—*CAN.*

d. Under Copyright Act, 1842—*Whether attestation by two witnesses necessary.]—KYLE v. JEFFERYS* (1859), 3 Macq. 611.—*SCOT.*

PART V. SECT. 1, SUB-SECT. 1.—A. (b).

e. Acquiescence in publication—*Author allowing publisher to advertise himself as owner—No written assignment to publisher.]—Re CURRY* (1848), 12 I. Eq. R. 382.—*IR.*

Sect. 1.—Assignment: Sub-sect. 1, A. (c), (d) & (e).]

might happen to be in advance during the publication. Having advanced a considerable sum, he refused to go on unless he were paid what was then due to him. It was not paid & the work was stopped. Afterwards deft. agreed with another bookseller to publish it & pltf. applied for an injunction to stop the publication till he should be paid what was due to him:—*Held*: pltf. was entitled to have an injunction on such an agreement as well as if he had absolutely purchased the copyright.—*BROOK v. WENTWORTH* (1797), 3 Anst. 881; 145 E. R. 1069.

251. ———— No assignment.]—Publishers agreed with an author to print, reprint & publish a work by him at their own risk, on the terms of dividing equally with him any profits that there might be after payment of all expenses, & that if all the copies should be sold & another edition should be required, the author should make all necessary alterations & additions, & the publishers should print & publish a second & subsequent editions on the same terms. After the publication of the first edition the firm of the publishers was changed, & the interest of the old firm in the work was expressed to be assigned to the new firm. The author prepared & the new firm published a second edition without any new agreement being entered into. Afterwards, a partner in the new firm, the only remaining member of the old firm, became bkpt., & his assignees, with the solvent partner, sold & assigned to other law publishers all the interest of the firm in the work & all the unsold copies:—*Held*: the purchasers had no share in the copyright of the work, & were not entitled to an injunction to restrain the publication of a third edition by another publisher with the author's concurrence, the agreement being held to be of a personal nature on both sides, & the benefit of it not assignable by either party without the other's consent.—*STEVENS v. BENNING* (1855), 6 De G. M. & G. 223; 3 Eq. Rep. 457; 24 L. J. Ch. 153; 24 L. T. O. S. 205; 1 Jur. N. S. 74; 3 W. R. 149; 43 E. R. 1218, L. J.J.

Annotations:—*Distd. Reade v. Bentley* (1858), 4 K. & J. 656. *Follid. Hole v. Bradbury* (1879), 12 Ch. D. 886. *Appl. Griffith v. Tower Publishing Co. & Moncrieff*, [1897] 1 Ch. 21. *Follid. Re Jude's Musical Compositions*, [1906] 2 Ch. 595. *Reid. London Printing & Publishing Alliance v. Cox*, [1891] 3 Ch. 291; *Macdonald v. Eyles*, [1921] 1 Ch. 631. *Mentd. Rosa v. Scovell* (1889), 5 T. L. R. 207.

252. ———— Only licence to print.]—An agreement between an author & publisher was to the effect that the latter should publish at his own expense & risk a work of the former, & after deducting from the produce of the sale the expenses, including a commission of 10 per cent. on gross amount of sale, the profits remaining of every edition that should be published of the work should be divided equally between the author & the publisher:—*Held*: this was not an irrevocable licence, but only a licence to publish, not a parting with the copyright by the author to the publisher & a joint adventure which the author might put an end to at any time after the publication of the first or any subsequent edition.—*READE v. BENTLEY* (1858), 4 K. & J. 656; 27 L. J. Ch. 254; 30 L. T. O. S. 269; 4 Jur. N. S. 82; 6 W. R. 240; 70 E. R. 273.

Annotation:—*Reid. Abrahams v. Relach*, [1922] 1 K. B. 477.

253. ———— .]—Pltf. agreed to act as reader & literary adviser to deft., who was a publisher. Subsequently pltf. wrote a book which was to be published by deft., it being agreed that the profits should be shared equally between them. Several editions of the book were published, & subsequently deft. became bkpt.:—*Held*: the

agreement as to sharing profits did not vest the copyright in the book in deft., & the contract was a personal one, & therefore deft.'s trustee in bkptcy.

— not the right of reprinting & publishing the book.—*LUCAS v. MONCRIEFF* (1905), 21 T. L. R. 683.

254. ———— No assignment—Only licence to print.]—J., the author of, & proprietor of the copyright in, certain musical compositions, published in a series under the title of "Music & the Higher Life," entered into an agreement with N., the managing director of a publishing co. whereby, in consideration of J. giving to N. the sole & exclusive right of printing & publishing the series of "Music & the Higher Life," & issuing the same in volume form, N. & J. jointly agreed that the cost of printing & issuing the volume should be borne by N., N. should pay to J. 6d. on every copy sold, N. should supply J. with such copies as he might require at 1s. 6d. per copy, any copies supplied to J. not to be liable to the royalty of 6d. N. subsequently assigned his rights under the agreement to the publishing co. That co. afterwards published two other series of musical compositions by J., & also a work entitled "Music & the Higher Life (abridged edition)," which contained 36 numbers from the original series:—*Held*: the agreement only passed the sole & exclusive right of printing & publishing the series called "Music & the Higher Life" in a particular form, namely, volume form, & did not amount to an assignment of the copyright in the compositions forming that series.—*Re JUDE'S MUSICAL COMPOSITIONS*, [1907] 1 Ch. 651; 76 L. J. Ch. 542; 96 L. T. 766; *sub nom. JUDE v. REID BROTHERS, LTD.*, 23 T. L. R. 461; 51 Sol. Jo. 426, C. A.

Whether assignable.]—See PRESS & PRINTING.

255. ———— Option to print & publish future works—Equitable ownership of interest in copyright.]—Pltfs. entered into a written agreement with deft., E., an authoress, for the publication of a novel already written by her, & by the same agreement secured an option to publish her next three books upon certain royalty terms therein contained. The agreement provided that if they exercised their option in the case of any of her next three books pltfs. were, during the legal term of the copyright, to have the exclusive right of producing & publishing the book within a defined area together with the entire control of the publication & terms of sale of the book, & also the right of suing in respect of infringement of copyright. The agreement also provided that E. was not, without the consent of the pltfs., to publish, or allow to be published, any abridgment, translation or dramatised version of the book, & that on the determination of the agreement in certain events therein specified the right to print & publish the book was to revert to E. who was then to be the proprietor thereof. In breach of this agreement E. agreed with defts. C. & Co., a rival firm of publishers, who had notice of pltfs.' agreement, to print & publish her next novel. In an action by pltfs. to restrain both defts. from publishing the novel until it had been first submitted to pltfs. for their acceptance:—*Held*: (1) by virtue of their agreement & 1911 Act, s. 1, pltfs. would, upon exercising their option in respect of any of the specified books, thereby become equitable owners of a part of, or of an interest in, the copyright thereof; (2) until they exercised their option pltfs. had an option to become entitled to an interest in such copyright, which option they were entitled to protect by injunction against E. & also against C. & Co. who had notice of the pltfs.' agreement.—*MACDONALD v. EYLES*, [1921] 1 Ch.

631; 90 L. J. Ch. 248; 124 L. T. 625; 37 T. L. R. 187; 65 Sol. Jo. 275.

Annotations:—As to (1) *Reid*. Performing Right Soc. v. London Theatre of Varieties, [1922] 2 K. B. 433. As to (2) *Consd.* Performing Right Soc. v. London Theatre of Varieties, [1922] 2 K. B. 433.

Agreement between author & bookseller—For sale of limited edition.—See No. 256, *post*.

See, also, No. 235, *ante*, No. 311, *post*.

See, further, PRESS & PRINTING.

(d) *Equitable Assignment.*

See, now, 1911 Act, s. 5 (2).

256. Agreement for sale—Limited edition—Equitable assignment.—By an agreement between an author & a bookseller, after reciting that the author had prepared a new edition of one of his works, & that the bookseller was desirous of purchasing it, it was agreed that H., printers, should print 2,500 copies of the work, in type & page corresponding with another of the author's works, at the sole cost of the bookseller, & that the latter should pay to the former for the edition a certain sum by instalments, the first to be paid as soon as the edition was ready for publication, etc. The work to be divided into three volumes, & to be sold to the public at £3.

Held: (1) the bookseller was not merely a purchaser of 2,500 copies of the work, but was, in equity, an assign of the copyright of it, to the extent that he was to be the sole publisher of it, until the whole edition, consisting of 2,500 copies, should be sold; (2) a bill by the bookseller to restrain a piracy of the work was not demurrable.

Upon the question of whether there has been a piracy it is not a question of one small passage here & another there, but when such a point is raised as to the quantity of the matter copied, I have always understood that the ct., at the time of trial, is to look at the two works & satisfy itself, as well as it can, whether there has been such an abstraction as forms a fair subject of complaint (*SHADWELL*, V.-C.).—*SWEET v. CATER* (1841), 11 Sim. 572; 5 Jur. 68; 59 E. R. 994.

Annotations:—As to (1) *Consd.* Sims v. Marryat (1851), 17 Q. B. 281; *Reade v. Bentley* (1858), 4 K. & J. 656. *Reid*. Stevens v. Benning (1854), 1 K. & J. 168; *Reade v. Bentley* (1857), 3 K. & J. 271; *Macdonald v. Eyles*, [1921] 1 Ch. 631.

257. — In writing not under seal—Invalid against subsequent regular assignee.]—*LEADER v. PURDAY*, No. 190, *ante*.

258. — In writing—Unattested—Equitable assignment.]—Deft., exor. of a deceased author M., wrote to plffs., a publisher, referring to a previous offer from plff. to deft. to give £50 for the copyright of one of M.'s works called V., which deft. said he had accepted. Plff. paid deft. £50, & had from him a receipt in these terms, "Received from S. £50 for permission to publish M.'s work, V., so long as the copyright may endure. The right to be exclusively S.'s own for ten years from this date." M. in his lifetime had agreed with B., another publisher, to sell him the copyright of V. No transfer had been executed; & the agreement between M. & B., which was in writing, was unattested. This was unknown to deft. & to plff. B. opposed the publishing of the work by plff., who then brought an action against deft. on a warranty of title in the copyright:—*Held*: B. had an equitable title to the copyright.—*SIMS v.*

MARRYAT (1851), 17 Q. B. 281; 117 E. R. 1287; *sub nom.* *SIMS v. MARRYAT*, 20 L. J. Q. B. 454.

Annotation:—*Mentd.* Eichholz v. Bannister (1864), 17 C. B. N. S. 708.

259. — By parol—Invalid against subsequent assignee in writing.]—*LEYLAND v. STEWART*, No. 239, *ante*.

260. — Of unwritten work—Equitable assignment—Of work when written.]—Plffs., a firm of publishers, agreed with an author to pay him £200 for the complete copyright of a story to be written on the lines of a synopsis already approved by them, containing not less than 80,000 words, copy to be delivered within six months. The story was completed & a type-written copy delivered to plffs. within the specified time. Pending a dispute about an alleged deficiency in the number of words, plffs. withheld payment of part of the £200, & in the interval the author sold the volume rights in the story to deft., a purchaser for value without notice. Plffs. published the story in volume form. They now sought to restrain deft. from publishing the story:—

Held: the agreement constituted a good equitable assignment of the complete copyright in the story, when written, to plffs., who thereby became assigns of the author within the definition contained in the Copyright Act, 1842 (c. 45), s. 2, & plffs. were entitled to an injunction, notwithstanding that the case was also a case of employment falling under s. 18 of the Act, under which plffs. could not have succeeded, inasmuch as the story had not as yet been paid for in full by them as required by that sect.—*WARD, LOCK & CO., LTD. v. LONG*, [1906] 2 Ch. 550; 75 L. J. Ch. 732; 95 L. T. 345; 22 T. L. R. 798.

Annotations:—*Consd.* Macdonald v. Eyles, [1921] 1 Ch. 631; *Performing Right Soc. v. London Theatre of Varieties* [1922] 2 K. B. 433.

261. Agreement to write play for producer—On terms of payment to author—And royalties whenever production played—No equitable assignment to producer.—*TATE v. THOMAS*, No. 193, *ante*.

By employment of author.]—See No. 77, *ante*.

See, also, No. 255, *ante*.

Right of action of equitable assignees.—See No. 614, *post*.

(e) *Other Cases.*

See, now, 1911 Act, s. 5 (2).

262. Parol consent—To publication—No assignment.—An author published his work in a foreign country in 1814, & afterward agreed to sell to A. the exclusive right of printing the work in this country, but no agreement or consent in writing was then entered into. A. published the work in Sept. 1814, in England. In 1818, B. published the same in England. In 1822, the author, by an agreement in writing, assigned to A. the exclusive right of printing the work in England:—*Held* (1) A. had not, by the parol consent given by the author in 1814, acquired the exclusive right of publishing the work in England; (2) it could not be deemed a publication by the author, not being made on his account or for his benefit; (3) the publication by B. in 1818, was a lawful publication; (4) the author could not afterwards, in 1822, by making a valid assignment to A., enable him to maintain an action against B. for selling a copy of the same work after such assignment was executed.—*CLEMENTI v. WALKER*, (1824), 2 B. & C. 861; 4

PART V. SECT. 1, SUB-SECT. 1.—
A. (d).

1. *Statement on title-page of work*
—As to whom printed for.]—*HODGES*
v. WELSH (1840), 2 I. Eq. R.

266.—IR.

PART V. SECT. 1, SUB-SECT. 1.—
A. (e).

g. *Receipt for payment—Of price*

of copyright—Effectual assignment.
A receipt in writing for the price of
the copyright operates as an effectual
assignment.—*KYLE v. JEFFREYS* (1859),
3 Macq. 611.—SCOT.

Sect. 1.—Assignment: Sub-sect. 1, A. (e), B.

Dow. & Ry. K. B. 598; 2 L. J. O. S. K. B. 176; 107 E. R. 601.

Annotations:—As to (1) *Consd.* Cocks v. Purday (1848), 5 C. B. 860; Jefferys v. Boosey (1854), 4 H. L. Cas. 815. *Refd.* Chappell v. Purday (1841), 4 Y. & C. Ex. 485; Boosey v. Purday (1849), 4 Exch. 145; Reid v. Maxwell (1886), 2 T. L. R. 790. As to (2) *Consd.* Chappell v. Purday (1845), 14 M. & W. 303. *Generally, Refd.* Page v. Townsend (1832), 5 Sim. 395.

263. Parol agreement—For sole right of representation—No assignment.—The proprietors of a theatre employed an author to adapt for them a foreign dramatic piece to the English stage, paying him a weekly salary & travelling expenses. They merely suggested the subject, & had no share in the design or execution of the work. There was no contract in writing, nor any assignment of the copyright, but a mere verbal understanding that pltf. were to have the sole right of representing the piece in London:—*Held*: (1) pltf. were not assignees of the copyright, nor had they such a right or interest therein as to entitle them to maintain an action for penalties under the Dramatic Copyright Act, 1833 (c. 15), s. 2; (2) the employer was not the author of the work within the Dramatic Copyright Act, 1833 (c. 15), but the person employed to make such adaptation acquired for himself, as author of the adaptation, & so far as that adaptation gave any new character to the work, the statutory right of representing it.—*SHEPHERD v. CONQUEST* (1856), 17 C. B. 427; 25 L. J. C. P. 127; 27 L. T. O. S. 105; 2 Jur. N. S. 236; 4 W. R. 283; 139 E. R. 1140.

Annotations:—As to (1) *Apld.* Eaton v. Lake (1888), 20 Q. B. D. 378. As to (2) *Consd.* Levy v. Rutley (1871), L. R. 6 C. P. 523; Nottage v. Jackson (1883), 52 L. J. Q. B. 760. *Apld.* Eaton v. Lake (1888), 20 Q. B. D. 378. *Refd.* Affalo v. Lawrence & Bullen, [1903] 1 Ch. 318. *Generally, Refd.* Hatton v. Kean (1859), 7 C. B. N. S. 268.

264. Receipt for payment—Of price of copyright—No assignment.—*LATOUR v. BLAND*, No. 245, *ante*.

265. — On account—For interest of author—No assignment.—*LEVY v. RUTLEY*, No. 198, *ante*.

266. — For five designs including all copyrights—“Subjects: four golfing subjects”—Assignment of copyright in golfing picture—Identified by parol evidence.—*SAVORY (E. W.), LTD. v. WORLD OF GOLF, LTD.*, No. 16, *ante*.

267. Registration of copyright—By owner of sole right to reproduce—With assent of author—Assignment.—H. agreed with T. to edit a translation of a foreign work, & compose a biographical sketch of the author, & give notes, etc. of his own. It was intended that T. should have the sole right of multiplying copies of the work, & the work was published before the passing of the Copyright Act, 1842 (c. 45). There was no assignment of the copyright from H. to T. After T.'s death, his widow, with H.'s knowledge & assent, registered the copyright in her own name under the Copyright Act, 1842 (c. 45):—

Held: the copyright was in T.'s widow & not in H.—*HAZLITT v. TEMPLEMAN* (1866), 13 L. T. 593.

268. Agreement to let assignee have drama—In discharge of debt—Assignment.—A. agreed with B. to let B. have a particular drama in discharge of £10 owing by A. to B.:—*Held*: this was a complete assignment to B. of A.'s whole property in the drama.

Semble: there is no provision as to the mode in which an assignment of the right to represent a drama must be made, & the assignment need not be in writing.—*LACY v. TOOLE* (1867), 15 L. T. 512, N. P.

269. Sale of sole right to reproduce picture—In chromo—For two years—No assignment—Only licence.—The assignees of the copyright in a picture sold to pltf. the sole right to reproduce it in chromo for two years. While this agreement was in force deft. published the same subject by chromo-lithography, independently, not directly copying pltf.'s chromo-lithograph:—*Held*: (1) the copyright in the original picture had been violated by the production of deft.'s chromo-lithograph, which was not simply an imitation of pltf.'s chromo-lithograph; (2) pltf. was not an assignee of the copyright within the meaning of Copyright Act, 1842 (c. 12), but a licensee to reproduce an imitation of the picture.—*TUCK v. CANTON* (1882), 51 L. J. Q. B. 363.

Annotation:—*Generally, Mntd.* Liverpool General Brokers' Assn. v. Commercial Press Telegram Bureau, [1897] 2 Q. B. 1.

270. ——K. & Co., art colour printers, who were owners of a picture called “The Bride,” & the copyright in it, entered into an agreement with the A. Co., the terms of which were embodied in a letter of Apr. 19, 1890, from K. & Co., “For 55,000 copies of ‘The Bride,’ price £13 9s. per 1000 copies, which price includes sole & entire copyright nett”:—*Held*: the title to the copyright passed immediately by the letter of Apr. 19, 1890.—*LONDON PRINTING & PUBLISHING ALLIANCE, LTD. v. COX*, [1891] 3 Ch. 291; 60 L. J. Ch. 707; 65 L. T. 60; 7 T. L. R. 738, C. A.

Annotations:—*Consd.* Petty v. Taylor, [1897] 1 Ch. 465; British Actors Film Co. v. Glover, [1918] 1 K. B. 299.

Refd. Neilson v. Horniman (1909), 26 T. L. R. 188.

271. Trade label—Conduct amounting to assignment.—*LEVI v. CHAMPION & Co., LTD.* (1887), 3 T. L. R. 286.

272. Sale of blocks—For reproducing designs—No written agreement as to use—No assignment—Only personal licence to use.—Pltf., owners of the copyright in books containing illustrations drawn by themselves, supplied copies of the drawings to persons for advertising purposes, the copies being generally printed by themselves & supplied to the customers on advertising sheets. Occasionally, for a money consideration, they supplied blocks of the drawings, so that the customers might print the designs with other matter not printed by pltf. For this purpose they sold blocks to L., but there was no written agreement with or licence to L. as to the use of the blocks. Defts., with permission of L., used the blocks to print drawings which they published:—*Held*: the licence did not constitute an assignment of copyright, but was a mere authority to L. personally to print therefrom for his own advertisements or trade; L. could not authorise defts. to print illustrations from the blocks, & pltf. were entitled to an injunction restraining defts. from using the blocks.—*COOPER v. STEPHENS*, [1895] 1 Ch. 567; 72 L. T. 390; 43 W. R. 444; 11 T. L. R. 283; 13 R. 444; *sub nom.* *Re COOPER*, *COOPER v. STEPHENS*, 64 L. J. Ch. 403.

Annotation:—*Consd. & Apprvd.* Marshall v. Bull (1901), 85 L. T. 77.

See, also, No. 47, *ante*.

273. Sale of “wood engraving copyright”—Of picture—No assignment—Only licence to engrave.—Pltf. was owner of the copyright in a picture & sold to G. the “wood engraving copyright.” He subsequently sent to the art editor of the I. magazine, owned by defts., a photograph of the picture with the following words written on it: “With the artist's compliments to the art editor of the I.” Defts. published in the I. a “process” reproduction of the photograph, & subsequently G. published a “wood block” of the picture:—*Held*: (1) whether or not copyright was

severable, the purported assignment to G. amounted to a licence to engrave & not an assignment of the copyright, which remained in pltf.; (2) the sending of the photograph did not amount to an invitation to reproduce it without remuneration & pltf. was entitled to damages.—*SMITH v. NEW PUBLISHING CO., LTD.* (1897), 41 Sol. Jo. 367.

274. Assignment qualified by undertaking—That assignee should not reproduce—Without consent of assignor—No valid assignment.]—*LANDEKER & BROWN v. WOLFF & Co., LTD.* (1907), 52 Sol. Jo. 45.

275. Assignment to unincorporated company—Adopted after incorporation.]—*MILLAR & LANG, LTD. v. POLAK*, No. 106, *ante*.

B. Effect of Assignment.

(a) Rights of Assignor.

See, now, 1911 Act, s. 5 (2).

276. Surplus stock—Printed before assignment—Assignor may sell.]—In the absence of special contract to the contrary, the assignor of a copyright is entitled, after the assignment, to continue selling copies of the work printed by him before the assignment & remaining in his possession.—*TAYLOR v. PILLOW* (1869), L. R. 7 Eq. 418.

277. Assignment to publisher—In consideration of royalties on sales by assignee—No right to royalties on sales by third parties.]—Pltf. assigned his copyright in certain songs to deft. co., in consideration of a royalty to be paid on every copy sold by the co. The songs were published in the *Weekly Dispatch* with the knowledge & approval of deft. co., & pltf. sought to recover royalties in respect of the publication & sales of the songs by the proprietors of the newspaper:—*Held*: (1) the assignment of copyright was unconditional, except as to payment of royalties on sales by deft. co., which was under no obligation to publish the songs; (2) pltf. was not entitled to royalties on sales made by third parties, who were not agents of deft. co.—*NICHOLLS v. AMALGAMATED PRESS* (1907), cited in Halsbury's Laws of England, Vol. VIII., 159, n.

278. ——— Subsequent assignment by receiver for debenture holders—Assignor not entitled to royalties from new assignee.]—The author of a book assigned by deed to a co. the exclusive right of publishing it so that upon publication the co. should be the sole owners of the copyright therein. The co. undertook to publish the book forthwith at their own risk & expense. In addition to an allotment of shares to the author the co. covenanted to pay him a royalty on the price of copies disposed of, to sell at prices agreed upon by the parties, to assign only to successors in business, & subject to the terms of the deed so far as applicable, to keep & furnish accounts of sales, & to allow the author to inspect the books of the co. relating to the publication & sale of the work. The co. & a receiver appointed by debenture holders subsequently, with the assent of the ordinary creditors, sold to a purchaser, who was a successor in business of the co., the copyright in the book so far only as the vendors had any right to sell & subject to all equitable or other claims thereon. In an action by the author against the purchaser for an account & payment of royalties:—*Held*: the original deed of assignment showed no intention to impose a charge or reserve a vendor's lien upon the copyright for the royalties, & the purchaser, not being a party to that deed, was not bound to account for or pay royalties to the author.—*BARKER v. STICKNEY*, [1919] 1 K. B. 121; 88 L. J. K. B. 315; 120 L. T. 172, C. A.
Annotation:—*Distd. Macdonald v. Eyles*, [1921] 1 Ch. 631.

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279. ——— Assignee not compelled to publish.]—*NICHOLLS v. AMALGAMATED PRESS*, No. 277, *ante*.

—— **Bankruptcy of assignee.]—***See BANKRUPTCY & INSOLVENCY*, Vol. IV., p. 256, No. 2336.

(b) Rights of Assignee.

See, now, 1911 Act, s. 5 (2).

280. Valid assignment—Confirming invalid parol consent to publication—Assignee may not restrain third party—From continuing lawful publication.]—*CLEMENTI v. WALKER*, No. 262, *ante*.

281. ——— When importation of copies permitted for over six years—Whether assignee may exclude others from publication.]—In 1830, A., a foreigner, assigned the entire copyright of a musical work to B., a foreigner. A. & B., by parol, assigned to C. the copyright for Great Britain & Ireland. In the same year C., by parol, assigned the work to D., who published the work in England. In 1834, E., denying the exclusive right of D., & being about to publish the same work, was induced by D. to desist upon certain terms. On the death of D., his extrix. refused to continue the agreement with E., who then published the work on his own account. In 1836 the extrix. obtained a legal assignment from A., B. & C., & then filed a bill against E., for an injunction & an account. On a motion to dissolve an *ex p.* injunction obtained, the answer of deft. was read, alleging, that from 1830 to 1836 the trade had freely imported the work in score from Paris, & that various parts had also been published here, without molestation by D., or his representatives, till the legal title was obtained by pltf.:—*Held*: the injunction would be dissolved, & an action at law directed as to this point, whether a party who had a parol assignment of a work, but no legal title, & had permitted importation by the trade for six years, could, by obtaining the legal title afterwards, acquire the right of excluding others from the privilege of publication, the deft. to keep an account in the meantime.

Semble: a legal title in pltf. is not absolutely necessary for an injunction.—*CHAPPELL v. PURDAY* (1841), 4 Y. & C. Ex. 485; 10 L. J. Ex. Eq. 50; 160 E. R. 1098; *subsequent proceedings* (1843), 12 M. & W. 303; (1845), 14 M. & W. 303.

Annotation:—*Reid. Jefferys v. Boosey* (1854), 4 H. L. Cas. 819.

282. To publish with alterations—In absence of special contract.]—Pltf. had contracted to correct & complete from materials to be furnished by deft. a book which deft. expressed his intention to write, & agreed also to supply the legal information connected with the subject, for which the pltf. was to be paid a certain remuneration, according to the number of pages the work might contain:—*Held*: an injunction would be refused to restrain deft. from printing, publishing or selling the legal part of the work, which pltf. had contributed, with any material alteration or omission, & to restrain deft. from printing, publishing or selling the work until he had paid pltf. the sum agreed upon for his assistance & contribution; for such payment might be enforced at law, & the title to it was not a ground for the interposition of a ct. of equity.

Semble: unless there be a special contract, either express or implied, reserving to the author a qualified copyright, the purchaser of a manuscript is at liberty to alter & deal with it as he thinks proper.—*COX v. COX* (1853), 11 Hare, 118; 1 Eq. Rep. 94; 22 L. T. O. S. 63; 1 W. R. 345; 68 E. R. 1211.

Sect. 1.—Assignment: Sub-sect. 1, B. (b) & (c), C.; sub-sect. 2, A. & B.]

283. —.]—Motion on behalf of pltf., an author, to restrain deft., a publisher, from publishing or selling a certain book otherwise than in the form in which it was prepared by the author, or from representing that pltf. was the author of the book published by deft. The book was originally published in its complete form in 1886. In 1892 the publisher issued an edition of the book, omitting the preface, table of contents, introduction, bibliographical notice, & index. The ground of the motion was that the publication of the book in a mutilated form caused an injury to the pltf.'s reputation as an author:—*Held*: (1) pltf.'s remedy in law was libel; (2) with the exception of a case of trade libel, the ct. would not grant an injunction to restrain a libel before the case had been submitted to a jury.—*LEE v. GIBBINGS* (1892), 67 L. T. 263; 8 T. L. R. 773; 36 Sol. Jo. 713.

Annotation:—As to (1) *Reid. Monson v. Tussaud, Monson v. Tussaud* (1894), 63 L. J. Q. B. 454.

See, also, LIBEL & SLANDER.

284. Assignee for limited period—May sell stock printed during period—After termination of period.]—An author contracted with a printer & publisher for the copyright & sole right of sale for four years, from Mar. 15, 1854, of a book written by the author. The publisher printed three editions of the work previously to the expiration of the four years in Mar. 1858, but had printed none since:—*Held*: an injunction would not lie to restrain the publisher from selling his unsold stock of copies.—*HOWITT v. HALL* (1862), 6 L. T. 348; 26 J. P. 372; 10 W. R. 381.

285. Performing rights—Assignment of copyright by author—Before Dramatic Copyright Act, 1833 (c. 15)—Passes sole right of representation.]—A person to whom the copyright of a dramatic piece has been assigned previously to & within ten years of, the passing of the above Act is an assignee within s. 1 of the Act, which gives to the author's assignee, in the case of a dramatic work published within ten years, the sole liberty of representing it.—*CUMBERLAND v. PLANCHE* (1834), 1 Ad. & El. 580; 1 Nev. & M. K. B. 537; 3 L. J. K. B. 194; 110 E. R. 1329.

Annotations:—*Consd. Lacy v. Rhys* (1864), 4 B. & S. 873. *Dbtd. Ex p. Hutchins* (1879), 4 Q. B. D. 483. *Consd. Chappell v. Boosey* (1882), 21 Ch. D. 232. *Reid. Barnett v. Glossop* (1835), 1 Scott, 621.

286. — On assignment of book containing dramatic piece—Assignee not entitled.]—*MARSH v. CONQUEST*, No. 531, *post*.

287. — On assignment of musical composition—With all property & benefit—Assignee entitled.]—Within ten years before the passing of the Copyright Act, 1842 (c. 45), C. set to music two songs, & in 1843, after the passing of that Act, he by deed assigned to D. & M. his copyright in the two musical compositions, together with all property & benefit therein. In 1878 C. purported to assign to A. the sole liberty of performing or singing, or causing or permitting to be performed or sung, the musical compositions:—*Held*: A. was not entitled to the liberty of performing the musical compositions, for C., by the deed made in 1843, had granted the sole liberty of performing the musical compositions to D. & M., & therefore could not in 1878 grant it to A.—*Ex p. HUTCHINS* (1879), 4 Q. B. D. 483; *sub nom. Re THE SONGS "KATHLEEN MAVOURNEEN" & "DERMOT ASTORE," Ex p. HUTCHINS & ROMER*, 48 L. J. Q. B. 505; 41 L. T. 144; *sub nom. Re TWO MUSICAL COMPOSITIONS ENTITLED "KATHLEEN MAVOURNEEN" & "DERMOT*

ASTORE," Ex p. HUTCHINS & ROMER, 27 W. R. 857, C. A.

288. Assignment of published & unpublished works—Subject to life interest of assignor—Works subsequently published by assignor pass.]—The owner of the copyright of printed & manuscript books & certain copies thereof on hand by deed assigned his rights, subject to a life interest to himself to print & publish the books & any new editions thereof, to trustees upon trust to permit his son to manage the printing & publishing of the books & to have & enjoy all the profit thereof:—*Held*: books published in the lifetime of the assignor after the date of the deed were subject to the trusts of the deed.—*RIPPON v. NORTON* (1839), 2 Beav. 63; 48 E. R. 1102.

Annotations:—*Mentd. Duncan v. Campbell* (1842), 12 Sim. 616; *Wallace v. Anderson* (1853), 16 Beav. 533; *Re Coleman, Henry v. Strong* (1888), 39 Ch. D. 443.

289. Assignment of copyright in oil painting—For purpose of producing engraving of one size—Assignee entitled only to copyright of engraving.]—The owner of a copyright of a painting assigned the copyright for the purpose of producing an engraving of one size. Deft., not having seen the painting or engraving, printed & published a chromo-lithograph very similar in design to the oil painting & engraving, but the main design of which he took from a photograph, as to which there was no extrinsic evidence of the origin of its design or whether it was an imitation of the oil painting or engraving:—*Held*: (1) the right of producing copies of the painting in other ways, or by engravings of other sizes, remained in the original owner of the copyright of the painting, & could be assigned by him to any other person; (2) if the assignee of the right of copying a painting in a particular way alleged that some other publication was an infringement of his copyright, the onus was on him to show that that publication had been taken from his copy & not from the original painting; (3) even if it had been proved that the idea or design of the photograph had been taken from the oil painting the copyright of such photograph was no infringement of the copyright in the engraving, & an action by the owner of the copyright in the engraving to restrain the publication of the lithograph would fail.—*LUCAS v. COOKE* (1880), 13 Ch. D. 872; 42 L. T. 180; 28 W. R. 439.

Annotations:—As to (1) *Consd. Fishburn v. Hollingshead* (1891), 64 L. T. 847; *Re Jade's Musical Compositions* (1907), 76 L. J. Ch. 542.

290. Musical composition—Under assignment before 1911 Act—Assignee not entitled to rights under 1911 Act—To restrain manufacturer of records.]—*CHAPPELL & Co., LTD. v. COLUMBIA GRAPHOPHONE Co., No. 485, post*.

Right to sue for infringement.]—See No. 88, ante; Nos. 531, 644, post.

Assignment by foreign author.]—See Nos. 160, 173, ante.

(c) *Assignment coupled with Covenant.*

See, now, 1911 Act, s. 5 (2).

291. Covenant by assignor not to prejudice sale—Rival work published—By assignor & third party—Assignee may restrain third party.]—(1) Copyright may be either in respect of the matter or the arrangement, but no property can be acquired in an article copied from a prior work.

(2) If A. sells a work to B., & covenants not to do anything which may be detrimental to the sale or circulation of that work, & if afterwards A. & a partner publish a rival work on the same subject, the partner will be restrained as well as A.

(3) If A., having entered into such a covenant

with B. sells the materials of a rival work to C., who concludes his agreement, & pays his money without any notice of the covenant, an injunction on the ground of that covenant cannot be maintained against C.

(4) If an injunction has been granted against a work, which is proposed to be published in successive numbers on the ground of piracy in the published numbers, the injunction will not be modified so as to permit the publication of the future numbers while the questions of piracy as to the others remains undetermined.

(5) If A. sells to B. the copyright of a work, containing letter-press & plates which are to be found in prior works, & subsequently furnishes the same letter-press & similar plates to C. for the purposes of a rival work C.'s publication will not, in respect of such letter-press & plates be held to be a piracy upon B.'s work.

(6) The person who forms the plan of the work to be composed by the labours of various persons, who employs different writers to contribute to it, & who pays them for their contributions, is the author & proprietor of such a work, within the Copyright Act, 1709 (c. 19).—*BARFIELD v. NICHOLSON* (1824), 2 Sim. & St. 1; 2 L. J. O. S. Ch. 90; 57 E. R. 245; *subsequent proceedings, sub nom. NICHOLSON v. BARFIELD* (1825), 4 L. J. O. S. Ch. 10; *sub nom. BARFIELD v. NICHOLSON* (1827), 1 Sim. 494.

Annotations :—As to (2) *Consd. Ainsworth v. Bentley* (1866), 14 W. R. 630. As to (6) *Consd. Shepherd v. Conquest* (1856), 17 C. B. 427; *Aflalo v. Lawrence & Bullen*, [1903] 1 Ch. 318. *Refd. Nottage v. Jackson* (1883), 52 L. J. Q. B. 760; *Tate v. Fullbrook* (1906), 98 L. T. 706.

292. — By purchase of author's material—Without notice of covenant—Assignee may not restrain on ground of covenant.]—*BARFIELD v. NICHOLSON*, No. 291, *ante*.

See, also, No. 274, *ante*.

Covenants in restraint of trade.]—*See, generally*, TRADE & TRADE UNIONS.

C. Partial Assignment.

See, now, 1911 Act, s. 5 (2), (3).

293. "For Great Britain & Ireland"—Bad.]—*JEFFERYS v. BOOSEY*, No. 164, *ante*.

See, also, No. 263, *ante*.

294. Agreement to let performing rights—Partial assignment.]—By an agreement in writing for the consideration & upon the terms & conditions therein mentioned the owners of the copyright in a dramatic & musical work agreed to let to deft. the right of professionally performing the work in the provinces of the United Kingdom, reserving to themselves full liberty to permit amateur performance. While this agreement was in force the same owners, in consideration of certain payments & royalties, granted to pltfs. a licence for five years to produce the work in moving pictures films & to lease the films for exhibitions in the United Kingdom & elsewhere, & agreed that pltfs. should have the right while showing the films to render instrumentally, but not vocally, any portions of the music of the work. Pltfs. produced a film of the work & had made arrangement for exhibiting the film with the orchestral music of the work, when deft. published an announcement in various periodical papers, stating that the entire provincial rights in the work & in the music in connection with any stage performance or moving

pictures display, other than amateur performances, were vested in him, & that proceedings would be taken against any proprietor of a theatre or picture infringing deft.'s agreement. Pltfs. claimed a declaration that they were entitled to the exclusive right of producing the work by cinematograph in the United Kingdom & of performing the music instrumentally in connection with the display of any film. The ct. having ordered a speedy trial of the question of title between pltfs. & deft. :—*Held* : there had been a partial assignment of the copyright to deft. & he had become the owner of the particular right mentioned in his agreement & was entitled to take steps to prevent any infringement of that right by pltfs. in performing the music of the work.—*BRITISH ACTORS FILM CO. v. GLOVER*, [1918] 1 K. B. 299; 87 L. J. K. B. 689; 118 L. T. 626; 34 T. L. R. 162; 62 Sol. Jo. 192.

295. Agreement for option to publish future books—Publisher to have exclusive rights during term of copyright—Publisher becomes equitable owner of part of copyright—On exercise of option.]—*MACDONALD v. EYLES*, No. 255, *ante*.

296. — Publisher entitled to option on equitable interest in copyright—Pending exercise of option under agreement.]—*MACDONALD v. EYLES*, No. 255, *ante*.

See, also, No. 256, *ante*.

297. Effect of—Assignee may prevent infringement.]—*BRITISH ACTORS FILM CO. v. GLOVER*, No. 294, *ante*.

298. — Confers rights of property—Capable of being protected by injunction.]—*MACDONALD v. EYLES*, No. 255, *ante*.

— For limited period.]—*See* No. 284, *ante*.

Assignment of performing rights.]—*See* Subsect. 2, *post*.

SUB-SECT. 2.—OF PERFORMING RIGHTS.

A. In what Form Valid.

See, now, 1911 Act, ss. 4, 5 (2).

299. Need not be by deed.]—*MARSH v. CONQUEST*, No. 531, *post*.

300. Need not be in writing.]—*LACY v. TOOLE*, No. 268, *ante*.

301. Parol agreement — Bad.] — *ROBERTS v. BIGNELL, ASHER & ROBERTSON* (1887), 3 T. L. R. 552.

Annotation :—*Consd. Fuller v. Blackpool Winter Gardens & Pavilion Co.*, [1895] 2 Q. B. 429.

B. What operates as.

See, now, 1911 Act, ss. 4, 5 (2).

302. Receipt by author for payment—For "London rights" of play—Assignment of sole right of representation in London.]—The owner of the exclusive right to represent a dramatic piece can grant a licence for the performance of the piece without formally assigning his exclusive right. Such a licence may be transferable, & after granting such a licence, the owner of the exclusive right cannot, without the consent of the licensee for the time being, bring any action to restrain a third party from representing the piece within the limits expressed by the licence.

Pltf., the author of a drama, entered into the following agreement with R. & E., "Received of Messrs. R. & E. the sum of £75 in part payment

PART V. SECT. 1, SUB-SECT. 2.—B.

b. Grant of sole right to represent—By owner of dramatic rights.]—The proprietor in Great Britain of the sole right of representing a dramatic work,

can assign to another that right in the Australian Colonies.—*HOLT v. WOODS* (1896), 17 N. S. W. Eq. 36; 12 N. S. W. W. N. 97.—AUS.

specific locality

& period.]—The right of exclusive representation of a dramatic work is a divisible right, & it may be conferred by assignment for a specific locality & period.—*Ex p. DOBSON & KENNEDY* (1892), 12 N. Z. L. R. 171.—N.Z.

that he should publish it.—**QUEENSBERRY (DUKE) v. SHEBBEARE** (1758), 2 Eden, 329; 28 E. R. 924.

Annotations:—**Consd.** *Abernethy v. Hutchinson* (1825), 1 H. & Tw. 28; *Pollard v. Photographic Co.* (1888), 40 Ch. D. 345. **Refd.** *Millar v. Taylor* (1769), 4 Burr. 2303; *Thompson v. Stanhope* (1774), Amb. 737; *Prince Albert v. Strange* (1849), 1 H. & Tw. 1; *Morison v. Moat* (1851), 9 Hare, 241; *Macmillan v. Dent*, [1907] 1 Ch. 107; *Phillip v. Pennell* (1907), 97 L. T. 386.

312. Consent to representation—Under Dramatic Copyright Act, 1833 (c. 15)—By agent of author—Good.—Pltf. was a member of a society called the Dramatic Authors' Society. This society issued lists of the several dramas composed by its members with the prices charged for each night's performance, if represented with the consent of the secretary, such permission to be granted conditionally on the party representing the piece furnishing a monthly file of bills, & payment within a given time after the account rendered. The latest of these lists was published in 1846. In 1849 the secretary gave deft. a written permission in these terms, "Mr. C. has permission to play dramas belonging to the authors forming the Dramatic Authors' Society upon his punctual transmission of monthly bills & payment of the prices for the performances of such dramas." Pltf. sued deft. for penalties for representing three dramas composed by him since the year 1849:—**Held**: (1) the licence so given by the secretary, the authorised agent of pltf. for that purpose, coupled with the original list & prospectus, applied to the dramas composed by members of the society after the date of the licence as well as to those composed before; (2) the consent in writing of the author or proprietor required by s. 2 of the above Act need not have been under the hand of the author or proprietor himself but might be given by an agent.—**MORTON v. COPELAND** (1855), 16 C. B. 517; 24 L. J. C. P. 169; 25 L. T. O. S. 216; 1 Jur. N. S. 979; 3 W. R. 593; 139 E. R. 861.

Sale of sole right to produce pictures.—See No. 269, *ante*.

Sale of blocks for reproducing designs.—See No. 272, *ante*.

Sale of "wood engraving copyright."—See No. 273, *ante*.

Reproduction of newspaper articles—Usage.—See No. 317, *post*.

Publishing agreement—Whether licence or assignment.—See Nos. 249, 252, 254, *ante*.

See, also, Nos. 193, 251, 253, *ante*.

SUB-SECT. 3.—EFFECT OF.

A. Licence to perform.

Whether assignment of performing rights.—See Nos. 302, 304, 305, *ante*.

313. Licence by Authors' Society—To perform plays of authors forming society—Applied to plays by members—Composed after date of licence.—**MORTON v. COPELAND**, No. 312, *ante*.

314. May be transferable.—**TAYLOR v. NEVILLE**, No. 302, *ante*.

315. By owner of performing right—Licensor cannot restrain third party—Without consent of licensee—From performance within limits of licence.—**TAYLOR v. NEVILLE**, No. 302, *ante*.

B. Other Cases.

See, now, 1911 Act, ss. 4, 5 (2), (3).

316. Parol agreement—Giving licensee exclusive publication & sale—Licensee may not maintain action—For infringement.—**POWER v. WALKER**, No. 236, *ante*.

317. Long continued usage—No grant presumed.—A bill was filed by P., part proprietors of the E. M. newspaper, for the purpose of having it declared that the proprietors of the E. M. were entitled to the use of the matter & types of the Times. Pltfs. derived their title under a purchase made in 1820, from a son of the founder of the Times in 1788, & of the E. M. in 1790, since which date until 1864 the practice had always been to make up the E. M. out of the two last preceding issues of the Times. There was no agreement in writing touching on the question, which depended on usage:—**Held**: (1) bill would be dismissed on the ground that it was an attempt to turn a licence into a right; (2) the presumption of a grant from long continued usage arose only where the origin of the usage was unknown. Long continued usage would not create or prove rights which did not exist upon the original creation of a property; (3) the protection given by common & statute law called copyright was only in respect of some already published or some composed & not yet published literary production, & therefore there could be no copyright in the prospective series of a newspaper. Copyright might attach upon each successive publication; but that which had no present existence as a publication could not be the subject of this species of property.—**PIATT v. WALTER** (1867), 17 L. T. 157.

318. Permission to reproduce photographs—To illustrate articles in periodical—Not extending to publication in separate form.—S., the proprietor of a periodical called "Good Words," agreed verbally with G. to purchase the right to engrave certain photographs to illustrate a series of articles in "Good Words." S. afterwards commenced publishing in a separate form these articles, illustrated by engravings from the same photographs. G. brought an action for damages & for a writ of injunction:—**Held**: the verbal agreement extended to the use of the photographs in "Good Words" only, & there was no licence by G. to publish in a separate form.—**STRAHAN v. GRAHAM** (1868), 17 L. T. 457, L. C.

Annotation:—**Refd.** *Cox v. Land & Water Journal Co.* (1869), L. R. 9 Eq. 324.

319. — In periodical—Publication in supplement not sold separately—No infringement.—**GUGGENHEIM v. LENG & Co.** (1896), 12 T. L. R. 491.

320. Assignment of copyright in oil painting—For purpose of producing engraving of one size—Assignor may grant licence to other persons—For other forms of reproduction.—**LUCAS v. COOKE**, No. 289, *ante*.

321. Sale of blocks—For reproducing designs—Personal licence—Not assignable by licensee.—**COOPER v. STEPHENS**, No. 272, *ante*.

322. — — Licensee may use only for purpose for which assigned.—**MARSHALL (W.) & Co., LTD. v. BULL (A. H.), LTD.**, No. 47, *ante*.

323. Licence to "print, publish & sell"—Licensee not bound to print & publish in own name.—**BOOTH v. LLOYD (EDWARD), LTD.** (1910), 26 T. L. R. 549.

Licence to print—By House of Lords.—See **PARLIAMENT**.

SUB-SECT. 4.—REVOCATION OF.

See, now, 1911 Act, ss. 4, 5 (2), (3).

324. Supply of photographs to periodical—Agreement terminated by proprietor of photographs—Licensee not entitled to use photographs already supplied—Whether for first time or not.—Pltfs.,

Sect. 2.—Licence: Sub-sect. 4. Sect. 3. Parts VI. & VII. Sects. 1 & 2.]

the proprietors of photographs, from time to time supplied defts., the proprietors of weekly periodicals, with photographs for reproduction as illustrations in the periodicals at certain charges for each user. Pltfs., having put an end to their arrangement with defts., the latter continued the publication of photographs:—*Held*: pltfs.' action had the effect of revoking all open offers, & defts. could not subsequently, without the licence of pltfs., use, whether for the first time or not, photographs already supplied by pltfs.—*BOWDEN BROTHERS v. AMALGAMATED PICTORIALS, LTD.*, [1911] 1 Ch. 386; 80 L. J. Ch. 291; 103 L. T. 829.

SECT. 3.—ROYALTIES.

325. Gramophone records—Board of Trade regulation—Payment by adhesive labels—Intra

vires.—Pltf. in the early part of 1911 composed & published an original musical work. Before the commencement of the 1911 Act, July 1, 1912, defts. manufactured abroad & imported into England gramophone records of pltf.'s musical work, & after the commencement of the Act, sold these records without pltf.'s consent & without payment of royalties. The Board of Trade made a reg. that, unless otherwise agreed, the royalties should be payable by means of an adhesive label purchased from the owner of the copyright & denoting the amount of the royalty, the label to be affixed to the record before delivery to a purchaser:—*Held*: (1) defts. had infringed pltf.'s copyright in his musical work, which he possessed by virtue of the 1911 Act, s. 1 (2) (d); (2) the reg. was *intra vires* as being one for "securing," that is to say ensuring, the payment of royalties within 1911 Act, s. 19 (6).—*MONCKTON v. PATHÉ FRÈRES PATHEPHONE, LTD.*, [1914] 1 K. B. 395; 83 L. J. K. B. 1234; 109 L. T. 881; 30 T. L. R. 123; 58 Sol. Jo 172, C. A.

Part VI.—University Copyright.

See, now, 1911 Act, s. 33.

326. As to Bibles—Extent of right of printing.]—*Semble*: the patent to the University of Oxford to print Bibles does not allow of their printing more than for their own use, with some small number more to compensate their charge.—*HILLS v. OXFORD UNIVERSITY* (1684), 1 Vern. 275; 23 E. R. 467.

327. — & Prayer Books—Sale of copies printed by King's printer in Scotland—Restrained in England.]—Upon the answer to a bill by the Universities of Oxford & Cambridge, the King's printer not joining, but being made a deft.:—*Held*: an injunction to restrain the sale in England of Bibles, Prayer Books, etc., printed by the King's printer in Scotland would be granted.—*OXFORD & CAMBRIDGE UNIVERSITIES v. RICHARDSON* (1802), 6 Ves. 689; 31 E. R. 1260.

Annotations:—*Consd. Manners, Miller & Buchan v. King's*

Printers (1828), 2 State Tr. N. S. 215. *Reffd. Grierson v. Eyre* (1804), 9 Ves. 341; *Caldwell v. Vanvliessen* (1851), 9 Hare, 415; *Betts v. Menzie* (1857), 3 Jur. N. S. 357; *Lister v. Leather* (1857), 5 W. R. 550. *Mentd. Gardner v. Broadbent* (1856), 2 Jur. N. S. 1041.

See, also, No. 350, post.

328. As to statutes—University of Cambridge entitled to print.]—The King's printer alone has express authority to print the statutes, but the University of Cambridge are also so entitled under words sufficient to convey the copyright of Acts of Parliament.—*BASKET v. CAMBRIDGE UNIVERSITY* (1758), 2 Keny. 397; 2 Burr. 661; 1 Wm. Bl. 105; 96 E. R. 1222.

Annotations:—*Consd. Eyre & Strahan v. Carnan* (1781), 6 Bac. Abr. 7th ed. 509; *Oxford & Cambridge Universities v. Richardson* (1802), 6 Ves. 689. *Reffd. Millar v. Taylor* (1769), 4 Burr. 2303.

329. As to other works—Effect of Copyright Act, 1709 (c. 19).]—*DONALDSON v. BECKETT*, No. 1, *ante*.

Part VII.—Crown Copyright.

SECT. 1.—OWNERSHIP IN CROWN.

See, now, 1911 Act, s. 18.

330. Acts of Parliament—Exclusive right of printing.]—Exclusive right of Crown to print Acts of Parliament, books of divine service, etc. Deft. printed copies of a form of prayer ordered by His Majesty to be used in all churches on a certain day. Bill brought by the assignee of the right to print (*inter alia*) Bibles, Testaments & books of common-prayer, granted to B. for thirty years in reversion, to restrain deft. from printing & praying for an account of the proceeds of sale:—*Held*: such exclusive right in Crown existed & therefore pltfs. were entitled to continuance of injunction & the account.—*EYRE & STRAHAN v. CARNAN* (1781), 6 Bac. Abr. 7th ed. 509.

331. Prayer Books—Exclusive right of printing.]—*EYRE & STRAHAN v. CARNAN*, No. 330, *ante*.

332. Narrative prepared under orders of Crown

—Of voyage executed under orders of Crown.]—A voyage of discovery having been executed, & a narrative of it prepared under the orders of the Crown, the narrative is the property of the Crown; but on a bill by pltf., a publisher, authorised by the secretary to the board of Admiralty to publish such a narrative, the profits remaining at their disposition:—*Held*: an injunction restraining publication by deft. would be dissolved.—*NICOL v. STOCKDALE* (1785), 3 Swan. 687; 37 E. R. 1023, L. C.

SECT. 2.—OWNERSHIP IN GRANTEE OR PATENTEE.

333. Sole right to print—Almanacs—Grant legal.]—The King may grant a patent for the sole printing of almanacs & Books of Common Prayer.

PART VII. SECT. 1.
m. Bibles — Exclusive right of

printing.]—The right of printing Bibles, etc. belongs exclusively to the King.—

MANNERS v. KING'S PRINTERS (1828), 2 State Tr. N. S. 215.—*SCOT*.

STATIONERS' CORPN. v. SEYMOR (1877), 3 Keb. 792; 1 Mod. Rep. 256; 84 E. R. 1015.

Annotations:—*Consd.* Jefferys v. Boosey (1854), 4 H. L. Cas. 819. *Refd.* Millar v. Taylor (1769), 4 Burr. 2303. *Mentd.* Yarmouth v. Darrel (1686), 3 Mod. Rep. 75; Tonson v. Walker (1752), 3 Swan. 672.

334. ———. ———.]—Pltfs. complained that whereas the sole printing & trading in almanacs was granted to them by letters patent, deft. did print & cause to be printed & vended secretly almanacs, & imported others from Holland, printed there, & sold them. Deft.'s demurrer was in effect that pltf.'s title was not good in law:—*Held*: the demurrer would be overruled.—**STATIONERS' CO.'S CASE** (1681), 2 Cas. in Ch. 66; 22 E. R. 849, H. L.

335. ———. ———. *Grant illegal.*]—The Crown hath not a prerogative or power to grant printing of almanacs to the Stationers' Co. exclusive of any other co.—**STATIONERS' CO. v. CARNAN** (1775), 2 Wm. Bl. 1004; 96 E. R. 590.

336. ———. ———. *Bibles—Grant legal.*]—The King granted the sole printing of English Bibles, & statute books to pltf.: deft. traded with certain Dutchmen, who printed many thousands of them in Holland. On a bill in Ch.:—*Held*: pltf. would have an injunction against deft. not to import or vend the same books, because it was not only a breach of the King's prerogative, but of great & public consequence for strangers to print & vend in England our statutes & laws, if falsely done.—**STATIONERS' CO.'S CASE** (1682), 2 Cas. in Ch. 93; 22 E. R. 862; *sub nom.* **STATIONERS' CO. v. LEE**, 2 Show 258, L. C.

Annotation:—*Refd.* Millar v. Taylor (1769), 4 Burr. 2303.

337. ———. ———. ———.]—**EYRE & STRAHAN v. CARNAN**, No. 330, *ante*.

See, also, Part VI., *ante*, & No. 347, *post*.

338. ———. ———. *Law books—Grant legal.*]—**THE STATIONERS v. PATENTEES ABOUT PRINTING OF ROLL'S ABRIDGMENT** (1686), Cart. 89; 124 E. R. 842, H. L.

See, also, No. 234, *ante*, No. 352, *post*.

339. ———. ———. *Playing cards—Grant void.*]—A grant by the Crown of the sole making of cards within the realm, is void.—**CASE OF MONOPOLIES** (1602), 11 Co. Rep. 84 b; 77 E. R. 1260; *sub nom.* **DARCY v. ALIN**, Noy, 173; Moore, K. B. 617; 1 Web. Pat. Cas. 1.

Annotations:—*Refd.* Thomas v. Sorrell (1673), Freem. K. B. 85; Yarmouth v. Darrel (1686), 3 Mod. Rep. 75; Boulton & Watt v. Bull (1795), 2 Hy. Bl. 463; Crane v. Price (1842), 4 Man. & G. 580; Beard v. Egerton (1846), 3 C. B. 97; Dalton v. Saville Street Foundry & Engineering Co. (1878), 39 L. T. 97; Marsden v. Saville Street Co. (1878), 3 Ex. D. 203; R. v. Yorkshire County Court Judge (1891), 60 L. J. Q. B. 550. *Mentd.* Precedence, etc. of the Judges (1558), Fortes. Rep. 382; City of London's Case (1610), 8 Co. Rep. 121b; Norris v. Staps (1616), Hob. 210; Dublin Corpn. Case (1620), Palm. 1; R. v. Maidenhead Corpn. (1620), Palm. 76; Fleming v. Pitman (1623), Win. 63; R. v. Hampden (1637), 3 State Tr. 826; Merchants Adventurers v. Rebow (1686), Comb. 52; Caldwell v. Vanvlissengen, Caldwell v. Verbeck, Caldwell v. Rolfe

(1851), 9 Hare, 415; Rogers v. Rajendro Dutt (1860), 13 Moo. P. C. C. 209; Young v. Fernie (1864), 4 Giff. 577; Murray v. Clayton (1872), 7 Ch. App. 573, n.; G. E. Ry. v. Goldsmid (1884), 9 App. Cas. 927; Jenks v. Turpin (1884), 13 Q. B. D. 505; R. v. Halifax County Court Judge, [1891] 1 Q. B. 793; British South Africa Co. v. De Beers Consolidated Mines, [1910] 1 Ch. 354; North Western Salt Co. v. Electrolytic Alkali Co. (1912), 107 L. T. 439; A.-G. of the Commonwealth of Australia v. Adelaide S.S. Co., [1913] A. C. 781.

340. ———. ———. *Prayer Books—Grant legal.*]—**STATIONERS' CORPN. v. SEYMOR**, No. 333, *ante*.

341. ———. ———. ———.]—**EYRE & STRAHAN v. CARNAN**, No. 330, *ante*.

342. ———. ———. *Statutes—Grant legal.*]—**STATIONERS' CO.'S CASE**, No. 336, *ante*.

343. ———. ———. ———.]—**EYRE & STRAHAN v. CARNAN**, No. 330, *ante*.

See, also, Part VI., *ante*.

344. *Rights of patentee—May print against private purchaser from author—Law reports.*]—**ROPER v. STREATER**, No. 234, *ante*.

345. ———. ———. *May exclude importations—From abroad.*]—**STATIONERS' CO.'S CASE**, No. 334, *ante*.

346. ———. ———. ———.]—**STATIONERS' CO.'S CASE**, No. 336, *ante*.

347. ———. ———. *To restrain sale—Abroad—Injunction refused—Bibles.*]—The Ct. of Ch. will not grant an injunction in any case, save where a man has a plain right in which he is entitled to be quieted: hence a motion by the King's patentees to stop the sale of English Bibles beyond the seas:—*Held*: would not be granted, till the validity of the patent had been tried at law.—**ANON.** (1682), 1 Vern. 120; 23 E.

348. ———. ———. *In England—Perpetual injunction granted.*]—A perpetual injunction was granted against the deft. for infringing the right of the King's printer in England by selling Bibles, etc., within the realm of England.—**BASKETT v. PARSONS** (1719), cited in 6 Ves. 699; 31 E. R. 1264, L. C.

Annotations:—*Refd.* Manners v. Blair (1828), 3 Bl. N. S. 391. *Mentd.* Oxford & Cambridge Universities v. Richardson (1802), 6 Ves. 689; Gurney v. Longman (1807), 13 Ves. 493.

349. ———. ———. ———.]—*Re* **RED LETTER NEW TESTAMENT (AUTHORISED VERSION)** (1900), 17 T. L. R. 1.

Compare No. 332, *ante*.

350. ———. ———. *After Act of Union—To exclude importations into England from Scotland.*]—Where in an action against the King's printer in Scotland the interlocutor granted by the Ct. of Session was that deft. might print & sell Bibles in any part of the United Kingdom or elsewhere:—*Held*: it should be varied by omitting the words "in any part of the United Kingdom or elsewhere," confining the right to Scotland only.—**BASKETT v. WATSON** (1717), cited in 6 Ves. 699; 31 E. R. 1265, H. L.

Annotation:—*Refd.* Manners v. Blair (1828), 3 Bl. N. S. 391.

See, also, No. 327, *ante*.

PART VII. SECT. 2.

336 i. Sole right to print—Bibles.]—The prerogative of the Crown to grant the exclusive right to print the Bible rests on the duty imposed upon the Sovereign as chief executive magistrate to superintend the publication of the works upon which the established doctrines of our religion are founded, so that these works may be published in a correct & authentic form.—**MANNERS v. KING'S PRINTERS** (1828), 2 State Tr. N. S. 215.—**SCOT.**

o. Right to print & distribute—Statutes.]—**GRIERSON v. EYRE** (1804), 9 Ves. 341; 32 E. R. 634.—**IR.**

p. Rights of patentee—Bibles.]—

A patentee claiming an exclusive right of printing Bibles must establish his patent, before he can have an injunction.—**GRIERSON v. JACKSON** (1794), Ridg. L. & S. 304.—**IR.**

q. ———. English translation of Bible—Sole right to print & to restrain sale of imported copies.]—The King by letters patent, granted to B. & B., their heirs & assigns, to be his only printers in Scotland for forty-one years, to use & enjoy with all its profits & privileges, so far as the same were consistent with the articles of the Union, & especially the sole privilege of printing in Scotland, Bibles, Testaments, the Psalms, the Book of Common Prayer, Confessions of Faith, the greater & lesser Catechisms in the

English tongue. The letters prohibited all other persons, subjects & foreigners, to print in or import into Scotland from any parts beyond the seas, any of the said books, without the licence or authority of B. & B., their heirs, assigns, & substitutes, under pain of confiscation:—*Held*: the patentees had the exclusive right of printing in Scotland, all the books enumerated in the patent, & that the received English translation of the Bible was within the terms of the patent, & could not be sold in Scotland without the authority of the patentees, although the prohibition in terms extended only to importation from parts beyond seas.—**MANNERS v. BLAIR** (1828), 3 Bl. N. S. 391; 4 E. R. 1379.—**SCOT.**

Sect. 2.—Ownership in grantee or patentee. Parts VIII. & IX.]

351. — Not exclusive—Against other patentees.]—BASKET v. CAMBRIDGE UNIVERSITY, No. 328, ante.

352. — — — —.]—Upon a bill brought by the King's printer to restrain deft. from the publi-

cation of certain Acts of Parliament, etc., to which the patentees for printing law books were also defts., the ct. refused to interfere between the contending patents, & therefore only restrained deft. from printing at any other than a patent press.—**BASKETT v. CUNNINGHAM** (1762), 2 Eden, 137; 1 Wm. Bl. 370; 28 E. R. 848, L. C.

Part VIII.—Delivery of Copies to British Museum, etc.

See, now, 1911 Act, s. 15.

353. Part of work—Thirty copies only printed—Cost of publication borne by testamentary donation.]—Where a part of a work, to which there were 26 subscribers, & of which only 30 copies were printed, was published at intervals of several years, at an expense exceeding the sum to be obtained by the price of the copies, & the expense

was defrayed by a testamentary donation :—*Held* : it was not a book demandable by the British Museum under Copyright Act, 1814 (c. 156).—**BRITISH MUSEUM v. PAYNE** (1828), 4 Bing. 540; 2 Y. & J. 166; 1 Moo. & P. 415; 130 E. R. 877, Ex. Ch.

354. Required of every book published—Any-where under British rule—Whether copyright or not.]—ROUTLEDGE v. LOW, No. 165, ante.

Part IX.—Letters.

355. Property in—In writer & recipient jointly—No licence to publish.]—Deft., on his answer being put in, moved to dissolve an injunction against his vending a book of letters from Swift, Pope, & others :—*Held* : a collection of letters, as well as other books, is within Copyright Act, 1709 (c. 19), the receiver of a letter has, at most, a joint property with the writer, & possession does not give him a licence to publish.—POPE v. CURL** (1741), 2 Atk. 342; 26 E. R. 608, L. C.**

Annotations :—Consd. Perceval v. Phipps (1813), 2 Ves. & B. 19; *Gee v. Pritchard* (1818), 2 Swan. 402; *Labouchere v. Hess* (1897), 77 L. T. 559. *Reid. Millar v. Taylor* (1769), 1 Burr. 2303; *Thompson v. Stanhope* (1774), Amb. 737; *Abernethy v. Hutchinson* (1825), 1 H. & Tw. 28; *Mawman v. Tegg* (1826), 2 Russ. 385; *Re Thomson* (1855), 24 L. J. Ch. 599; *Lytton v. Devey* (1884), 54 L. J. Ch. 293; *Hennessy v. Wright* (1888), 21 Q. B. D. 509; *Macmillan v. Dent*, [1907] 1 Ch. 107; *Philip v. Pennell*, [1907] 2 Ch. 577.

356. — In recipient—May recover possession from sender—Holding as bailee.]—The receiver of a letter has a sufficient property in the paper upon which it is written to entitle him to maintain detinue for it against the sender, into whose hands it has come as a bailee.—OLIVER v. OLIVER** (1861), 11 C. B. N. S. 139; 31 L. J. C. P. 4; 5 L. T. 287; 8 Jur. N. S. 512; 10 W. R. 18; 142 E. R. 748.**

357. — — — — Extends to all lawful user—Except publication.]—The receiver of a letter is the owner of it, & may use it for all lawful purposes; the only right which the writer has in reference to it is to restrain publication.—HOPKINSON v. BURGHLEY (LORD)** (1867), 2 Ch. App. 447; 36 L. J. Ch. 504; 15 W. R. 543, C. A.**

Annotations :—Consd. Labouchere v. Hess (1897), 77 L. T. 559; *Macmillan v. Dent*, [1907] 1 Ch. 107. *Expld. Philip v. Pennell*, [1907] 2 Ch. 577.

See, also, No. 360, post.

358. — — — — Right to retain.]—The property in & the right to retain letters remain in the person to whom they are sent; but the sender has still that kind of interest, if not property, in the letters which enables him to restrain their publication,

unless it can be clearly shown that such publication is necessary for the vindication of character.—**LYTTON (EARL) v. DEVEY** (1884), 54 L. J. Ch. 293; 52 L. T. 121; 1 T. L. R. 41.

Annotations :—Consd. Labouchere v. Hess (1897), 77 L. T. 559; *Macmillan v. Dent*, [1906] 1 Ch. 101.

See, also, No. 370, post.

359. — — — — No right of publication—Except for vindication of character.]—LYTTON (EARL) v. DEVEY, No. 358, ante.

See, also, Nos. 366, 371, post.

360. — In person having lawful possession—Extends to all lawful user—Except publication.]—P. & his wife were authorised by W. to write his biography, but no express authority was given to publish any of his letters :—*Held* : P. & his wife were entitled to use the information contained in letters or documents written by W., which had lawfully come into their possession, for the purpose of compiling the biography, without any express or implied authority given by W. for that purpose; but they were not entitled to publish any letters of W., or any extracts therefrom, or paraphrases thereof.

So far as authority goes it is in favour of any use of letters except publication (*KEKEWICH, J.*).—**PHILIP v. PENNELL**, [1907] 2 Ch. 577; 76 L. J. Ch. 663; 97 L. T. 386; 23 T. L. R. 718; 51 Sol. Jo. 719.

361. Copyright in—Does not follow possession.]—POPE v. CURL, No. 355, ante.

362. — — — —.]—HOPKINSON v. BURGHLEY (LORD), No. 357, ante.

363. — — — —.]—PHILIP v. PENNELL, No. 360, ante.

364. — Remains in writer.]—Copyright in private letters, remaining in the writer after transmission, will be protected by injunction against publication, but in an injunction against publishing private letters, alleged to have been obtained from an agent, to whom they were sent in confidence,

PART VIII.

r. To Parliamentary Library—Neglect to deliver—Whether affecting author's right to protection.]—The neglect of the author of a work to deposit a copy thereof in the library of Parliament does not incapacitate him

from proceeding for an infringement of it.—**GRIFFIN v. KINGSTON & BROKE RY. CO.** (1889), 17 O. R. 660.—**CAN.**

PART IX.

360 i. Property in—In person having

lawful possession—Executor.]—GRANARD (EARL) v. DUNKIN (1809), 1 Ball & B. 207.—**IR.**

364 i. Copyright in—Does not follow possession—Remains in writer.]—NELSON v. QUIN (1874), Buch. 46.—**S. AF.**

and upon the answer, denying confidence, & avowing the deft.'s object in publishing them in a newspaper, of which he was proprietor, to be, not profit, but the vindication of his character from the imputation of giving false intelligence, publicly cast upon him by the pltf. :—*Held* : the injunction would be dissolved.—*PERCEVAL (LORD & LADY) v. PHIPPS* (1813), 2 Ves. & B. 19 ; 35 E. R. 225.

Annotations :—*Consd.* *Gee v. Pritchard* (1818), 2 Swan. 402 ; *Labouchere v. Hess* (1897), 77 L. T. 559 ; *Macmillan v. Dent*, [1907] 1 Ch. 107.

365. ———.]—*LABOUCHERE v. HESS*, No. 373, *post*.

366. ———. Though vindication of character alleged as excuse.]—Where letters written by pltf. to deft., were returned by him, with a declaration that he did not consider himself entitled to retain them :—*Held* : the publication of copies taken before the return without the knowledge of pltf. would be restrained by injunction, though it was represented by deft. as necessary for the vindication of his character. The jurisdiction to restrain the publication of letters was founded on a right of property in the writer.—*GEE v. PRITCHARD* (1818), 2 Swan. 402 ; 36 E. R. 670.

Annotations :—*Consd.* *Labouchere v. Hess* (1897), 77 L. T. 559 ; *Philip v. Pennell*, [1907] 2 Ch. 577. *Refd.* *Prince Albert v. Strange*, A.-G. v. *Strange* (1849), 2 De G. & Sm. 652 ; *Re Thomson* (1855), 24 L. J. Ch. 599 ; *Austria (Emperor) v. Day* (1861), 3 De G. F. & J. 217 ; *Springhead Spinning Co. v. Riley* (1868), L. R. 6 Eq. 551 ; *Mulkern v. Ward* (1872), L. R. 13 Eq. 619 ; *Prudential Assce. v. Knott* (1875), 10 Ch. App. 142 ; *Macmillan v. Dent*, [1907] 1 Ch. 107.

367. ——— & vests in executors.]—Injunction was granted to restrain the exor. of the person to whom private letters were written from publishing them without leave of the exors. of the person who wrote them.—*THOMPSON v. STANHOPE* (1774), Amb. 737 ; 27 E. R. 476, L. C.

Annotations :—*Consd.* *Perceval v. Phipps* (1813), 2 Ves. & B. 19 ; *Gee v. Pritchard* (1818), 2 Swan. 402 ; *Labouchere v. Hess* (1897), 77 L. T. 559.

368. ———. When written on behalf of another—No copyright in writer—Letter by solicitor on behalf of company.]—Where a co.'s solr. writes a letter apparently on behalf of the co., he has no such property in it as to entitle him to prevent its publication, although he swears that it was written in his private capacity.—*HOWARD v. GUNN* (1863), 32 Beav. 462 ; 2 New Rep. 256 ; 55 E. R. 181.

369. ———. Letter published after death of writer—In owner of manuscript.]—Although at common law the writer of a letter & his legal personal representatives are entitled to prevent its publication, & this is a right of property, the copyright in a letter published after the death of the writer is vested by the Copyright Act, 1842 (c. 45), in the proprietor of the letter itself, *i.e.*, of the paper & the writing upon it.

The proprietors of unpublished manuscripts, written by an author long deceased, assigned to S. E. & Co., in 1895, all copyright which they possessed & the exclusive right of publishing an entire collection of letters. S. E. & Co. undertook to return to the assignors all the manuscript when copied. S. E. & Co. copied the letters, published them in 1898, & returned the originals to the assignors. Deft. subsequently purchased the originals from the assignors, with any rights which

they might still have therein. He also took from the legal personal representative of the deceased author an assignment of the copyright & all other rights of the author in the letters :—*Held* : by the assignment S. E. & Co. had become proprietors of the author's manuscript so as to enable them by first publication to obtain the copyright in the letters, & they were entitled to an injunction restraining deft. from publishing the letters.—*MACMILAN & Co. v. DENT*, [1907] 1 Ch. 107 ; 76 L. J. Ch. 136 ; 95 L. T. 730 ; 23 T. L. R. 45 ; 51 Sol. Jo. 46, C. A.

370. Author's rights against third parties—Wrongfully in possession—Order for delivery up & injunction.]—Letters written by pltf. to his solr. were improperly handed over by such solr.'s clerk to one P. :—*Held* : the original letters should be handed back to pltf. & an injunction granted restraining the use of copies of them.—*ASHBURTON (LORD) v. PAPE*, [1913] 2 Ch. 469 ; 82 L. J. Ch. 527 ; 109 L. T. 381 ; 57 Sol. Jo. 644 ; *sub nom.* *ASHBURTON v. NOCTON*, 29 T. L. R. 623, C. A.

371. When recipient may publish—To vindicate character.]—*PERCEVAL (LORD & LADY) v. PHIPPS*, No. 364, *ante*.

372. ———.]—*LYTTON (EARL) v. DEVEY*, No. 358, *ante*.

373. ———.]—Deft. H., the proprietor of a newspaper, published on Oct. 2, 1897, a violent attack upon pltf.'s conduct in certain Stock Exchange transactions some years ago, founded upon letters written by pltf. to B. The same supplement contained a threat to publish on Jan. 1, 1898, proofs which deft. had in his possession that pltf. had carried on similar transactions in later years. Pltf., also the proprietor & editor of a newspaper, published on Oct. 7, 1897, an article dealing with & denying deft.'s charges, in which he wrote : " You may publish & republish my letters to B. as often as you please," adding that he could restrain their publication by injunction if he chose, but that he had no intention of doing so. Pltf. afterwards published a letter, alleged to have been written by deft. to a third person, as proof that deft. was a person wholly unworthy of confidence. Pltf. subsequently discovered that the proofs referred to in deft.'s threat consisted wholly or partly of letters written by pltf. to S., & obtained by deft. H., from S.'s widow. Pltf. now moved to restrain defts. H. & S.'s widow from publishing any letters written by pltf. to S., & from informing any one of the contents thereof :—*Held* : the ct. would restrain any person in the possession of letters from publishing them against the will of the writer, except under special circumstances, as where the publication is necessary for the purpose of clearing deft.'s character. There was nothing in pltf.'s conduct to disentitle him to this relief, & deft. had not shown that his purpose in publishing the letters was to clear his own character.

The injunction was granted against publication of the letters from pltf. to S., but not against informing any one of the contents thereof.—*LABOUCHERE v. HESS* (1897), 77 L. T. 559 ; 14 T. L. R. 75.

Annotation :—*Refd.* *Philip v. Pennell*, [1907] 2 Ch. 577.

See, also, Nos. 360, 366, *ante*.

3701. Author's rights against third parties—Wrongfully in possession—Perpetual injunction granted.]—Notes or drafts of private letters dictated to a stenographer in the course of business were surreptitiously given by him to

A., who, knowing how they had been obtained, proposed to publish them & to use them in proceedings he alleged he intended to bring about :—*Held* : the property in the documents was in

pltf., & possession having been obtained unlawfully pltf. was entitled to a perpetual injunction restraining their publication.—*LIDLAW v. LEAR* (1898), 30 O. R. 26.—CAN.

Part X.—Photographs.

As subject matter of copyright.]—See Part II., Sect. 5, sub-sect. 2, *ante*.

Ownership of copyright in—By authorship.]—See Part IV., Sect. 1, sub-sect. 1, B. (a), *ante*.

Where author in employment.]—See Part IV., Sect. 1, sub-sect. 2, B., *ante*.

Ownership of negative.]—See Nos. 189, 210, *ante*.

Infringement of.]—See Part XIII., Sect. 1, sub-sect. 3, B., *post*.

When amounting to infringement.]—See Nos. 451, 452, 453, 463, *post*.

Licence to reproduce—Effect of.]—See Nos. 318, 319, *ante*.

Revocation of.]—See No. 324, *ante*.

Part XI.—International Copyright.

SECT. 1.—IN GENERAL.

See, now, 1911 Act, s. 29.

374. Work composed out of England—By foreign author residing abroad—No copyright in England—At common law.]—CHAPPELL *v.* PURDAY, No. 178, *ante*.

375. Whether foreign author exempt from English conditions.]—The International Copyright Acts, & the convention with France & Ord. in Council made thereunder, do not exempt authors of works in France claiming copyright in this country from the conditions affecting authors of works in this country.—CASSELL *v.* STIFF (1856), 2 K. & J. 279; 69 E. R. 786.

Annotation:—Consd. Fishburn *v.* Hollingshead, [1891] 2 Ch. 371.

376. — Berne Convention, 1887.]—The provision in the Berne Convention, 1887, & the Ords. in Council adopting it, that the enjoyment of the rights thereby given to foreign authors is to be subject to the conditions & formalities prescribed by law in the country of origin of the work, means that it is to be subject only to those conditions & formalities, & not to those required by the law of the country in which the right is being enforced:—*Held*: on the true construction of the Berne Convention, the declaration that public performance of musical works is forbidden, thereby required to be made on the title-page of the work, was sufficient if made in the language of the country of origin. It need not be repeated in the language of the country in which the right is to be enforced. Copyright (Musical Compositions) Act, 1882 (c. 40), s. 1, does not apply to such a case.—SARPY *v.* HOLLAND, [1908] 2 Ch. 198; 77 L. J. Ch. 637; 99 L. T. 317; 24 T. L. R. 600, C. A.

377. Translation—Under International Copyright Act, 1852 (c. 12)—Must be substantially accurate.]—A translation such as is required by the above Act must be a translation of the whole work; & it is not sufficient that it be a version which the foreign author may have sanctioned as a translation.

PART XI. SECT. 1.

a. Work composed abroad — By foreign author—Reprints—Importation of foreign reprints.]—It is not necessary for the author of a book, who has duly copyrighted the work in England under Copyright Act, 1842, to copyright it in C. under Copyright Act, 1875, with a view of restraining a reprint of it in C.; but if he desires to prevent the importation into C. of printed copies from a foreign country, he must copyright the book in C.—SMILES *v.* BEDFORD (1877), 1 A. R. 436.—CAN.

had imported foreign reprints of a book, of which the copyright was owned by pltf., & were offering them

for sale in C.:—*Held*: pltf. were entitled to prohibit their importation into C.—MORANG *v.* PUBLISHERS' SYNDICATE (1900), 32 O. R. 393.—CAN.

c. — — — — —.]—Although the owner of an Imperial copyright has ineffectually attempted to secure a Canadian copyright it is still illegal to import foreign reprints into C.—ANGLO-CANADIAN MUSIC PUBLISHERS ASSOCN. *v.* DUPUIS (No. 2) (1903), Q. R. 27 S. C. 485.—CAN.

d. — — — — — Unauthorised circulation & publication of—No bar to effectual copyright.]—Unauthorised circulation & publication of foreign reprints is no bar to effectual copyright in Canada.—ANGLO-CANADIAN MUSIC PUBLISHERS

ASSOCN. *v.* DUPUIS (No. 2) (1903), Q. R. 27 S. C. 485.—CAN.

e. Foreign reprints — Priorities of British & Canadian copyrights—Copyright Act, R. S., c. 62.]—There is a clear distinction in the above Act, between works which are of prior British copyright, & those which are of prior Canadian copyright. If there is a prior British copyright, & thereafter Canadian copyright is obtained by production of the work, then local copyright is subject to invasion by importation of lawful British reprints. But if Canadian copyright is first on the part of the author or his assigns, then the monopoly is secured from all outside importations.—ANGLO-CANADIAN MUSIC PUBLISHERS ASSOCN.,

Where the original work sought to be protected was a French comedy entitled "Frou-frou," & the version sanctioned by the foreign authors & published in England was entitled "Like to Like"; the names of the characters & the scenery were changed from French to English; in some instances English manners were substituted for French; & considerable omissions of speeches & alterations of passages were made:—*Held*: the version was not a translation within the meaning of the Act, such as to entitle the foreign authors & their assignee to the benefit of the statute.—WOOD *v.* CHART, WOOD *v.* WOOD (1870), L. R. 10 Eq. 193; 39 L. J. Ch. 641; 22 L. T. 432; 18 W. R. 822.

Annotation:—Reid. Lauri *v.* Renad, [1892] 3 Ch. 402.

378. "Publication" of opera—Under International Copyright Act, 1844 (c. 12)—Not publication of four separate instrumental parts.]—On Mar. 10, 1869, an opera composed by O., a French subject, was first represented at a theatre in Paris. On Mar. 28, 1869, a pianoforte arrangement of the music of the opera, made by S. with O.'s consent, was published at a shop in Paris, & about the same time an arrangement by S. for piano & voices was also published. In June, 1869, O. assigned the opera & the copyright & the right of public representation to B., an English subject, & handed over to him the manuscript score. In Aug. 1869, four separate instrumental parts of the opera were published, but the rest of the score remained in manuscript. In 1874 F. brought out at his theatre in London an opera in English under the same title, & announced as with music by O., a substantial part of the music of which was taken from one of the arrangements by S. In a suit by B. to restrain F. from infringing his copyright in the opera & sole right of public representation:—*Held*: (1) the publication of the four instrumental parts in Aug. 1869, was not a publication of the opera within International Copyright Act, 1844 (c. 12), & the convention with France under that Act; (2) a dramatic representation in which a substantial part of the music of O.'s opera was per-

formed was an infringement of the sole right of publicly performing that music, though the operatic score was obtained by independent labour bestowed on the arrangement of S., which was not protected.—*FAIRLIE v. BOOSEY* (1879), 4 App. Cas. 711; 48 L. J. Ch. 697; 41 L. T. 73; 28 W. R. 4, H. L.

Annotation.—As to (1) *Consd. Fishburn v. Hollingshead* (1891), 64 L. T. 647.

379. Translation of foreign work—No copyright—Unless published within twelve months of registration of foreign work—International Copyright Act, 1852 (c. 12), s. 8.]—OSBORNE v. VIZETELLY (1884), 1 T. L. R. 17.

380. Painting—Country where first published—Is country of origin.]—“Published” in International Copyright Act, 1886 (c. 33), s. 11, is applicable to a painting, & the country where it is first published is the country of origin mentioned in the Convention of Berne, art. 2, so that compliance with the formalities prescribed by the laws of that country gives the owner the right to sue in this country.—HANFSTAENGL v. AMERICAN TOBACCO Co., [1895] 1 Q. B. 347; 64 L. J. Q. B. 277; 71 L. T. 864; 43 W. R. 261; 11 T. L. R. 97; 14 R. 106, C. A.

Annotations.—*Refd. Pitt Pitts v. George*, [1896] 2 Ch. 866; *Sarpy v. Holland*, [1908] 2 Ch. 198.

381. — Compliance with formalities—Under law of country of origin—Entitles owner—International Copyright Act, 1886 (c. 33)—To sue in England.]—HANFSTAENGL v. AMERICAN TOBACCO Co., No. 380, *ante*.

382. Infringement of foreign copyright—On proof of right to protection in country of origin—Author may sue in England—International Copyright Act, 1886 (c. 33), s. 2 (3).]—The joint effect of International Copyright Act, 1886 (c. 33), s. 2 (3), & the Berne Convention, art. 2, is that an author suing in England in respect of an infringement of foreign copyright must prove that he is entitled to protection in the country of origin of the work, but that right once established, his remedy depends entirely on English law.

An author whose copyright is infringed in any manner under Fine Arts Copyright Act, 1862 (c. 68), s. 6, is entitled to recover separate penalties against every infringer, whether principal or agent, master or servant, the minimum penalty in every case being a farthing for each copy by him pirated.

Where an action in respect of infringement of copyright fails on the ground of the indecency of the work, & the indecency has been repeated in the infringements, the action will be dismissed without costs.—*BASCHET v. LONDON ILLUSTRATED STANDARD Co.*, [1900] 1 Ch. 73; 69 L. J. Ch. 35; 81 L. T. 509; 48 W. R. 56; 44 Sol. Jo. 42.

Annotation.—*Refd. Hildesheimer v. Faulkner*, [1901] 2 Ch. 552.

383. — — — Remedy of author depends on English law.]—BASCHET v. LONDON ILLUSTRATED STANDARD Co., No. 382, *ante*.

SECT. 2.—PROTECTION OF INTERESTS EXISTING BEFORE DECEMBER 6, 1887.

See, now, 1911 Act, s. 29.

384. “Interest” under International Copyright Act, 1886 (c. 33), s. 6—Before Order in Council of Nov. 28, 1887—Purchase & performance of musical

work in England sufficient evidence.]—A., a French subject, had composed a polka, & first produced it in France before the Ord. in Council of Nov. 28, 1887, but had not acquired copyright in the United Kingdom. Before the Ord. was gazetted, an English publisher printed the polka, & deft., a bandmaster, bought a copy & played it before & after that date:—

Held: there was evidence that deft. had an interest arising in connection with the lawful production of the work in the United Kingdom which was subsisting & valuable when the Ord. was published, & he was therefore protected by s. 6 of the above Act.—*MOUL v. GROENINGS*, [1891] 2 Q. B. 443; 60 L. J. Q. B. 715; 65 L. T. 327; 39 W. R. 691; 7 T. L. R. 623, C. A.

Annotations.—*Folld. Hanfstaengl Art Publishing Co. v. Holloway*, [1893] 2 Q. B. 1. *Appld. Schauer v. Field*, [1893] 1 Ch. 35.

385. — — — Design used as trade mark.]—Pltf., a German, claimed to have the photographic copyright in an oil-painting called “Lisette,” produced in Germany before Dec. 1885, & also the copyright in a photograph of “Lisette” as a distinct work of art. In Jan. 1887, defts. registered as their trade-mark for candles a photograph of “Lisette” on a small scale, with their name & the words “trade-mark” across the picture. This trade-mark was extensively used by defts. on their goods, & was also reproduced by them in various sizes & colours by chromo-lithography on show cards & trade lists for the purposes of advertisement. In Dec. 1887, an Ord. in Council, extending the benefit of the above Act to Germany, came into operation, & in Jan. 1892, pltf. sought to restrain defts. from infringing his copyright by continuing the use of these show cards, admittedly produced subsequently to Dec. 1887:—*Held*: defts., as the proprietors of the trade-mark, a work lawfully produced before Dec. 1887, had an interest in advertising it, as they had done, by means of the show cards & trade lists, that this was an interest arising from or in connection with the trade-mark itself, which was subsisting & valuable at the date of the publication of the Ord., & that defts. were consequently protected by the proviso in s. 6 of the above Act, & that it was not material to consider the date at which these show cards were produced, neither was it material that there was a trifling difference between the show cards & the trade-mark, so long as the substance of the trade-mark had, as here, been honestly advertised.—*SCHAUER v. FIELD* (J. C. & J.), LTD., [1893] 1 Ch. 35; 62 L. J. Ch. 72; 68 L. T. 81; 41 W. R. 201; 9 T. L. R. 29; 37 Sol. Jo. 26; 3 R. 78.

386. — — — May exist though work produced after June 25, 1886.]—S. 6 of the above Act applies to any literary or artistic work produced before Dec. 6, 1887, the date at which the Ord. in Council of Nov. 28, 1887, came into operation, whether produced before or after June 25, 1886, the date of the passing of the above Act, & the interest contemplated by the proviso is a direct subsisting pecuniary interest in the continuation of the production.—HANFSTAENGL ART PUBLISHING Co. v. HOLLOWAY, [1893] 2 Q. B. 1; 62 L. J. Q. B. 347; 68 L. T. 676; 57 J. P. 407; 9 T. L. R. 390; 37 Sol. Jo. 510; 5 R. 358.

Annotations.—*Consd. Hanfstaengl v. Empire Palace, Hanfstaengl v. Baines* (1894), 42 W. R. 681; *Hanfstaengl v. American Tobacco Co.*, [1895] 1 Q. B. 347. *Refd. Hanfstaengl v. Baines* (1894), 42 W. R. 681; *Hanfstaengl*

LTD. v. SUCKLING (1889), 17 O. R. 239.—CAN.

i. — Customs Consolidation Act, 1876, s. 152—Canadian Customs Tariff Act, 1897—Copyright Act, 1842.]—*IMPERIAL BOOK Co., LTD. v. BLACK*

& Co., LTD. (1905), 35 S. O. R. 488; 21 T. L. R. 540.—CAN.

g. International Copyright Act, 1886—Applies to whole Empire.]—*HUBERT v. MARY* (1906), Q. R. 15 K. B.

381.—CAN.

h. Berne Convention—In force in Canada.]—*JOUBERT v. GERACIMO* (1916), Q. R. 26 K. B. 97; 35 D. L. R. 683.—CAN.

Sect. 2.—Protection of interests existing before December 6, 1887. Parts XII. & XIII. Sect. 1: Sub-sects. 1 & 2, A. & B.]

v. Smith, [1905] 1 Ch. 519; *Sarpy v. Holland*, [1908] 2 Ch. 198.

387. ——— Must be direct subsisting pecuniary interest in continuation of production.]—HANFSTAENGL ART PUBLISHING CO. v. HOLLOWAY, No. 386, ante.

388. ——— Publication & inclusion in publisher's list insufficient—When sale had practically ceased at date of Order in Council—Notwithstanding subsequent revival in sale.]—C. & Co., music publishers in London, claimed an injunction to restrain defts., also music publishers in London, from printing, publishing, or selling copies of musical compositions called "Die Fledermaus Waltz by Johann Strauss" & "Du & Du Waltz," first published in Vienna in 1874, & without copyright in this country until 1894, when an Ord. under s. 6 of the above Act came into force entitling the operettas to British Copyright. In 1877 defts. had printed & published in London a waltz under

the title of "Die Fledermaus Waltz by Johann Strauss," which was substantially a reprint of the waltz "Du & Du." By s. 6 of the above Act the Ord. was retrospective; but was subject to a proviso that where, prior to the date of the Ord., any work had been lawfully produced in the United Kingdom, any rights & interests arising from or in connection with such production should remain unaffected:—*Held*: the interest claimed by deft. in such a case must have had a substantial market value at the date when the Ord. came into force, the mere fact that a publisher had published a work & added it to his repertoire was insufficient to constitute such an interest where the sale of the work had practically ceased at the date of the Ord., a revival of public interest in the work since the date of the Ord. causing the interest to become valuable was immaterial, & an injunction would be granted.—*CRANZ & CO. v. SHEARD* (1913), *MacGillivray's Copyright Cases*, 86.

389. Expired rights—Not revived by International Copyright Act, 1886 (c. 33), s. 6.]—LAURI v. RENAD, No. 88, ante.

Part XII.—Registration.

The 1911 Act has rendered registration unnecessary in England.

Whether necessary—As condition precedent—To substituted copyright under 1911 Act.]—See No. 16, ante.

Registration of newspapers.]—See PRESS & PRINTING.

Registration of designs.]—See TRADE MARKS, TRADE NAMES, & DESIGNS.

Part XIII.—Infringement.

SECT. 1.—WHAT CONSTITUTES.

SUB-SECT. 1.—IN GENERAL.

390. Partial copying of copyright works—Parts copied not copyright—No infringement.]—BARFIELD v. NICHOLSON, No. 291, ante.

—— Not amounting to colourable imitation of whole—No infringement.]—See No. 108, ante.

PART XII.

k. Whether necessary—As condition precedent—To right to sue.]—MORANG v. PUBLISHERS' SYNDICATE (1900), 32 O. R. 393.—CAN.

l. ———.]—CARTE v. DENNIS (1900), 5 Terr. L. R. 30.—CAN.

m. Certificate of—Evidence of—Ownership of copyright.]—ALLAN & CO. PROPRIETARY, LTD. v. REED, [1913] V. L. R. 422.—AUS.

n. ———.]—IMPERIAL BOOK CO., LTD. v. BLACK & CO., LTD. (1905), 35 S. C. R. 488.—CAN.

o. ———.]—STONE v. WHITE (1889), 8 N. Z. L. R. 58.—N.Z.

p. ——— Prima facie evidence—That previous requirements of law complied with.]—BERNARD v. BERTONI (1888), 14 Q. L. R. 219.—CAN.

q. Date of—Partial infringement—When parties entitled to particulars.]—In an action for infringement of copyright, the statement of claim alleged that defts. were the proprietors of a subsisting copyright duly registered, & further alleged that defts. printed for sale a large number of copies of another book, a part whereof was an infringement of plifs.' copyright:—

Held: the defts. were entitled to particulars showing the date of registration of plifs.' copyright.—*LIDDELL v. COPP-CLARK CO.* (1900), 19 P. R. 332.—CAN.

r. Expungement of.]—Ex p. DOBSON & KENNEDY (1892), 12 N. Z. L. R. 171.—N.Z.

s. ———.]—Re MARSHALL-HALL (1899), 24 V. L. R. 702.—AUS.

PART XIII. SECT. 1, SUB-SECT. 1.

t. Partial copying of copyright work—Innocent infringement.]—A compiler of a work such as an "automobile road guide" is not entitled to copy any information from a copyright work published by a former compiler.—*EMMETT v. MEIGS*, [1921] 1 W. W. R. 35; 56 D. L. R. 63; 16 Alta. L. R. 132.—CAN.

a. ——— Unless of substantial part—No infringement.]—Copyright under Copyright Ordinance, 1842, is not infringed unless the matter the printing of which is alleged to be an infringement is a substantial part of the publication.—*COOKSLEY v. JOHNSON & SONS* (1905), 25 N. Z. L. R. 834.—N.Z.

b. Similarity—Wrongful use of material of earlier work.]—CANADA

391. Similarity—No infringement—If works produced independently.]—JARROLD v. HOULSTON, No. 22, ante.

392. ———.]—CORELLI v. GRAY, No. 14, ante.

393. ——— Of "work"—Whether book or painting.]—HILDESHEIMER & FAULKNER v. DUNN & Co., No. 201, ante.

BONDED ATTORNEY & LEGAL DIRECTORY, LTD. v. LEONARD-PARMITER, LTD., CANADA BONDED ATTORNEY & LEGAL DIRECTORY, LTD. v. LEONARD (1918), 42 O. L. R. 141; 13 O. W. N. 437; 42 D. L. R. 342.—CAN.

c. ———.]—Deft. G. wrote a book for school use the copyright in which he assigned to plifs. & agreed not to publish any similar work during the subsistence of the agreement. He subsequently wrote for deft. F. a book on the same lines, adopting the same system, repeating the same kind of lessons, intended practically for the same class of pupils & F. published it at a like low price:—*Held*: the author in the subsequent work had made an unfair use of the material used in the preparation of the former work.—*EDUCATIONAL CO. OF IRELAND v. FALLON & GETZ*, [1919] 1 I. R. 62.—IR.

d. Printing of copyright work.]—The mere innocent printing by one person of published matter in which another has the statutory copyright may be an actionable infringement of statutory copyright.—*COOKSLEY v. JOHNSON & SONS* (1905), 25 N. Z. L. R. 834.—N.Z.

e. Publication—By circulation amongst members of society—Of legal

394. Publication—Licence from one co-owner only.]—POWELL v. HEAD, No. 309, *ante*.

Whether actionable.]—See Nos. 540, 563, *post*.

As to knowledge as a defence.]—See No. 47, *ante*; Nos. 506, 539, 540, 541, 557, *post*.

See, also, 1911 Act, s. 2 (1) (2) (3).

SUB-SECT. 2.—LITERARY WORK.

A. Copies.

395. Unauthorised republication—Part printed separately—Remainder in magazine.]—Deft., under pretence & title of an extract, printed part of a book, & was printing the rest in a pamphlet called "The Gentleman's Magazine." Demurrer, that an extract such as this, was not within the Copyright Act, 1709 (c. 19), for then all extracts in the memoirs of literature would be so.

It is not material what title you give the book, nor whether you print all at once or not (LORD HARDWICKE, C.).—AUSTIN v. CAVE (1740), 2 Eq. Cas. Abr. 522; 22 E. R. 440, L. C.

396. — With small original commentary.]—Injunction till hearing to restrain the publication of Milton's poems with Dr. Newton's notes, notwithstanding a small addition of original commentary.—TONSON v. WALKER (1752), 3 Swan. 672; 36 E. R. 1017, L. C.

*Annotations:—*Consd. Osborne v. Donaldson (1765), 2 Eden. 327; Millar v. Taylor (1769), 4 Burr. 2303. *Refd.* Dodsley v. Kinnorsley (1761), Amb. 403; Tonson v. Collins (1761), 1 Wm. Bl. 321; Prince Albert v. Strango (1849), 2 De G. & Sm. 652.

See, also, No. 615, *post*.

397. — Of part of work.]—Upon motion for injunction:—*Held*: defts. would be restrained from printing & publishing a book called "The Friendly Societies Manual," as it was an infringement of pltf.'s copyright in a work called "The Law Relating to Friendly Societies."—SHAW v. BUTTERWORTH (1855), 19 J. P. 804.

398. — Copy made from one publication—Infringes copyright in other publications with joint copyright.]—CATE v. DEVON & EXETER CONSTITUTIONAL NEWSPAPER CO., No. 631, *post*.

For use as advertisement.]—See No. 201, *ante*.

399. Multiplication of copies — Distributed gratis privately—For use of employees—Slightly altered — Adaptation of telegraph code.]—Pltf. published a book of words selected from eight languages, for use in telegraphic transmissions of messages, & it was accompanied by figure cyphers for reference or private interpretation. Defts. bought a copy of the book, & compiled for their own use with its aid a new & independent work, as alleged, which was their own private telegraph

*reports & forms.]—*Pltf. published "An analysis of the Heritable Securities & Infertment Acts, with an Appendix, containing Practical Forms of the writs & instruments thereby introduced." Shortly thereafter defts. prepared "Reports on the two Statutes," & appended thereto a number of forms. These reports & forms were circulated among the members of the society:—

Held: the circumstances amounted to an invasion of the copyright of the party who had published the first analysis & forms.—ALEXANDER v. MACKENZIE (1847), 9 Dunl. (Ct. of Sess.) 748.—SCOT.

PART XIII. SECT. 1, SUB-SECT. 2.—A.

397 l. Unauthorised republication—Of part of work.]—Defenders issued a book which professed to be a reprint

of the original edition of a work, the copyright of which had expired. There was, however, a later edition of this work, with notes, alterations & additions still within the protection of copyright, & the copyright in which was the property of the pursuers. From this last edition the defenders borrowed certain notes, a few of which were original & the rest consisted of quotations from various works which were used by way of explanation & illustration:—

Held: as regarded all the notes borrowed the defenders had infringed the pursuers' copyright.—BLACK v. MURRAY (1870), 9 Macph. (Ct. of Sess.) 341; 43 Sc. Jur. 160; 8 Sc. L. R. 261.—SCOT.

1. Repetition of common errors in spelling—& in alphabetical sequence of names—Infringing publication—

code, & they distributed copies of their book amongst their agents at home & abroad, but they had not printed their book for sale or exportation:—*Held*: defts. had infringed the copyright of pltf., & a perpetual injunction must be granted.—AGER v. PENINSULAR & ORIENTAL STEAM NAVIGATION CO. (1884), 26 Ch. D. 637; 53 L. J. Ch. 589; 50 L. T. 477; 33 W. R. 116.

*Annotations:—*Folld. Ager v. Collingridge (1886), 2 T. L. R. 291. *Consd.* Anderson v. Lieber Code Co., [1917] 2 K. B. 469.

—.]—AGER v.

COLLINGRIDGE (1886), 2 T. L. R. 291.

*Annotation:—*Consd. Anderson v. Lieber Code Co., [1917] 2 K. B. 469.

401. — — — For use in schools.]—OXFORD & CAMBRIDGE UNIVERSITIES v. GILL (1899), 43 Sol. Jo. 570.

See, also, No. 481, *post*.

402. Sale of American reprint—Of law report—Special title printed to resemble English edition.]—BUTTERWORTH v. KELLY (1888), 4 T. L. R. 430.

403. Copy of map—On reduced scale.]—FADEN v. STOCKDALE, No. 66, *ante*.

See, also, Nos. 439, 440, *post*.

B. Quotations, Extracts and Anthologies.

404. General rule—Mere copying of passages insufficient—If not colourable imitation of original.]—The first publisher of a book, even though he has improperly obtained the materials of it, may maintain an action for pirating it.

It is not sufficient to support an action for pirating books, that part is found transcribed into another, for it is lawful to use former publications in composing a new work if they are fairly taken, without being made colour for publishing the original work.—CARY v. KEARSLEY (1802), 4 Esp. 168, N. P.

*Annotations:—*Consd. Splers v. Brown (1858), 31 L. T. O. S. 16; Reade v. Lacy (1861), 1 John. & H. 524; Scott v. Stanford (1867), L. R. 3 Eq. 718. *Refd.* Chatterton v. Cave (1878), 38 L. T. 397; Kelly v. Byles (1880), 13 Ch. D. 682.

405. — — — If subjected to independent work.]—If any part of a work complained of is a transcript of another work, or with only colourable additions & variations, & prepared without any real independent literary labour, such portion of the work complained of is piratical, but it is impossible to establish a charge of piracy where it is necessary to track mere passages & lines through hundreds of pages, or where the authors of a work challenged as piratical have honestly applied their labours to various sources of information.—JARROLD v. HEYWOOD (1870), 18 W. R. 279.

406. — — — Extent of quotation not test of piracy.]—The question whether one author has made a piratical use of another's work does not necessarily depend upon the quantity of that work

*Strong evidence of copying.]—*CARTWRIGHT v. WHARTON (1912), 20 O. W. R. 853; 3 O. W. N. 499; 25 O. L. R. 357; 1 D. L. R. 392.—CAN.

g. Passages copied verbatim in subsequent publication—First publisher protected—Though original information irregularly obtained.]—WALFORD v. JOHNSTON & SON (1846), 20 Dunl. (Ct. of Sess.) 1160; 18 Sc. Jur. 423.—SCOT.

h. Sale of American reprints—Of copyright book—Added as appendix to American reprints of Bible imported into Canada.]—American reprints of pltf.'s copyright book added as an appendix to American reprints of the Bible imported into Canada, were held to be a violation of pltf.'s rights.—FROWDE v. PARRISH (1896), 27 O. R. 526; 23 A. R. 728.—CAN.

Sect. 1.—What constitutes: Sub-sect. 2, B. & C.]

which he has quoted or introduced in his own book.—**BRAMWELL v. HALCOMB** (1836), 3 My. & Cr. 737; 40 E. R. 1110, L. C.

Annotations.—**Expld.** **Saunders v. Smith** (1888), 3 My. & Cr. 711. **Consd.** **Tinsley v. Lacy** (1863), 1 Hem. & M. 747. **Refd.** **Sweet v. Shaw** (1839), 3 Jur. 217; **Jarrold v. Houlston** (1857), 3 Jur. N. S. 1051; **Spiers v. Brown** (1858), 6 W. R. 352; **Hotten v. Arthur** (1863), 11 W. R. 934; **Chatterton v. Cave** (1878), 3 App. Cas. 483.

407. — Infringement question of degree.]—**SWEET v. CATER**, No. 256, *ante*.

408. —.]—The bill alleged that defts. had published a book, in which numerous passages were copied from pltf's. book, & it prayed an injunction to restrain the sale of defts.' book:—**Held**: upon comparison of the two books, that in defts.' book there had been such copying from pltf's. book as would entitle pltf's. to the injunction.—**STEVENS v. WILDY** (1850), 19 L. J. Ch. 190.

See, also, No. 415, *post*.

409. Abstract in magazine—Not piracy.]—A fair abridgment is not a piracy.

An abstract published in annual register or magazine:—**Held**: not a piracy, especially as the author himself had published extracts in a periodical paper.—**DODSLEY v. KINNERSLEY** (1761), Amb. 403; 27 E. R. 270.

Annotations.—**Distd.** **Maeklin v. Richardson** (1770), Amb. 694; **Whittingham v. Wooler** (1817), 2 Swan. 428.

410. Quotation by way of criticism or review—Broken & detached fragments of farce—No infringement.]—Where deft. having in two numbers of a periodical work of theatrical criticism, inserted detached extracts to the extent of six or seven pages, from a farce the property of pltf's., containing 40 pages, interspersed with criticisms:—**Held**: a bill for a perpetual injunction & an account of the profits of the numbers which amounted not to £3, would be dismissed with costs.

If deft. had inserted in one number a criticism, & in the following number mere specimens, that would be the case of an unprotected plagiarism; but here deft. has given no entire act or scene, but only broken & detached fragments of the piece in question (**GRANT, M.R.**).—**WHITTINGHAM v. WOOLER** (1817), 2 Swan. 428; 36 E. R. 679.

Annotations.—**Consd.** **Bell v. Whitehead** (1839), 8 L. J. Ch. 141. **Refd.** **Tinsley v. Lacy** (1863), 1 Hem. & M. 747; **Scott v. Stanford** (1867), 16 L. T. 51.

411. — Ten pages quoted verbatim—Followed by other extracts—Excessive.]—**HARPER BROTHERS v. BIGGS & SON** (1907), *Times*, June 27.

412. Quotation beyond fair limits—Second work competing with first—Abstract in encyclopædia—Infringement.]—If an article, in a general compilation of literature & science, copies so much of a book, the copyright of which is vested in another person, as to serve as a substitute for it; though there may have been no intention to pirate it or to injure its sale; this is a violation of literary property, for which an action will lie to recover damages.—**ROWORTH v. WILKES** (1807), 1 Camp. 94, N. P.

Annotations.—**Consd.** **Bohn v. Bogue** (1846), 7 L. T. O. S. 277. **Refd.** **Newton v. Cowie** (1827), 4 Bing. 234; **Brooks v. Cock** (1835), 3 Ad. & El. 138; **Campbell v. Scott** (1842), 11 Sim. 31; **Hanfstaengl v. Empire Palace, Hanfstaengl v. Newnes**, [1894] 3 Ch. 109.

413. — No independent work done on quotations—Acknowledgment of source no excuse.]

—A., being clerk & registrar of the London Coal Market, was in the habit of publishing, under the authority of the Corp'n., at a considerable profit to himself, statistical returns, extracted from the Corp'n. books of which he had the custody, of all coal imported into London; such returns being published annually in sheets, & supplied to subscribers at a cost of £3 3s. per annum. In a work published under the authority of the Lords of the Treasury, giving the mineral statistics of the United Kingdom during preceding years, & published at a cost of 2s. 6d., the returns compiled & published by A. for the last nine years were introduced into the edition for 1866, the source from which this information was derived being prominently acknowledged, & formed one-third of the whole of deft.'s work:—**Held**: having regard to the quantity & matter of the information which had been taken & republished without the exercise of any independent thought & labour, & the prejudice to A. in having the sale of his work superseded by this republication in a cheap form of his labours, A. was entitled to an injunction.

The result, in such cases, is the true test of the act, & full acknowledgment of the original, & the absence of any dishonest intention, will not excuse the appropriator where the effect of his appropriation is, of necessity, to injure & supersede the sale of the original work.—**SCOTT v. STANFORD** (1867), L. R. 3 Eq. 718; 36 L. J. Ch. 729; 16 L. T. 51; 15 W. R. 757.

Annotations.—**Consd.** **Ager v. Peninsular & Oriental Steam Navigation Co.** (1884), 26 Ch. D. 637. **Refd.** **Smith v. Chatto** (1874), 31 L. T. 775; **Walter v. Steinkopff**, [1892] 3 Ch. 489; **Hanfstaengl v. Empire Palace, Hanfstaengl v. Newnes**, [1894] 3 Ch. 109; **Guggenheim v. Leng** (1896), 12 T. L. R. 491.

— Second work injuring first—Though not a substitute for it—Source acknowledged—Infringement.]—Pltf. had become entitled to the entire copyright of "Illustrations of the Life of L. de M." Deft. commenced a publication called "The European Library," the first volume whereof was intitled "A Life of L. de M.", several passages of which were admitted by deft. to have been copied from the "illustrations":—**Held**: deft. having, by so doing, materially lessened the price of the original work by knowingly taking a material valuable part of it, this was sufficient to constitute a piracy from the "Illustrations," notwithstanding the passages copied were stated to be quotations, & were not so many, nor extensive as to make the work so pirated a substitution for the original one.—**BOHN v. BOGUE** (1846), 7 L. T. O. S. 277; 10 Jur. 420.

Annotation.—**Refd.** **Performing Right Soc. v. London Theatre of Varieties**, [1922] 2 K. B. 433.

— Pirated matter small proportion of original work—Large proportion of infringing work.]—Injunction granted & continued against deft. restraining the sale of a sheet almanac, containing matter pirated from a distinct part of a directory published by the pltf., affording information with respect to the Post Office, compiled from public documents; the matter pirated forming an exceedingly small portion of pltf.'s work, but bearing a great proportion to the other matter in deft.'s work.—**KELLY v. HOOPER** (1839), 4 Jur. 21.

416. — In anthology—Though alleged to be in illustration of essay.]—Defts. published a work

PART XIII. SECT. 1, SUB-SECT. 2.—B.

k. Quotation by way of explanation & illustration.]—Defenders issued a book which professed to be a reprint of the original edition of a work, the copyright of which had expired.

There was a later edition of this work, with notes, alterations & additions still within the protection of copyright, the property of pursuers. From this last edition defenders quoted passages by way of explanation & illustration:

—**Held**: there was no infringement, as what was taken did not exceed the limits of legitimate quotation.—**BLACK v. MURRAY** (1870), 9 Macph. (Ct. of Sess.) 341; 43 Sc. Jur. 160; 8 Sc. L. R. 261.—**SCOT.**

poetry, biographical sketches of 43 modern poets, & selections from their poems, amongst which were six short poems & parts of longer poems, the copyright whereof belonged to pltf. The selections constituted altogether the bulk of defts.' work; but were alleged to have been introduced into it for the purpose of illustrating the essay:—*Held*: the publication of defts.' work would be restrained as being an infringement of pltf.'s copyright.—*CAMPBELL v. SCOTT* (1842), 11 Sim. 31; 11 L. J. Ch. 166; 6 Jur. 186; 59 E. R. 784.

Annotations:—*Consd.* Tinsley v. Lacy (1863), 1 Hem. & M. 747. *Refd.* Walter v. Steinkopff, [1892] 3 Ch. 489.

417. — Though extracts selected in support of theory.]—H., a bookseller & publisher, purchased at a sale some books, the property of T., deceased, & containing several caricatures & sketches executed by T. He purchased, at the same time, some separate drawings by T.; & afterwards bought some more of T.'s drawings & of his books containing sketches. These books & sketches came into the possession of C. & W., who succeeded H. in his business. C. & W. published a book which contained the sketches & caricatures, as well as numerous extracts from T.'s published novels, in order to show that T. had in fact written his own biography in these novels. The copyright in the novels, & in all T.'s published & unpublished sketches had been assigned to S.:—*Held*: S. had no copyright in the sketches & caricatures, but that, inasmuch as the book appeared to contain an undue amount of extracts, he was entitled to an interlocutory injunction to restrain its sale, on giving the usual undertaking as to damages.—*SMITH v. CHATTO* (1874), 31 L. T. 775; 23 W. R. 290.

Annotation:—*Refd.* Hanfstaengl v. Empire Palace (1894), 63 L. J. Ch. 681.

Legal digest.]—*See* No. 220, *ante*.

418. Cartoons from "Punch"—Reproduced in history.]—Pltfs. are the proprietors of a weekly periodical called "Punch." Between 1849 & 1867 they published, in nine several numbers, nine cartoons, with descriptive writing underneath them with reference to the Emperor Napoleon III. In 1871 deft. published a work called "The Man of his Time," consisting, first, of the "Story of the Life of Napoleon III., by James M. Haswell": & secondly, of "The same Story as told by Popular Caricaturists of the last Thirty Years." Among the caricatures in part 2 were copies in a reduced form, sometimes with & sometimes without the descriptive writing, of the nine cartoons above mentioned. No consent from pltfs. to this reproduction had been obtained. In an action by them for infringement of their copyright in the several books or sheets of letterpress containing the cartoons:—*Held*: a substantial part of pltfs.' books, or sheets of letterpress, had been appropriated, & they were entitled to recover.—*BRADBURY v. HOTTEN* (1872), L. R. 8 Exch. 1; 42 L. J. Ex. 28; 27 L. T. 450; 21 W. R. 126.

Annotations:—*Consd.* Smith v. Chatto (1874), 31 L. T. 775; Weatherby v. International Horse Agency & Exchange, [1910] 2 Ch. 297. *Refd.* Chatterton v. Cave (1876), 2 C. P. D. 42; Hanfstaengl v. Empire Palace, Hanfstaengl v. Newnes, [1894] 3 Ch. 109; Leslie v. Young [1894] A. C. 335; Cooper v. Stephens, [1895] 1 Ch. 567.

419. Quotation in one newspaper from another—Alleged custom bad.]—*MAXWELL v. SOMERTON*, No. 668, *post*.

420. — — —.]—*WALTER v. STEINKOPFF*, No. 23, *ante*.

Reprint in periodical—Under pretence of abstract.]—*See* No 395, *ante*.

C. Abridgments.

421. If colourable only—Several pages omitted in three volumes.]—I thought it was an evasive abridgment & therefore continued the injunction (*LORD HARDWICKE, C.*).—*READ v. HODGES* (1740), cited in 2 Atk. at p. 142; 2 Bro. Parl. Cas. at p. 138; 3 Swan. at p. 679; 26 E. R. 490, L. C.

422. Not if real & fair—& not mere colourable imitations—Law book—Latin & French quotations translated—Repealed statutes omitted—Infringement.]—A bill was brought by G., bookseller, for injunction to stay the printing of a book, entitled "Modern Crown Law"; it being suggested to be colourable only, & in fact borrowed verbatim from "Pleas of the Crown," only some old statutes being left out which are now repealed; & in this work all the Latin & French quotations in the "Historia Placitorum Coronæ" are translated into English:—*Held*: after being referred to award, a fair abridgment, & not within the statute.—*GYLES v. WILCOX* (1741), 2 Atk. 141; Barn. Ch. 368; 26 E. R. 489, L. C.; *subsequent proceedings*, 3 Atk. 269.

Annotation:—*Refd.* Tonson v. Walker (1752), 3 Swan. 672.

423. — — —.]—Injunction granted against a colourable abridgment of the Term Rep., among other law reports, till answer or further order upon certificate of the bill filed.—*BUTTERWORTH v. ROBINSON* (1801), 5 Ves. 709; 31 E. R. 817, L. C.

Annotations:—*Consd.* Sweet v. Beuning (1855), 16 C. B. 459; Walter v. Lane, [1899] 2 Ch. 749. *Refd.* Chilton v. Progress Printing & Publishing Co. (1895), 72 L. T. 442.

424. — — —.]—*VESEY v. SWEET* (1823), 5 Ves. 709, n., 2nd ed.; 31 E. R. 818.

425. — — —.]—*DODSLEY v. KINNERSLEY*, No. 409, *ante*.

426. — Intellectual effort employed.]—To constitute a true & proper abridgment of a work the whole must be preserved in its sense: & then the act of abridgment is an act of understanding, employed in carrying a large work into a smaller compass, & rendering it less expensive, & more convenient both to the time & use of the reader, which made an abridgment in the nature of a new & meritorious work. An abridgment, where the understanding is employed in retrenching unnecessary & uninteresting circumstances, which rather deaden the narration, is not an act of plagiarism upon the original work, nor against any property of the author in it, but an allowable & meritorious work.—*ANON.* (1774), Lofft, 775; 98 E. R. 913, L. C.

427. — — —.]—Injunction shall be against a publication piratically taken from another, but not against a fair abridgment.—*BEIL v. WALKER & DEBRETT* (1785), 1 Bro. C. C. 451; 28 E. R. 1235.

Annotation:—*Refd.* Tinsley v. Lacy (1863), 1 Hem. & M. 747.

See, also, No. 195, *ante*.

428. Of unpublished notes of cases—Infringement.]—*STRANGE'S (SIR JOHN) CASE*, No. 124, *ante*.

Abridgment of dramatic work.]—*See* No. 505, *post*.

PART XIII. SECT. 1, SUB-SECT. 2.—C.

1. Of text as altered in copyright edition—Alteration in copyright edition insignificant—No infringement.]—Defenders issued a book which professed to be a reprint of the original edition

of a work, the copyright of which had expired. A later edition of this work, with notes, alterations & additions still within the protection of copyright, was the property of pursuers. From this last edition defenders took passages abridged from the text as altered

in the copyright edition:—*Held*: there was no infringement, alteration in copyright edition being too insignificant.—*BLACK v. MURRAY* (1870), 9 Macph. (Ct. of Sess.) 341; 43 Sc. Jur. 160; 8 Sc. L. R. 261.—*SCOT*

Sect. 1.—What constitutes: Sub-sect. 2, D., E. & Fo.]

D. Dramatisation and Burlesque.

See, now, 1911 Act, s. 1 (2).

429. Dramatisation of novel—Representation of dramatised version—No infringement.]—Dramatising a novel & causing it to be represented on the stage without the author's consent is no infringement of his copyright therein.—*READE v. CONQUEST* (1861), 9 C. B. N. S. 755; 30 L. J. C. P. 209; 3 L. T. 888; 7 Jur. N. S. 265; 9 W. R. 434; 142 E. R. 297; *subsequent proceedings* (1862), 11 C. B. N. S. 479.

*Annotations:—*Consd. *Toole v. Young* (1874), L. R. 9 Q. B. 523. *Distd. Warne v. Seeborn* (1888), 39 Ch. D. 73. *Refd. Boosey v. Fairlie* (1877), 7 Ch. D. 301.

430. ———.](1) It is no infringement of copyright to represent a play dramatised from a novel written by another author; but (2) the printing & publication of a drama in which large passages are extracted from a novel is an infringement of the copyright in the novel. (3) To sustain a bill for an infringement of copyright, it is not necessary to prove pltf. has sustained special damage.—*TINSLEY v. LACY* (1863), 1 Hem. & M. 747; 2 New Rep. 438; 32 L. J. Ch. 535; 27 J. P. 676; 11 W. R. 876; 71 E. R. 327.

*Annotations:—*As to (1) *Refd. Toole v. Young* (1874), L. R. 9 Q. B. 523. As to (2) *Consd. Warne v. Seeborn* (1888), 39 Ch. D. 73. As to (3) *Folld. Warne v. Seeborn* (1888), 39 Ch. D. 73.

431. ——— Publication of dramatised version—Containing large passages from novel—Infringement.]—*TINSLEY v. LACY*, No. 430, *ante*.

432. ——— Four copies made for acting purposes—Infringement.]—Deft. dramatised a novel & caused his play to be performed on the stage. The infringement of copyright complained of was that, for the purpose of producing the play, deft. made four copies of it, one for the Lord Chamberlain & three for the use of the performers, either in manuscript, or by the aid of a typewriter. Very considerable passages in the play were extracted almost verbatim from the novel. Deft. claimed the right to make more copies if it should be necessary to enable him to give further representations of the play in London & elsewhere:—*Held*: (1) what had been done by deft. constituted an infringement of the pltf's. copyright, & they were entitled to an injunction to restrain deft. from printing or otherwise multiplying copies of his play containing any passages from pltf's. book; (2) all passages from pltf's. book in the four copies must be cancelled.—*WARNE & CO. v. SEEBORN* (1888), 39 Ch. D. 73; 57 L. J. Ch. 689; 58 L. T. 928; 36 W. R. 686; 4 T. L. R. 535.

*Annotation:—*As to (2) *Apld. Chappell v. Columbia Graphophone Co.* (1914), 112 L. T. 63.

See, also, No. 485, post.

———.]—*See, also, No. 429, ante, Nos. 490, 492, 493, 494, 495, post.*

433. By cinematograph film—Degree of similarity.]—*GLYN v. WESTON FEATURE FILM CO.*, No. 55, *ante*.

434. By burlesque—Not infringement.]—*GLYN v. WESTON FEATURE FILM CO.*, No. 55, *ante*.

PART XIII. SECT. 1, SUB-SECT. 2.—D.

m. Dramatisation of novel—Not dramatised by author himself—Provided previous dramatisation not copied.]—Any person may dramatise a novel written by another, which the author himself has not dramatised, so long as he does not copy a previous dramatisation of the novel.—*WEEKES v. WILLIAMSON* (1886), 12 V. L. R. 483.—*AUS.*

PART XIII. SECT. 1, SUB-SECT. 2.—E.

n. No infringement.]—A person

who translates a book into another language is not thereby guilty of an infringement of copyright.—*ABDURRUHMAN v. MAHOMED SHIRAZI* (1890), 1 L. R. 14 Bom. 586.—*IND.*

o. ———.]—Pltf's. were publishers in London. Deft., who carried on a printing & publishing business at Delhi, translated English works into the Urdu language, & sold & distributed copies thereof in parts of India. Pltf's. alleged that the books printed & sold by deft. were an infringement of their

E. Translations.

435. Retranslation into English—From foreign translation of English work.]—Where there are errors in both publications, the presumption is, that the author of the last publication has pirated the first author's work; but where the same errors are found in works common to both, & upon evidence the second author has used such works, the mere insertion of like errors in both publications would not be a proof of piracy. An author may make a fair use of a prior publication, as to the scope & tenor of a work; &, therefore, where upon the evidence it appears that no unfair use of the prior publication has been made, an injunction to restrain the publication of the second book would be refused.—*MURRAY v. BOGUE* (1853), 1 Drew. 353; 22 L. J. Ch. 457; 20 L. T. O. S. 198; 17 Jur. 219; 1 W. R. 109; 61 E. R. 487.

*Annotations:—*Refd. *Jarrold v. Houlston* (1851), 3 K. & J. 708; *Collingridge v. Emmott* (1887), 57 L. T. 864; *Hanfstaengl v. Empire Palace, Hanfstaengl v. Newnes*, [1894] 3 Ch. 109; *Moffatt & Paige v. Gill* (1901), 84 L. T. 452.

F. Where Absolute Originality Impossible.

436. General rule—User with mere colourable variations—Infringement.]—*JARROLD v. HOULSTON*, No. 22, *ante*.

See, also, No. 442, post; No. 51, ante.

437. ——— Competition between two works not essential—Stud Book.]—*WEATHERBY & SONS v. INTERNATIONAL HORSE AGENCY & EXCHANGE, LTD.*, No. 74, *ante*.

438. Similarity unavoidable—Book of chronology—Infringement question of fact.]—In an action for pirating a book of chronology, it was proved by pltf. that though some parts of deft.'s book were different, yet in general it was the same, & particularly from p. 20 to p. 34 it was a literal copy:—*Held*: pltf. must recover.

The main question was whether in substance one work is a copy & imitation of the other; for undoubtedly in a chronological work the same facts must be related (*LORD KENYON, C.J.*).—*TRUSLER v. MURRAY* (1789), 1 East, 362, n.; 102 E. R. 140, n.

*Annotation:—*Consd. *Matthewson v. Stockdale* (1806), 12 Ves. 270.

439. ——— Map on same scale—Positive evidence of copying necessary.]—*NICHOLS v. LODER* (1831), 2 Coop. temp. Cott. 217; 47 E. R. 1135.

See, also, No. 66, ante; No. 440, post.

440. Test of fair user—Earlier work used as basis of improvement—Chart—No infringement.] This was an action for pirating sea charts, which are protected by Prints Copyright Act, 1777 (c. 57). The charts which had been copied were four in number, which deft. had made into one large map. Deft. had taken the body of his publication from the work of pltf's., but he had made many alterations & improvements thereupon; also pltf's. had originally been at a great expense in procuring materials for these maps:—*Held*: there had been no infringement of copyright.

The Act that secures copyright to authors does not prohibit writing on the same subject, the question is, whether the alteration be colourable

copyright:—*Held*: defts., by translating the books, had not infringed pltf's.—*MACMILLAN v. KHAN BAHADUR SHAMSUL ULAMA ZAKA* (1895), 1 L. R. 19 Bom. 557.—*IND.*

PART XIII. SECT. 1, SUB-SECT. 2.—F.

p. Similarity unavoidable—Positive evidence of servile imitation necessary.]—*ROUSSAO v. THACKER & CO.* (1862), 1 Hyde, 9.—*IND.*

or not? No doubt different men may take engravings from the same picture. The same principle holds with regard to charts; whoever has it in his intention to publish a chart may take advantage of all prior publications. There is no monopoly of the subject, the jury will decide whether it be a servile imitation or not (*MANSFIELD, C.J.*).—*SAYRE v. MOORE* (1785), 1 East, 361, n.; 102 E. R. 139.

441. — Defendant's edition of letters printed from plaintiff's text—& corrected from originals—Infringement.]—Pltf. published a book under the title of the "Letters from Dorothy Osborne to Sir William Temple, 1652-54," having first obtained the permission of the owner of the letters. The letters being undated pltf. placed them in their probable order, translated them into modern English & spelling, wrote an introduction, notes & compiled an index. The British Museum purchased the original letters, & they were placed in a folio in the same order with one exception as pltf. had placed them in his book. Five years after pltf. published his book, deft. published an edition of the letters under the title of the "Love Letters from Dorothy Osborne to Sir William Temple" with an introduction, notes & index by deft. G. Pltf. brought an action for infringement of copyright alleging that deft. G. had taken his text, sent it to the printers, & revised & corrected it from the originals:—*Held*: an injunction must be granted to restrain the publication of deft.'s book, correcting pltf.'s text did not affect his copyright.—*PARRY v. MORING & GOLLANCZ* (1903), *MacGillivray's Copyright Cases*, 49.

442. — Earlier work must be subjected to independent labour—Dictionary.]—In cases of copyright, where, from the nature of the work, absolute originality is impossible, the ct. will not hold a subsequent author guilty of piracy by reason of his having made use of the works of earlier writers, provided he bestows such mental labour upon what he takes, as to give to it an original character; but the alterations which he makes must not be of a merely colourable character, & it is incumbent upon him to acknowledge the use which he has made of such earlier works.—*SPIERS v. BROWN* (1858), 31 L. T. O. S. 16; 22 J. P. 738; 6 W. R. 352.

Annotations:—*Refd.* *Hotten v. Arthur* (1863), 1 Hem. & M. 603; *Scott v. Stanford* (1867), L. R. 3 Eq. 718; *Hildesheimer & Faulkner v. Dunn* (1891), 64 L. T. 452; *Moffatt & Paige v. Gill & Marshall* (1902), 86 L. T. 465.

443. — Earlier work may be used to verify results—Guide book.]—The compiler of a directory or guide book, containing information derived from sources common to all, which must of necessity be identical in all cases if correctly given, is not entitled to spare himself the labour & expense of original inquiry by adopting & republishing the information contained in previous works on the same subject. He must obtain & work out the information independently for himself, & the only legitimate use which he can make of previous works is for the purpose of verifying the correctness of his results.—*KELLY v. MORRIS* (1866), L. R. 1 Eq. 697; 35 L. J. Ch. 423; 14 L. T. 222; 30 J. P. 628; 14 W. R. 496.

Annotations:—*Consd.* *Morris v. Ashbee* (1868), L. R. 7 Eq. 34; *Cox v. Land & Water Journal Co.* (1869), L. R. 9 Eq. 324; *Morris v. Wright* (1870), 5 Ch. App. 279; *Hogg v. Scott* (1874), L. R. 18 Eq. 444. *Apld.* *Ager v. Peninsular & Oriental Steam Navigation Co.* (1884), 26 Ch. D. 637. *Consd.* *Exchange Telegraph Co. v. Gregory* (1895), 73 L. T. 120. *Apld.* *Walter v. Lane*, [1900] A. C. 539. *Refd.* *Hollinrake v. Truswell* (1894), 7 R. 508; *Chilton v. Progress Printing & Publishing Co.*, [1895] 2 Ch. 29. *Mentd.* *Hildesheimer & Faulkner v. Dunn* (1891), 64 L. T. 452.

444. — Directory.]—*KELLY v. MORRIS*, No. 443, *ante*.

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445. — Unless amounting to mere copying.]—*MORRIS v. ASHBEE*, No. 79, *ante*.

446. — Earlier work may be used as guide to information.]—Pltf. published a book, & deft. afterwards published a book on the same subject, in which he mentioned pltf.'s book as one of the authorities consulted by him. Pltf. alleged deft.'s book was a piracy, & in proof showed pltf. had referred to a large number of authorities to which deft. had referred. Deft. stated he had taken the references from a previous writer from whom pltf. had taken them, & showed that he, deft., had referred to two authorities not mentioned by pltf., but as to two of the authorities referred to by pltf., & also by deft., deft. was unable to state where he had found them:—*Held*: (1) under the circumstances deft. had not made such use of pltf.'s book as to entitle pltf. to an injunction; (2) an author who has been led by a former author to refer to older writers might without committing piracy use the same passages in the older writers which were used by the former author; (3) an author had no monopoly in any theory propounded by him; (4) the ct. would not grant an injunction to restrain plagiarism unless some material part of pltf.'s book was shown to have been taken.—*PIKE v. NICHOLAS* (1869), 5 Ch. App. 251; 39 L. J. Ch. 435; 18 W. R. 321, L. C.

Annotations:—*As to* (1) *Refd.* *Morris v. Wright* (1870), 5 Ch. App. 279; *Chatterton v. Cave* (1876), 2 C. P. D. 42; *Walter v. Steinkopf*, [1892] 3 Ch. 489; *Glyn v. Weston Feature Film Co.*, [1916] 1 Ch. 261. *As to* (4) *Consd.* *Moffatt & Paige v. Gill* (1901), 84 L. T. 452.

447. — Directory.]—Although the compiler of a new directory is not justified in using slips cut from one previously published for the purpose of deriving information from them for his own work, yet he may use such slips for the purpose of directing him to the parties from whom such information is to be obtained.

Pltf., who was the publisher of a trades directory, filed a bill against deft., who was preparing for publication a new directory, charging him with using slips cut from pltf.'s work in obtaining materials for the new directory, & with copying from such slips. Pltf. having moved for an interlocutory injunction, deft. filed an affidavit, in which he admitted that at first he had used slips from pltf.'s work in obtaining materials for his own; but having discovered that it was illegal to do so, he had discontinued the practice; & he denied having copied any of such slips. In the absence of satisfactory evidence of the actual contents of the new directory, which was not yet published:—*Held*: injunction would be refused.—*MORRIS v. WRIGHT* (1870), 5 Ch. App. 279; 22 L. T. 78; 18 W. R. 327, C. A.

Annotations:—*Consd.* *Hogg v. Scott* (1874), L. R. 18 Eq. 444. *Refd.* *Leslie v. Young* (1894), 6 R. 211; *Moffatt & Paige v. Gill* (1901), 84 L. T. 452.

See, also, No. 51, *ante*.

448. Road book—Map substituted for letterpress—No infringement.]—A. having sold to B. a book of roads which was printed in letterpress, after the expiration of the first fourteen years sold it to C., who published the high roads upon copper plates, & the cross roads in letterpress; as to C.:—*Held*: an injunction would be granted; the author having no resulting right as against his own assignee, after the first 14 years, & this being part of the former work, although the delineation on copper plates was a new work.—*CARNAN v. BOWLES* (1786), 2 Bro. C. C. 80; 29 E. R. 45.

449. Legal digest—Headnotes from reports used—Infringement.]—*SWEET v. BENNING*, No. 220, *ante*.

Sect. 1.—What constitutes: Sub-sect. 2, F.; sub-sect. 3, A., B. & C.]

450. Edition of Shakespeare play—General arrangement of critical matter similar—Similar selection of quotations as illustrations—Infringement.]—MOFFATT & PAIGE, LTD. v. GILL & SONS, LTD., No. 51, *ante*.

SUB-SECT. 3.—ARTISTIC WORKS.

A. Paintings and Drawings.

451. Any process capable of indefinite multiplication.]—The piracy of a picture or engraving by the process of photography, or by any other process mechanical or otherwise whereby copies may be indefinitely multiplied, is within Engraving Copyright Acts, 1734 (c. 13), & 1766 (c. 38), & Prints Copyright Act, 1777 (c. 57), for the protection of artists & engravers.—GAMBART v. BALL (1863), 14 C. B. N. S. 306; 2 New Rep. 125; 32 L. J. C. P. 166; 8 L. T. 426; 9 Jur. N. S. 1059; 11 W. R. 699; 143 E. R. 463.

*Annotations:—*Apprvd. Graves v. Ashford (1867), L. R. 2 C. P. 410. *Consd.* Hanfstaengl v. Empire Palace, Hanfstaengl v. Newnes, [1894] 3 Ch. 109. *Refd.* Dicks v. Brooks (1880), 15 Ch. D. 22.

452. —.]—The piracy of a picture or engraving by the process of photography, or by any other process, mechanical or otherwise, whereby copies may be indefinitely multiplied, is within Engraving Copyright Acts, 1734 (c. 13), & 1766 (c. 38), & Prints Copyright Act, 1777 (c. 57), for the protection of artists & engravers.—GRAVES v. ASHFORD (1867), L. R. 2 C. P. 410; 36 L. J. C. P. 139; 16 L. T. 98; 31 J. P. 343; 15 W. R. 495, Ex. Ch.

*Annotation:—*Consd. Rock v. Lazarus (1872), L. R. 15 Eq. 104.

453. Photograph of engraving of picture.]—G., being the proprietor of a copyright in two paintings in oil, & in a photograph, entered them under Fine Arts Copyright Act, 1862 (c. 68), s. 4. B. sold, on two several days, in two parcels, 26 photographic copies of these works, knowing them to have been unlawfully made. These copies had been made from engravings of the pictures, in which engravings G. also had the copyright. B. was convicted under the above Act, s. 6, in a penalty for each copy sold:—*Held*: the nature & subject of the works were sufficiently described under the Act, s. 4; to sell photographic copies of the engravings of a painting in which a person had a copyright, was an offence under the Act, s. 6; & B. was properly convicted in a penalty in respect of each copy sold.—*Ex p.* BEAL (1868), L. R. 3 Q. B. 387; 37 L. J. Q. B. 161; 32 J. P. 628; *sub nom.* BEAL v. GRAVES, *Ex p.* BEAL, 9 B. & S. 395; *sub nom.* GRAVES v. BEAL, 18 L. T. 285; 16 W. R. 852.

*Annotations:—*Consd. Hanfstaengl v. Empire Palace, Hanfstaengl v. Newnes, [1894] 3 Ch. 109; Nicholls v. Parker (1901), 17 T. L. R. 482. *Apprvd.* & *Fold.* Hildesheimer v. Faulkner, [1901] 2 Ch. 552. *Refd.* Tuck v. Priestler (1887), 19 Q. B. D. 48; McCrum v. Eisner (1917), 87 L. J. Ch. 99.

454. Reduced copies licenced by owner for particular purpose—Mounted & sold—No infringement.]—FROST & REED v. OLIVE SERIES PUBLISHING Co. (1908), 24 T. L. R. 649.

450 i. Edition of Shakespeare play—General arrangement of matter similar—Notes taken verbatim—Infringement.]—In an annotated edition of one of Shakespeare's plays published by deft., the arrangement was similar to, but not copied from, that of pltf.'s book; & parts of the introduction & of the notes were taken from pltf.'s book either under a colourable disguise or verbatim:—*Held*: deft. had

appropriated a substantial & valuable portion of pltf.'s book, & was liable for infringement of copyright.—BLACKIE & SONS, LTD. v. LOTHIAN BOOK PUBLISHING Co. PROPRIETARY, LTD. (1921), 29 C. L. R. 396.—AUS.

PART XIII. SECT. 1, SUB-SECT. 3.—A. r. Photograph of picture—Published: sold—Infringement.]—A. owned

455. Innocent publication no excuse.]—MANSELL v. VALLEY PRINTING Co., No. 128, *ante*.

456. By one co-author.]—In 1885 P., a German, was engaged to paint a panorama of Jerusalem & the Crucifixion. He engaged K. & F., also Germans, to assist him, & the three went to the Holy Land to make pictures & take photographs. On their return they painted eight pictures, one painting the architectural parts, one the landscape, & one the figures. From these pictures the panorama was painted on a larger scale, & exhibited in Germany. K. & F. afterwards went to Holland & the U.S.A., & there painted other panoramas of Jerusalem & the Crucifixion, one of which had been brought over, & exhibited by deft. in London. It was proved that there was a copyright in the German panorama, & that such copyright belonged, so far as necessary for the purposes of the present action, to pltf.s:—*Held*: the copyright in respect of which pltf.s. sued was in the panorama as a whole, & if F. & K. had confined themselves to reproducing the parts which they respectively had painted they could not be interfered with, but deft.'s panorama was really only a colourable reproduction of pltf.s., & there had been an infringement of pltf.s.' copyright.—FISHBURN v. HOLLINGSHEAD, [1891] 2 Ch. 371; 60 L. J. Ch. 768; 64 L. T. 647; 7 T. L. R. 263.

*Annotations:—*N.F. Hanfstaengl Art Publishing Co. v. Holloway, [1893] 2 Q. B. 1; Hanfstaengl v. American Tobacco Co., [1895] 1 Q. B. 347.

See, also, No. 538, *post*.

457. By tableaux vivants—No infringement.]—H. was the owner of the copyright in pictures painted in Germany. The E. Co. exhibited at a music-hall *tableaux vivants* taken from the pictures. N. in a newspaper published reproductions of sketches taken from the tableaux:—*Held*: the representation of pictures by *tableaux vivants* formed by grouping in the same way as the figures in the pictures living persons in the same dress & the same attitudes is not an infringement of the copyright.—HANFSTAENGL v. EMPIRE PALACE, LTD., [1894] 2 Ch. 1; 63 L. J. Ch. 417; 70 L. T. 459; 42 W. R. 454; 10 T. L. R. 229; 38 Sol. Jo. 270; 7 R. 375, C. A.; *subsequent proceedings* (1895), 11 T. L. R. 368.

*Annotations:—*Consd. Millar & Lang v. Polak, [1908] 1 Ch. 433; Bradbury, Agnew v. Day (1916), 32 T. L. R. 349. *Refd.* Boosey v. Whight, [1899] 1 Ch. 836.

458. — With painted backgrounds resembling originals—Infringement as to background.]—HANFSTAENGL v. EMPIRE PALACE, LTD. (1895), 11 T. L. R. 368.

459. — — — Infringement.]—*Held*: on the facts, deft. had by means of a *tableaux vivant* infringed pltf.'s copyright in a cartoon & pltf.s. were entitled to an injunction & damages.—BRADBURY, AGNEW & Co. v. DAY (1916), 32 T. L. R. 349.

460. By newspaper reproduction of tableaux vivants—No infringement.]—An artist employed by an illustrated newspaper made rough sketches of certain *tableaux vivants*, which were intended to represent pictures, of the copyright in which appellant was the owner; & reproductions of these sketches were published in the newspaper:—*Held*: the sketches were not copies of the pictures

a picture which he exhibited for the purpose of obtaining subscribers to an engraving thereof. B. arranged in his own studio a group bearing an exact resemblance to the picture & took for the stereoscope, photographs so coloured as to correspond with the picture, which he published & sold:—*Held*: an infringement of A.'s copyright.—TURNER v. ROBINSON (1860), 10 L. Ch. R. 510.—IR.

or of the designs thereof within Fine Arts Copyright Act, 1862 (c. 68).—**HANFSTAENGL v. BAINES & Co.**, [1895] A. C. 20; 64 L. J. Ch. 81; 72 L. T. 1; 11 T. L. R. 131; 11 R. 88, H. L.

Annotations:—**Consd.** Bolton v. Aldin (1895), 65 L. J. Q. B. 120; Hanfstaengl v. Smith, [1905] 1 Ch. 519; Bradbury, Agnew v. Day (1916), 32 T. L. R. 349; McCrum v. Eisner (1917), 87 L. J. Ch. 99. **Refd.** Boosey v. Whight, [1899] 1 Ch. 836.

461. ———.]—**HANFSTAENGL v. NEWNES** (1895), 11 T. L. R. 314; 39 Sol. Jo. 363.

462. Incomplete or modified copies—Copy of substantial portion.—Where a picture contains a direct copy of a substantial portion of a copyright work, that substantial portion constitutes an infringement if it is a copy in the ordinary sense, & particularly where the sentiment expressed in the copyright picture has also been embodied.—**BROOKS v. RELIGIOUS TRACT SOCIETY** (1897), 45 W. R. 476; 41 Sol. Jo. 333.

463. ——— **Reduced copy of figure—With slight modification — Without background.**—Pltf. was the owner of the copyrights in several works of art, including an oil-painting of which the principal feature was the winged figure of Psyche, & his business consisted in reproducing these copyright works in various forms & sizes by means of photographic processes & selling the reproductions. Pltf. complained that a very rough photographic illustration which appeared in the advertisement portion of a well-known magazine was an infringement of his copyright in this picture. The illustration, which was diminutive & was devoid of artistic merit, contained a rude reproduction of the female figure, but omitted a portion of the background of the picture:—**Held**: the illustration was an infringement of pltf.'s copyright, inasmuch as it tended to prevent the sale of pltf.'s goods by familiarising the public with a base form of reproduction.—**HANFSTAENGL v. SMITH (W. H.) & SONS**, [1905] 1 Ch. 519; 74 L. J. Ch. 304; 92 L. T. 351; 21 T. L. R. 291.

Annotation:—**Consd.** McCrum v. Eisner (1917), 87 L. J. Ch. 99.

464. ——— **Reversed copy.**—Pltf. was the owner of the copyright of a drawing, the principal features of which deft. had copied on to a wood-block, so that in the reproductions printed therefrom the features were transposed, & faced the opposite direction:—**Held**: the block & reproductions printed therefrom were copies or colourable imitations & infringements of the copyright.—**WHITEHEAD v. WELLINGTON** (1911), 55 Sol. Jo. 272.

465. ——— **Figure in different attitude — With different inscription — No infringement.**—Pltf. was the owner of the copyright in a series of picture post cards, one of which depicted a soldier reading the orders of the day for recruits, underneath which was the legend, " & then we have the rest of the day to ourselves." The soldier appeared to be very tired & hot; & he was resting on his rifle, the butt of which was on the ground. Deft. published a picture post card depicting a soldier reading the daily routine, underneath which was the legend, " & then we have the rest of the day to ourselves." In deft.'s card the soldier appeared to be quite fresh & cool, & he was carrying his rifle on his shoulder. In an action by pltf., asking for an injunction & damages in respect of the alleged infringement of his copyright:—**Held**: the expression & general set-up of the cards being dissimilar, there was no infringement.—**MCCRUM v. EISNER** (1917), 87 L. J. Ch. 99; 117 L. T. 536.

466. Three architectural drawings out of two

hundred — Reprinted in magazine.] — **NEALE v. HARMER** (1897), 13 T. L. R. 209.

467. Copy produced abroad—Not unlawful under Fine Arts Copyright Act, 1862 (c. 68), s. 6.—Pltfs. were the owners of a drawing, which they entrusted in confidence to deft. in Germany to produce certain copies. Deft. executed the work, & also made other copies for himself & sent them to England. Subsequently deft., without the consent of pltfs., sold the copies which he had made for himself & sent to England. In an action by pltfs. for an injunction & to recover penalties & damages under the above Act, ss. 6, 11:—**Held**: pltfs. were entitled to an injunction & damages for breach of contract & good faith, but were not entitled to penalties, on the ground that production abroad is not unlawful within the meaning of s. 6.—**TUCK & SONS v. PRIESTER** (1887), 19 Q. B. D. 629; 56 L. J. Q. B. 553; 52 J. P. 213; 36 W. R. 93; 3 T. L. R. 826, C. A.

Annotations:—**Consd.** Troitzsch v. Rees (1887), 3 T. L. R. 773; Fishburn v. Hollingshead, [1891] 2 Ch. 371. **Apprvd.** Graves v. Gorrie, [1903] A. C. 496. **Consd.** Bowden v. Amalgamated Pictorials, [1911] 1 Ch. 386; Barker Motion Photography v. Hulton (1912), 28 T. L. R. 496. **Apld.** Amber Size & Chemical Co. v. Menzel, [1913] 2 Ch. 239. **Refd.** Pollard v. Photographic Co. (1888), 40 Ch. D. 345; Robb v. Green, [1895] 2 Q. B. 1; Hildesheimer v. Faulkner, [1901] 2 Ch. 552; Nicholls v. Paker (1901), 17 T. L. R. 482; Alpertion Rubber Co. v. Manning (1917), 86 L. J. Ch. 377. **Mentd.** Forbes v. Samuel, [1913] 3 K. B. 706; A.-G. v. Brown, [1920] 1 K. B. 773; Remington v. Larchin, [1921] 3 K. B. 404.

Registered design.—See **TRADE MARKS, TRADE NAMES, & DESIGNS.**

B. Photographs.

468. By taking head—For composite photograph.—**LONDON STEREOSCOPIC & PHOTOGRAPHIC Co., LTD. v. KELLY** (1888), 5 T. L. R. 169.

469. By enlarged drawing—Published in newspaper.—One of the defts. made a drawing on a larger scale of an original photograph, of the copyright in which the pltf. was owner, & sold it to the other defts., who reproduced the drawing as a full page illustration in an illustrated newspaper of which they were the proprietors. In an action for an injunction restraining defts. from making & publishing copies of the photograph, & for penalties under Fine Arts Copyright Act, 1862 (c. 68), & for damages:—**Held**: the drawing was a copy of the photograph within the meaning of the Act, & pltf. was entitled to the injunction & to penalties & damages.—**BOLTON v. ALDIN** (1895), 65 L. J. Q. B. 120.

470. By advertisement poster.—**BOLTON v. LONDON EXHIBITIONS, LTD., & WEINERS, LTD.**, No. 561, *post*.

Ownership of copyright, see Part IV., Sect. 1, sub-sects. 1, B. (a), & 2, B., *ante*.

Effect of licence to reproduce, see No. 324, *ante*.

Copies by photography, see Nos. 451, 452, 453, *ante*.

C. Engravings, Prints, etc.

471. Copy from original picture—No infringement.—Where an engraving has been made from a picture it is not a piracy of the print for another artist to make another engraving from the original picture.—**DE BERENGER v. WHEBLE** (1819), 2 Stark. 548.

472. ——— **May be infringement.**—**TUCK v. CANTON**, No. 269, *ante*.

473. Whether by proofs from original plate.—A. being employed by B. to engrave plates from drawings belonging to B., took off from the plates

Sect. 1.—What constitutes: Sub-sect. 3, C. & D.; sub-sects. 4 & 5.]

so engraved by him a number of proof impressions, which he retained for his own use. A. afterwards became bankrupt, & the proofs of which he had so possessed himself, were advertised by his assignees for sale:—*Held*: neither he nor his assignees were liable under Prints Copyright Act, 1777 (c. 57), to an action for having disposed of pirated prints without the consent of the proprietor, inasmuch as that Act applied to impressions of engravings pirated from other engravings, & not to prints taken from a lawful plate.—*MURRAY v. HEATH* (1831), 1 B. & Ad. 804; 9 L. J. O. S. K. B. 111; 109 E. R. 985.

Annotations:—*Consd.* Prince Albert v. Strange (1848), 2 De G. & Sm. 652; Pollard v. Photographic Co. (1888), 40 Ch. D. 345; Marshall v. Bull (1901), 85 L. T. 77.

474. Whether by enlarged copy—Exhibited for profit as diorama.]—A. made a copy of a print invented by B., in colours, & of larger dimensions, & exhibited it as a diorama. The ct. refused to restrain the exhibition until the right had been established at law.—*MARTIN v. WRIGHT* (1833), 6 Sim. 297; 58 E. R. 605.

Annotations:—*Mentd.* Austria (Emperor) v. Day (1861), 3 De G. F. & J. 217; Mulkern v. Ward (1872), L. R. 13 Eq. 619; Prudential Assoc. v. Knott (1875), 10 Ch. App. 142.

475. By substantial copy—Question of fact for jury.]—In an action on the case, for pirating an engraving, brought under Copyright Act, 1776 (c. 57), which gives a right of action against any one who shall copy any print “in the whole or in part, by varying, adding to, or diminishing from, the main design,” the judge directed the jury to consider whether deft.’s engraving was substantially a copy of pltf.’s:—*Held*: this direction was correct. *Semble*: the law will imply damage if the piracy be proved, although no actual damage may have been sustained.—*MOORE v. CLARKE* (1842), 9 M. & W. 692; 11 L. J. Ex. 286; 6 Jur. 648; 152 E. R. 293.

Annotation:—*Mentd.* Electric Telegraph Co. v. Nott (1847), 8 L. T. O. S. 529.

476. Any process capable of indefinite multiplication.]—GAMBART v. BALL, No. 451, *ante*.

477. —.]—GRAVES v. ASHFORD, No. 452, *ante*.

See, also, No. 453, *ante*.

478. By pattern for wool work—No infringement.]—D., the proprietor of a periodical, published with his Christmas number a pattern for wool work, consisting of the figures in Millais’ picture, “The Huguenot,” with a different background. The pattern appeared not to have been taken from the original picture, but to have been made by help of a fine engraving published in 1857. The pattern was a mosaic built up of small coloured squares. B., who was the owner of the copyright in the engraving, claimed an injunction against the sale of the pattern, & penalties in respect of the infringement of his copyright:—*Held*: a pattern of this description was not a copy of the engraving within the meaning of Engraving Copyright Act, 1766 (c. 38), & Prints Copyright Act, 1777 (c. 57), as it did not copy or imitate anything which constituted the work of the engraver, & the injunction & penalties would be refused.—*DICKS v. BROOKS* (1880), 15 Ch. D. 22; 49 L. J. Ch. 813; 43 L. T. 71; 29 W. R. 87, C. A.

Annotations:—*Consd.* Halsey v. Brotherhood (1881), 19 Ch. D. 386; Hanfstaengl v. Empire Palace, [1894] 2 Ch. 1. *Foll.* Hanfstaengl v. Empire Palace, Hanfstaengl v. Newnes, [1894] 3 Ch. 109; Hanfstaengl v. Smith, [1905] 1 Ch. 519. *Refd.* Burnett v. Tak (1882), 45 L. T. 743; Household & Rosher v. Fairburn & Hall (1884), 51 L. T. 498; Boosey v. Whight, [1899] 1 Ch. 836.

479. Design for type face—User of letters—No

infringement—unless colourable imitation of whole.]—STEPHENSON, BLAKE & CO. v. GRANT, LEGROS & CO., No. 108, *ante*.

Design for Christmas card—Reproduced as advertisement.]—See No. 201, *ante*.

D. Sculpture.

480. Sale of pirated cast slightly altered—Or making exact facsimile—No offence under Copyright Act, 1798 (c. 71).]—It is no offence under the above Act, passed for preventing the pirating of busts & other figures made & published by statuaries, to sell a pirated cast of a bust, if the piracy has any addition to or diminution from the original. *Semble*: it is no offence to make a pirated cast if it is a perfect facsimile of the original.—*GAHAGAN v. COOPER* (1811), 3 Camp. 111, N. P.

Annotation:—*Refd.* West v. Francis (1822), 5 B. & Ald. 737. *See, also*, No. 112, *ante*.

SUB-SECT. 4.—MUSICAL WORKS.

See, now, 1911 Act, s. 1 (2) (d).

481. By copies—Distributed gratis among members of musical society.]—A publication of a piece of music, not for sale or hire, but by the gratuitous distribution of lithographed copies amongst the members of a musical society, is a publication for which a person would be liable as for an invasion of the property of the proprietor therein.—*NOVELLO v. SUDLOW* (1852), 12 C. B. 177; 21 L. J. C. P. 169; 19 L. T. O. S. 166; 16 Jur. 689; 138 E. R. 869.

Annotations:—*Consd.* Ager v. Peninsular & Oriental Steam Navigation Co. (1884), 26 Ch. D. 637; Warne v. Seeborn (1888), 39 Ch. D. 73; Chappell v. Columbia Graphophone Co., [1914] 2 Ch. 745.

482. By performance—Operatic score based on arrangement for pianoforte—Infringement of original opera.]—FAIRLIE v. BOOSEY, No. 378, *ante*.

483. — Though not at “place of dramatic entertainment.”]—Action by the owner of the sole liberty of performing a musical composition, which was not a dramatic piece, to recover penalties for the unauthorised performance of that composition at a place which was not a place of dramatic entertainment:—*Held*: pltf. was entitled to recover the penalty given by Dramatic Copyright Act, 1833 (c. 15), s. 2, & was not limited to the recovery of damages only, for the right to recover the penalty was not confined to cases in which there had been an infringement of the sole liberty of performing a musical composition by an unauthorised performance at a place of dramatic entertainment. *WALL v. TAYLOR* (1883), 11 Q. B. D. 102; 52 L. J. Q. B. 558; 31 W. R. 712, C. A.

Annotations:—*Refd.* Duck v. Bates (1884), 13 Q. B. D. 843; Monaghan v. Taylor (1886), 2 T. L. R. 246; Adams v. Batley, Cole v. Francis (1887), 18 Q. B. D. 625; Fuller v. Blackpool Winter Gardens & Pavilion Co., [1895] 2 Q. B. 429.

See Sect. 3, sub-sect. 4, & Nos. 506, 507, 508, *post*.

484. By adaptation—As dance music—Opera.]—To publish, in the form of quadrilles & waltzes, the airs of an opera of which there exists an exclusive copyright is an act of piracy.—*D’ALMAINE v. BOOSEY* (1835), 1 Y. & C. Ex. 288; 4 L. J. Ex. Eq. 21; 160 E. R. 117.

Annotations:—*Refd.* Chappell v. Purday (1841), 4 Y. & C. Ex. 485; Chappell v. Purday (1845), 14 M. & W. 303; Cocks v. Purday (1848), 5 C. B. 860; Boosey v. Purday (1849), 4 Exch. 145; Jefferys v. Boosey (1854), 4 H. L. Cas. 815; Sweet v. Benning (1855), 3 C. L. R. 1448; Wood v. Boosey (1868), L. R. 3 Q. B. 223; Chatterton v. Cave

(1875), L. R. 10 C. P. 572; *Boucicault v. Chatterton* (1876), 5 Ch. D. 267; *Fairlie v. Boosey* (1879), 4 App. Cas. 711.

485. — Manuscript orchestral accompaniment—For purpose of gramophone record.]—The rights given by 1911 Act to the author of a musical production to restrain the manufacturer of records for mechanical reproduction of the music, & to other persons to make such records upon giving notice to the author & paying royalties to him, do not affect any copyright vested in an assignee under an assignment made before that Act. The making of a single copy of a song with pianoforte accompaniment, the copyright of which is vested in such an assignee, for the purpose of making an orchestral accompaniment, is an infringement of the assignee's copyright, & is not justified because it is done for the purpose of making a graphophone disc of & for which the notice & royalties prescribed under the Act have been given & paid to the author. Delivery-up of the copy and records ordered that they might be destroyed.—*CHAPPELL & CO., LTD. v. COLUMBIA GRAPHOPHONE CO.*, [1914] 2 Ch. 745; 84 L. J. Ch. 173; 112 L. T. 63; 31 T. L. R. 18; 59 Sol. Jo. 6, C. A.

Annotation:—Refd. Glyn v. Weston Feature Film Co., [1916] 1 Ch. 261.

486. By mechanical contrivance — Perforated rolls—No infringement.]—*BOOSEY v. WHIGHT*, No. 120, *ante*.

487. — — — — —.]—A perforated music roll, which, when put on a mechanical instrument known as a piano player, produces the notes of a pianoforte accompaniment of a copyright song in much the same way as when the accompaniment is played on a piano with the fingers, is not a pirated "copy" of a musical work within the meaning of the Musical (Summary Proceedings) Copyright Act, 1902 (c. 15), so as to authorise proceedings being taken under that Act for the purpose of having the perforated music roll forfeited, destroyed, or otherwise dealt with.—*MABE v. CONNOR*, [1909] 1 K. B. 515; 78 L. J. K. B. 342; 100 L. T. 449; 73 J. P. 109; 25 T. L. R. 217.

Annotation:—Refd. Chappel v. Columbia Graphophone Co. (1914), 112 L. T. 63.

also Nos. 6, 121, ante.

488. By sale of record—Imported before July 1, 1912.]—*MONCKTON v. PATHÉ FRÈRES PATHEPHONE, LTD.*, No. 325, *ante*.

489. By colourable imitation — "Reply song" is not necessarily.]—*FRANCIS, DAY & HUNTER v. FELDMAN & CO.*, No. 155, *ante*.

Songs forming part of dramatic works.]—*See* No. 304, *ante*, No. 502, *post*.

SUB-SECT. 5.—DRAMATIC WORKS.

490. Similarity—Between play adapted from novel—& original play from which novel produced.]—A. published a play, & afterwards published a novel founded upon it, into which he introduced many scenes & passages from the play. B. afterwards published a play, compiled from A.'s novel, without, as was alleged, any knowledge of A.'s play. B.'s play contained scenes & passages substantially identical with scenes & passages which were common both to A.'s play & novel:—*Held*: even if B.'s play were a fair adaptation of the novel, & not an infringement of the copyright therein, it was an infringement of the copyright in A.'s play.—

READE v. LACY (1861), 1 John. & H. 524; 30 L. J. Ch. 655; 4 L. T. 354; 7 Jur. N. S. 463; 9 W. R. 531; 70 E. R. 853.

Annotations:—Consd. Boosey v. Fairlie (1877), 7 Ch. D. 301. *Refd. Tinsley v. Lacy* (1863), 32 L. J. Ch. 535.

491. — — — — —.]—The author of a drama called "Gold," which had been printed & represented on the stage, published a novel founded upon it, called "It is never too late to mend," to which novel he transferred some of the scenes from the drama. Deft. caused another drama to be constructed from the novel, which he called "Never too late to mend," taking many of the scenes from the novel which had been imported into the novel from the original drama, & produced it at a theatre:—*Held*: this was an infringement of pltf.'s copyright in his drama.—*READE v. CONQUEST* (1862), 11 C. B. N. S. 479; 31 L. J. C. P. 153; 5 L. T. 677; 8 Jur. N. S. 764; 10 W. R. 271; 142 E. R. 883.

Annotations:—Consd. Toole v. Young (1874), L. R. 9 Q. B. 523. *Folld. Schlesinger v. Turner* (1890), 63 L. T. 764. *Refd. Boosey v. Fairlie* (1877), 7 Ch. D. 301; *Chatterton v. Cave* (1878), 3 App. Cas. 483; *Warne v. Seeborn* (1888), 39 Ch. D. 73.

492. — — — — —.]—An action was brought by the exors. of A. to restrain deft. from representing a certain drama in infringement of pltf.'s stage copyright. A. had first published a drama & afterwards a novel founded on it. Deft.'s drama was dramatised directly from the novel, & not with the help of A.'s drama:—

Held: (1) A. having published the drama before the novel no person had a right to infringe the stage copyright in the drama, even though the passages complained of were taken from the novel & not from the drama of the author, & pltf. were entitled to a perpetual injunction as claimed; (2) if a deft. desired to avoid the payment of costs at the trial of an action should he be held to be unsuccessful, any offer he might have previously made with regard to the payment of costs must have been of substantially the whole of the costs which the ct. found pltf. to be entitled to at the trial, & short of that, the offer might be evidence of good faith, but would not be such an offer as to interfere with the ordinary course with respect to costs.—*SCHLESINGER v. TURNER* (1890), 63 L. T. 764.

493. — Between two plays adapted from same novel—First play not published or represented—No infringement.]—H. wrote & published a novel, which he afterwards dramatised. He assigned the drama to pltf., but it was never printed, published, or represented upon the stage. G., in ignorance of H.'s drama, also dramatised the novel in a different form, & assigned his drama to deft., who represented it on the stage:—*Held*: H. having published his novel, any one might dramatise it, & although the two dramas were founded upon the novel written by H., the representation upon the stage of the drama written by G. was not a representation of the drama written by H., & pltf. could not, therefore, recover penalties from deft. under Dramatic Copyright Act, 1833 (c. 15), ss. 1 & 2.—*TOOLE v. YOUNG* (1874), L. R. 9 Q. B. 523; 43 L. J. Q. B. 170; 30 L. T. 599; 22 W. R. 694.

Annotation:—Consd. Schlesinger v. Bedford (1890), 63 L. T. 762.

494. — — — — — Second play dramatised from novel—No infringement.]—An action was brought by the exors. of A. to restrain deft. from representing a certain drama in infringement of pltf.'s stage

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493 i. Similarity—Between two plays adapted from same novel—Both dramatic versions must be brought into court—To

establish.]—Where a pltf. who has dramatised a novel seeks an injunction against a deft. who has also dramatised it under a similar name he must bring both dramatic versions before the

court, to enable the court to ascertain whether there has been any real infringement.—*WEEKES v. WILLI* (1886), 12 V. L. R. 483.—*AUS.*

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copyright. A. had first published a novel & afterwards had published a dramatised version of his own novel. Deft.'s drama was dramatised directly from the novel, after the publication of the dramatised version by A., but not with the help of it:—*Held*: A. having published the novel before the drama, any person had a right to dramatise the novel & represent the drama, & therefore the action failed.—*SCHLESINGER v. BEDFORD* (1890), 63 L. T. 762; *subsequent proceedings* (1893), 9 T. L. R. 370, C. A.

495. ——— Similarities too many for coincidence—Infringement.]—*NETHERSOLE v. BELL* (1903), *Times*, July 31.

See, also, Nos. 430, 432, *ante*.

496. ——— By coincidence is not—No common source.]—The sole liberty of representing a play vests, under the Dramatic Copyright Act, 1833 (c. 15), s. 1, in the author when the work is written & finished. The first public performance confers no priority, but only fixes the period from which, if entitled to it, the endurance of the sole liberty of representation is to be calculated.

Semble: the sole rights in two plays, which though the same in substance are original & unaided productions, may be vested in different persons.—*REICHARDT v. SAPTE*, [1893] 2 Q. B. 308; 9 T. L. R. 604.

497. ——— From stock ideas.]—The representation of a dramatic piece in which the similarities to a piece previously produced are due to mere coincidence, both plays being derived independently from the common stock of dramatic ideas, is not an infringement of the rights given by Dramatic Copyright Act, 1833 (c. 15), to the author of the play first produced.—*ROBL v. PALACE THEATRE, LTD.* (1911), 28 T. L. R. 69.

498. ——— ———.]—*REES v. ROBRINS* (1914), *Times*, July 4, C. A.

See, also, No. 500, *post*.

499. ——— In scenes, stage "business," etc.—Is not per se.]—*TATE v. FULLBROOK*, No. 100, *ante*.

500. ——— In characters & ideas is not—In plot & scenes may be.]—*SCHOLZ v. AMASIS, LTD.* (1909), *Times*, May 19, C. A.

501. Performance—Is not "publication"—Within Copyright Act, 1709 (c. 19).]—Evidence that deft. acted on the stage a piece of which pltf. had bought the copyright is not evidence of a publication by deft. within the meaning of the above Act.—*COLEMAN v. WATHEN* (1793), 5 Term Rep. 245; 101 E. R. 137.

Annotations:—*Consd.* *Reade v. Conquest* (1861), 9 C. B. N. S. 755; *Warne v. Seebohm* (1888), 39 Ch. D. 73. *Reid.* *Prince Albert v. Strange* (1848), 2 De G. & Sm. 652; *Tinsley v. Lacy* (1863), 1 Hem. & M. 747.

502. ——— "Of production or any part"—Question of fact for jury—Two or three songs from libretto.]—A jury found that the singing two or three songs of pltf.'s libretto to an opera, was a representation of part of pltf.'s production:—*Held*: (1) a new trial would not be granted; (2) what was a representation of a "production or any part thereof," so as to subject the person representing it to a penalty under Dramatic Copyright Act, 1833 (c. 15), was a question for the jury.—*PLANCHE v. BRAHAM* (1837), 4 Bing. N. C. 17; 3 Hodg. 288; 5 Scott, 242; 7 L. J. C. P. 25; 1 Jur. 823; 132 E. R. 695.

Annotations:—*Consd.* *Chatterton v. Cave* (1878), 3 App. Cas. 483; *Beere v. Ellis* (1889), 5 T. L. R. 330. *Reid.* *Russell v. Briant* (1849), 8 C. B. 836.

503. ——— ——— Means substantial & material

part.]—A. had produced a drama on the tale as written, and the play as acted, of "The Wandering Jew," the authorship of S., but had introduced two scenic representations into his production, not to be found in the French original, & B. afterwards produced a drama on the same subject, in which these two scenic representations were also introduced. An arbitrator had found that two scenes or points had been taken direct from the drama of pltf's., but the drama of deft. was not, except in those respects, a copy from or a colourable imitation of the drama of pltf's., & had directed the verdict to be entered for deft.:—*Held*: (1) the finding was conclusive; (2) the words in Dramatic Copyright Act, 1833 (c. 15), s. 2, "production or any part thereof" must receive a reasonable construction, & were to be treated as implying some part that was substantial & material.—*CHATTERTON v. CAVE* (1878), 3 App. Cas. 483; 47 L. J. Q. B. 545; 38 L. T. 398; 26 W. R. 498, H. L.

Annotations:—*Consd.* *Hanfstaengl v. Empire Palace, Hanfstaengl v. Newnes*, [1894] 3 Ch. 109; *Karno v. Pathé Frères*, London (1908), 99 L. T. 114; *Tate v. Fullbrook*, [1908] 1 K. B. 821. *Reid.* *Fairlie v. Boosey* (1879), 28 W. R. 4; *Warne v. Seebohm* (1888), 39 Ch. D. 73; *Beere v. Ellis* (1889), 5 T. L. R. 330.

504. ——— ———.]—*BEERE v. ELLIS* (1889), 5 T. L. R. 330.

505. ——— Of abridgment of published play—Not an infringement.]—The manager of a theatre publicly represented for profit a tragedy altered & abridged for the stage, without the consent of the owner of the copyright:—*Held*: he was not liable to an action, although the tragedy had been previously printed & published for sale.—*MURRAY v. ELLISTON* (1822), 5 B. & Ald. 657; 1 Dow. & Ry. K. B. 299; 106 E. R. 1331.

Annotations:—*Consd.* *Prince Albert v. Strange* (1848), 2 De G. & Sm. 652; *Reade v. Conquest* (1861), 9 C. B. N. S. 755; *Chappell v. Boosey* (1882), 21 Ch. D. 232; *Warne v. Seebohm* (1888), 39 Ch. D. 73. *Reid.* *Russell v. Smith* (1848), 12 Q. B. 217; *Marsh v. Conquest* (1864), 17 C. B. N. S. 418.

506. ——— At "place of dramatic entertainment"—Without knowledge.]—(1) In an action upon Dramatic Copyright Act, 1833 (c. 15), s. 2, for penalties for the representation of a dramatic piece of pltf.'s at a "place of dramatic entertainment," without his consent, it is sufficient to describe the offence in the words of the Act, & to constitute the offence, it is not necessary to show, nor need the declaration aver, that deft. knowingly invaded pltf.'s right.

(2) An introduction to a pantomime, that is the only written part of the entertainment, is within the protection of the Act.—*LEE v. SIMPSON* (1847), 3 C. B. 871; 4 Dow. & L. 666; 16 L. J. C. P. 105; 8 L. T. O. S. 340; 11 Jur. 127; 136 E. R. 349.

Annotations:—*Reid.* *Reade v. Conquest* (1862), 11 C. B. N. S. 479. *Mentd.* *Russell v. Smith* (1848), 12 Q. B. 217; *Drury v. Hopwood* (1860), 29 L. J. C. P. 151; *Wigan v. Strange* (1865), 35 L. J. M. C. 31; *R. v. Prince* (1875), L. R. 2 C. C. R. 154; *Sherras v. De Rutzen*, [1895] 1 Q. B. 918; *Wake v. Dyer* (1911), 104 L. T. 448.

507. ——— ——— Not gratis performance in hospital—For benefit of nurses, etc.]—Deft. & others joined in representing a dramatic piece in a room of an hospital, without the consent of the proprietor of the copyright in the drama. The performance was merely for the entertainment of the nurses, attendants, & others connected with the hospital, who were admitted free of charge:—*Held*: the room where the drama was represented was not a place of public entertainment, & consequently deft. was not liable to damages or penalties under the Dramatic Copyright Act, 1833 (c. 15), ss. 1 & 2.—*DUCK v. BATES* (1884), 13 Q. B. D. 843;

53 L. J. Q. B. 338; 50 L. T. 778; 48 J. P. 501; 32 W. R. 813, C. A.

Annotations :—*Mentd.* Kelly v. London Pavilion, Kelly v. New Tivoli, Kelly v. Oxford (1897), 77 L. T. 215; Larsen v. Sylvester (1908), 99 L. T. 94, H. L.

508. ——— Not exhibition room of film producers.]—Defts. were producers of cinematograph films, had a room at their place of business fitted up with a cinematograph apparatus, & they issued advertisements inviting the public to see films showing certain scenes of a play which pltf. alleged to be an infringement of their rights :—*Held* : the room where the films were shown on the cinematograph was not a place “of dramatic entertainment” within the meaning of Dramatic Copyright Act, 1833 (c. 15), s. 2, inasmuch as the public were merely invited with the object of getting them to purchase the films.—*GLENVILLE v. SELIG POLYSCOPE CO.* (1911), 27 T. L. R. 554.

See, also, No. 483, *ante*.

509. Representation—Of sketch by film—No infringement.]—Defts. manufactured films, by means of which a music hall sketch belonging to pltf. could be reproduced as living pictures at places of entertainment by means of a cinematograph, & they made the films for that purpose. They sold the films well knowing that the purchasers bought them for the purpose, with the intention of exhibiting the living pictures in places of entertainment, & the purchasers so used the films to the damage of pltf. :—*Held* : assuming pltf.’s sketch to be a dramatic piece or entertainment within the meaning of Dramatic Copyright Act, 1833 (c. 15), s. 1, defts. did not “cause to be represented” pltf.’s sketch within the meaning of s. 2 of the Act.—*KARNO v. PATHÉ FRÈRES, LTD.* (1909), 100 L. T. 260; 25 T. L. R. 242; 53 Sol. Jo. 228, C. A.

Annotations :—*Folld.* Glenville v. Selig Polyscope Co. (1911), 27 T. L. R. 554. *Mentd.* Chappell v. Columbia Graphophone Co. (1914), 112 L. T. 63.

Whether breach of covenant in restraint of performance.]—*See* THEATRES & OTHER PLACES OF ENTERTAINMENT.

510. Authorising performance—By exhibiting advertisements.]—By an agreement dated Sept. 8, 1913, pltf. agreed to let a certain cinematograph film to defts. for a period of one week for exhibition as to three days at the S. theatre at W., & as to the other three days at the L. cinema at A. Defts. agreed not to exhibit or suffer to be exhibited the film or any part of it at any other place other than the two theatres mentioned. Defts. exhibited or suffered to be exhibited the film at places other than the two theatres mentioned, & also announced their intentions, by means of posters & handbills circulated in or about the town of B., of exhibiting the film at a theatre in that town :—*Held* : in addition to pltf.’s right to damages for the breach of contract, defts. by the advertising at B. had authorised a performance of the work within the meaning of 1911 Act, s. 1 (2), & therefore there had been an infringement by defts. of pltf.’s copyright in the film within the meaning of s. 2 (1) of the Act for which pltf. were entitled to recover damages under s. 6.—*FENNING FILM SERVICE, LTD. v. WOLVERHAMPTON, WALSALL & DISTRICT CINEMAS, LTD.*, [1914] 3 K. B. 1171; 83 L. J. K. B. 1860; 111 L. T. 1071.

Extracts published by way of criticism.]—*See* No. 410, *ante*.

Who liable for infringement.]—*See* Sect. 3, subsect. 4, *post*.

See, also, Nos. 130, 152, *ante*.

SUB-SECT. 6.—TITLE OF PUBLICATION.

See, also, Part II., Sect. 9, *ante*.

511. Periodical—Similar title & character—Not liable to mislead—“Punch” & “Punch & Judy”—No infringement.]—The proprietors of “Punch” moved to restrain the publication of “Punch & Judy,” a rival periodical of like character & of the same size as, & somewhat similar appearance to, “Punch,” but with a different illustration on the cover, & sold at a lower price. It was in evidence that another well-known comic periodical was published weekly under the name of “Judy” :—*Held* : the adoption of the whole title, “Punch & Judy” was no infringement of the pltf.’s right to use, & property in, the name “Punch”; & the general public were not likely to be misled into purchasing deft.’s publication by mistake for that of pltf., & the motion for injunction would be refused.—*BRADBURY v. BEFTON* (1869), 39 L. J. Ch. 57; 21 L. T. 323; 18 W. R. 33.

Annotations :—*Refd.* Weldon v. Dicks (1878), 10 Ch. D. 247.

Mentd. Lee v. Haley (1869), 21 L. T. 546.

512. Magazine—General resemblance.]—*CLOWES v. HOGG*, [1870] W. N. 268.

513. ——— Similar title—But words purely descriptive.]—*STEVENS (WILLIAM), LTD. v. CASSELL & CO., LTD.* (1913), 29 T. L. R. 272.

514. Identical title—Injunction refused.]—*CROTCH v. ARNOLD* (1909), 54 Sol. Jo. 49.

See, also, No. 133, *ante*.

515. Birthday book—Title—Infringement.]—Pltf. was the publisher of a work which he claimed to have originated, called “The Birthday Scripture Text Book,” consisting of a printed diary interleaved, with a blank space opposite each day & a text of Scripture appended, & which was designed as a record of the birthdays of friends :—*Held* : he was entitled to an injunction to restrain defts. from publishing & selling a work subsequent to pltf.’s, called “The Children’s Birthday Text Book,” on the ground that it was an infringement of pltf.’s copyright in the title of his work, as well as a colourable imitation of it.—*MACK v. PETER* (1872), L. R. 14 Eq. 431; 41 L. J. Ch. 781; 20 W. R. 964.

Annotations :—*Refd.* Kelly v. Byles (1880), 13 Ch. D. 682; Dicks v. Yates (1881), 44 L. T. 660.

516. Piano tutor—By author using own name—Misleading public.]—Pltf. were the publishers of a work intituled “Hemy’s Royal Modern Tutor for the Pianoforte,” a revised edition of which had been brought out in 1867, & which was well known & had an extensive sale. In 1874 deft. employed Hemy to revise an old work, intituled “Jousse’s Royal Standard Pianoforte Tutor,” which had formerly been in high repute, but had entirely fallen into disuse. This revised work deft. brought out under the title “Hemy’s New & Revised Edition of Jousse’s Royal Standard Pianoforte Tutor,” the word “Hemy’s,” both on the outside of the book & on the title page, being printed in much larger & more conspicuous type than any other of the words :—*Held* : pltf. were entitled to an injunction restraining deft. from offering

PART XIII. SECT. 1, SUB-SECT. 6.

a. Play—General resemblance of title—No other similarity.]—Pltf. were proprietors of a comedy known as “The Wrong Mr. Wright,” played in England, America, & N. S. W. Deft.

advertised for production in N. S. W. a comedy “The enormous English & American success ‘The Wrong Mr.

success in those countries under other names. The title was in each case to some extent descriptive of t.
— — — — — & there was no

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his work for sale with its present form, title page, & cover, or any other form, title page, or cover, calculated to deceive persons into the belief that it was pltf.'s work.—**METZLER v. WOOD** (1878), 8 Ch. D. 606; 47 L. J. Ch. 625; 38 L. T. 541; 26 W. R. 577, C. A.

Annotations:—*Refd.* Kelly v. Byles (1880), 13 Ch. D. 682; Dicks v. Yates (1881), 18 Ch. D. 76.

517. Violin tutor—Title, preface & special features copied—Infringement.]—HUTCHINGS v. SHEARD, [1881] W. N. 20.

518. Passing off—Authorship.]—Deft., a publisher, advertised for sale certain poems which he represented to be the work of Byron by the advertisement. A bill was filed on behalf of B. for an injunction to restrain the publication under the title described in the advertisement:—**Held**: an injunction would be granted until answer or further order, to restrain the publication of the work as pltf.'s, upon affidavit by pltf.'s agents, pltf.

highly probable that it was not pltf.'s work, & deft. having refused to swear as to his belief that it was so.—**BYRON (LORD) v. JOHNSTON** (1816), 2 Mer. 29; 35 E. R. 851, L. C.

Annotations:—*Refd.* Clark v. Freeman (1848), 11 Beav. 112. *Mentd.* Day v. Brownrigg (1878), 10 Ch. D. 294; Harris v. Warren & Phillips (1918), 119 L. T. 217.

519. ——— Song—"Written by" confined to words.]—BARNARD v. PILLOW, [1868] W. N. 94.

520. ——— Advertisement of book—Tending to confusion with rival work.]—Where there are two rival works, the ct. will restrain the proprietor of one of them from advertising it in terms calculated to induce the public to believe that it is the other work, but will not restrain him from publishing an advertisement tending to disparage that other work.—**SEELEY v. FISHER** (1841), 11 Sim. 581; 10 L. J. Ch. 274; 59 E. R. 998, L. C.

521. ——— Get-up of song—Portrait of alleged singer.]—CHAPPELL v. SHEARD, No. 138, *ante*.

522. ——— Different title.]—Pltfs. published a song, on the title page of which was a portrait of T., & the words "Minnie, sung by T. & D. at J.'s concerts, written by L.," etc. This song having become very popular deft. subsequently published another song, consisting of different words to the same air, in which there was no copyright, with a title page on which was a different portrait of T., copied from an American publication, & the words "Minnie, dear Minnie. Madame T.":—**Held**: this was an obvious attempt to pass off deft.'s publication for that of pltfs., which had obtained public favour, & this attempt would be restrained by an interlocutory injunction without imposing upon the parties the necessity of trying the right at law.—**CHAPPELL v. DAVIDSON** (1855), 2 K. & J. 123; 69 E. R. 719; *varied on appeal* (1858), 8 De G. M. & G. 1, L. JJ.; *subsequent proceedings* (1856), 18 C. B. 194.

523. ——— As new work of author—Injunction refused.]—The owner of the copyright of a composer's new & recent works brought an action to restrain defts., the owners of the copyright of an old song by the same composer, from publishing it in such a manner as to lead to the belief that it

restrained by injunction.—**BROADHURST v. NICHOLS** (1903), 3 S. R. N. S. W. 147; 20 N. S. W. W. N. 70.—**AUS.**

b. ——— Similar title.]—In Mar. 1906 pltf. produced a play under title "The Fatal Wedding" with great success. In May 1906 deft. produced another play under the same title as pltf. or with slight variation there-

from:—**Held**: pltf. was entitled to an injunction restraining deft. from producing a play under the title of "The Fatal Wedding" or any similar title.—**MEYNELL v. PEARCE**, [1906] V. L. R. 447.—**AUS.**

PART XIII. SECT. 2.

531 i. Assignee—Of sole right of

was one of the composer's new & recent works:—**Held**: the action failed, & would be dismissed with costs.—**HARRIS v. WARREN & PHILLIPS** (1918), 87 L. J. Ch. 491; 119 L. T. 217; 34 T. L. R. 440; 62 Sol. Jo. 568; 35 R. P. C. 217.

SECT. 2.—WHO MAY SUE FOR.

524. Author—Work first published without author's name.]—An author whose work is pirated before the expiration of twenty-eight years from the first publication of it may maintain an action on the case for damages against the offending party although it was first published without the name of the author affixed.—**BECKFORD v. HOOD** (1798), 7 Term Rep. 620; 101 E. R. 1164.

Annotations:—*Consd.* Roworth v. Wilkes (1807), 1 Camp. 94; Cambridge University v. Bryer (1812), 16 East, 317; Newton v. Cowie (1827), 4 Bing. 234; A.-G. v. Aspinall (1837), 2 My. & Cr. 613; Jefferys v. Boosey (1854), 4 H. L. Cas. 815. *Refd.* Brooks v. Cock (1835), 3 Ad. & El. 138; Novello v. Sudlow (1852), 12 C. B. 177; Reade v.

L. T. 704; Vallance v. Falle (1884), 13 Q. B. D. 109. *Mentd.* Stevens v. Chown, Stevens v. Clark (1901), 70 L. J. Ch. 571.

525. Equitable owner—Though legal title incomplete.]—The ct. will interfere to protect copyright from piracy, at the suit of pltfs. who appear to have a good equitable title, even though it should not be quite clear that their legal title is complete.

If an individual choses in any work to mix my literary matter with his own he must be restrained from publishing the literary matter which belongs to me, & if parts of the work cannot be separated, & if by that means the injunction which restrained the publication of my literary matter prevents also the publication of his own literary matter, he has only himself to blame (**LORD ELDON, C.**).—**MAWMAN v. TEGG** (1826), 2 Russ. 385; 38 E. R. 380, L. C.

Annotations:—*Consd.* Lewis v. Fullarton (1839), 2 Beav. 6; Bohn v. Bogue (1846), 7 L. T. O. S. 277; Jarrold v. Houlston (1857), 3 K. & J. 708. *Refd.* Sweet v. Maugham (1840), 4 Jur. 479; *Re* Curry; *Ex p.* Lever (1850), 15 L. T. O. S. 476; Spiers v. Brown (1858), 6 W. R. 352; Tinsley v. Lacy (1863), 32 L. J. Ch. 535.

526. Publisher—Authorised by Admiralty to publish—Profits remaining in Admiralty—Cannot sue.]—NICOL v. STOCKDALE, No. 332, *ante*.

527. ——— During licence to publish.]—SWEET v. CATER, No. 256, *ante*.

528. First publisher—Though materials improperly obtained.]—CARY v. KEARSLEY, No. 404, *ante*.

529. Assignor—Cannot sue alone—For infringement of rights assigned.]—TREE v. BOWKETT, No. 307, *ante*.

530. Assignee—Not for infringement after assignment—Where copies sold in England before assignment—Assignment by foreigner.]—CHAPPELL v. PURDAY, No. 281, *ante*.

531. ——— Of sole right of representing.]—Deft., the proprietor of a theatre, let it for one night for the benefit of one of his performers, who was to pay him £30 for the use of it for that night, together with the services of the *corps dramatique*, band, lights, & accessories. The performer who so had

*representing.]—*The assignee of the sole right of representing a dramatic work can sue in his own name to restrain the infringement of the right.—**HOLT v. WOODS** (1896), 17 N. S. W. Eq. 36; 12 N. S. W. W. N. 97.—**AUS.**

*For infringements made before registration of assignment—But after registration of copyright.]—*The

the use of the theatre represented therein a dramatic piece, the sole right of representing which had been assigned to pltf.:—*Held*: (1) deft. "caused the piece to be represented," & consequently was guilty of an infringement of pltf.'s right, & liable to the penalty imposed by Dramatic Copyright Act, 1833 (c. 15); (2) it was competent to the assignee of the sole right of representing a dramatic piece to sue for penalties under Dramatic Copyright Act, 1833 (c. 15), notwithstanding the assignment was not by deed; (3) the assignment of the copyright of a book consisting of or containing a dramatic piece did not, in the absence of an expressed intention that it should do so, pass the right of representing or performing it, & that might be the subject of a subsequent assignment to a third person.—*MARSH v. CONQUEST* (1864), 17 C. B. N. S. 418; 4 New Rep 282; 33 L. J. C. P. 319; 10 L. T. 717; 10 Jur. N. S. 989; 12 W. R. 1006; 144 E. R. 169.

Annotations:—*Consd.* *Chattorton v. Cave* (1875), 44 L. J. C. P. 386; *Monaghan v. Taylor* (1886), 2 T. L. R. 685; *Karno v. Pathé Frères* (1909), 100 L. T. 260. *Refd.* *Lyon v. Knowles* (1864), 5 B. & S. 751.

See, also, No. 263, *ante*.

532. — With incomplete title—One part owner dead.—*LAURI v. RENAD*, No. 88, *ante*.

533. Not licensee with sole right of publication & sale in England.—*POWER v. WALKER*, No. 236, *ante*.

534. Where licence to perform granted—Owner may not sue alone for unauthorised performance.—*TAYLOR v. NEVILLE*, No. 302, *ante*.

535. — Sole licensee cannot sue in own name.—*NEILSON v. HORNIMAN*, No. 305, *ante*.

536. Author of contribution to periodical—Retaining copyright—Though no separate publication.—The author of a contribution to a periodical who has not parted with his copyright to the proprietor of the periodical may sue an infringer before publishing his contribution in a separate form. Copyright Act, 1842 (c. 45), s. 18, does not apply to an author who has sold the right to publish a story in serial form & who has agreed not to publish his work elsewhere until the series is completed. To secure his copyright he need not republish his story in separate form under the last proviso in s. 18.

When a volume is found to contain separate parts each distinguished or perfectly distinguishable from the other parts, & the volume is published, each part that is separate & clearly distinguished in the volume itself is separately published within the meaning of Copyright Act, 1842 (c. 45), s. 2 (*ROMER, J.*).—*JOHNSON v. NEWNES (GEORGE), LTD.*, [1894] 3 Ch. 663; 63 L. J. Ch. 786; 71 L. T. 230; 43 W. R. 572; 10 T. L. R. 561; 8 R. 500.

Annotation:—*Apprvd.* *Aflalo v. Lawrence & Bullen*, [1903] 1 Ch. 318.

537. Society to protect members—Copyrights assigned to society & damages pooled—Not champertous.—Pltf. society was formed as a limited co. to protect the copyright interests of members, who assigned their copyrights to the society. By the rules of the society fees & damages recovered were pooled, & the fund so formed was divided among the members after the deduction of expenses. The assignments were real & substantial

transactions, & the provision as to the division of the damages was only subsidiary. In an action by the society for the infringement of copyrights which had been assigned to the society by two members:—*Held*: the arrangement between the society & its members was made for legitimate business reasons & was not champertous, & pltf. were entitled to succeed.—*PERFORMING RIGHTS SOCIETY, LTD. v. THOMPSON* (1918), 34 T. L. R. 351.

538. Co-owner — May sue co-owner.—Pltf. was the author of a book entitled "English Furniture of the Eighteenth Century." By a memorandum of agreement it was agreed between pltf. & defts., who were publishers, that defts. should take over from another firm the publication of the book, & should pay pltf. certain royalties; the copyright was to be vested in the author & defts. equally, & no arrangements for the transfer of the copyright were to be concluded without the consent in writing of both parties to the agreement. Defts. subsequently published for another author a book which was an infringement of the copyright of the book written by the pltf.:—*Held*: pltf. was entitled to an injunction as the effect of 1911 Act, s. 2 (1), was that a reproduction of a book without the consent of all the owners of the copyright was an infringement of the copyright, & the fact that pltf. was only a co-owner did not affect his rights in this respect.—*CECINSKY v. ROUTLEDGE (GEORGE) & SONS, LTD.*, [1916] 2 K. B. 325; 85 L. J. K. B. 1504; 115 L. T. 191.

See, also, No. 456, *ante*.

Ownership of copyright.—*See, generally*, Part IV., *ante*.

Necessary parties.—*See* Part XIV., Sect. 2, sub-sect. 6, B., *post*.

SECT. 3.—WHO MAY BE LIABLE FOR.

SUB-SECT. 1.—AS VENDOR.

See, now, 1911 Act, s. 2 (2) (a), (b).

539. Vendor of infringing reproduction—Though ignorant of infringement.—The vendor of a print, being a copy in part of another by varying in some trifling respects from the main design, is liable to an action by the proprietor of the original, & that although the vendor did not know it to be a copy.—*WEST v. FRANCIS* (1822), 5 B. & Ald. 737; 1 Dow. & Ry. K. B. 400; 106 E. R. 1361.

Annotations:—*Consd.* *Dicks v. Brooks* (1880), 15 Ch. D. 22; *Hanfstaengl v. Empire Palace*, *Hanfstaengl v. Newnes*, [1894] 3 Ch. 109; *Hanfstaengl v. Baines*, [1895] A. C. 20; *Boosey v. Whight*, [1900] 1 Ch. 122. *Refd.* *Gambart v. Sumner* (1859), 5 H. & N. 5; *Hanfstaengl v. Smith*, [1905] 1 Ch. 519; *McCrum v. Eisner* (1917), 87 L. J. Ch. 99.

540. — Knowledge of infringement necessary.—In an action on the case under Copyright Act, 1842 (c. 45), against the seller of a pirated work it is necessary to prove that he sold & published the same knowing it to have been improperly printed.—*LEADER v. STRANGE* (1850), 15 L. T. O. S. 67.

541. — Though ignorant of infringement.—By Prints Copyright Act, 1777 (c. 57), a person having a copyright in a print or engraving may maintain an action against a person for selling pirated copies of it, though such person has no

assignee of a copyright may recover for infringements made before the registration of the assignment, but after the registration of the copyright.—*BERNARD v. BERTONI* (1888), 14 Q. L. R. 219.—CAN.

d. Foreign author — Under Berne Convention.—The Berne Convention

& all Imperial Acts respecting the rights of authors are in force in Canada. French literary societies are only

Q. R. 26 K. B. 97; 35 D. L. R. 683.—CAN.

PART XIII. SECT. 3, SUB-SECT. 1.

539 i. Vendor of

TENNYS
Sc. Jur.

Sect. 3.—Who may be liable for: Sub-sects. 1, 2, 3, 4 & 5. Part XIV. Sects. 1 & 2: Sub-sect. 1.]

knowledge that the prints are piracies.—**GAMBART v. SUMNER** (1859), 5 H. & N. 5; 29 L. J. Ex. 98; 1 L. T. 12; 23 J. P. 744; 5 Jur. N. S. 1109; 8 W. R. 27; 157 E. R. 1078.

542. — — — — —.]—MARSHALL (W.) & Co., LTD. v. BULL (A. H.), LTD., No. 47, ante.

See, also, No. 563, post.

— Registered design.]—See TRADE MARKS, TRADE NAMES, & DESIGNS.

543. — — — — — What constitutes sale—Or exposure for sale—No request for orders by sample.]—BRITAIN v. KENNEDY (1902), 19 T. L. R. 122.

544. — — — — — Not quoting approximate price.]—WOLFF v. WOOD (1903), *Times*, Oct. 31.

545. Consignor of copies on sale or return—Copies sold after notice of infringement.]—SAVORY (E. W.), LTD. v. WORLD OF GOLF, LTD., No. 16, ante.

Licensee for limited period—Selling copies after expiration of period.]—See No. 284, ante.

Assignor—Selling copies printed before assignment.]—See No. 276, ante.

SUB-SECT. 2.—AS PRINTER.

See, now, 1911 Act, s. 2 (1).

546. Though only agent.]—BASCHET v. LONDON ILLUSTRATED STANDARD CO., No. 382, ante.

547. Not unless actually employed in printing infringement—Though stated to be printer on title page.]—L. agreed with G. to print & publish in L.'s name a diary for merchant shippers in consideration of certain payments. G. obtained lists of merchant shippers which were an infringement of pltf.'s copyright. By agreement with L., & to save time in publication, G. employed another printer, who was paid by G., to print the pirated portion, & L., without any knowledge of the piracy, included the infringing portion in the diary, which bore on the title page, "Printed at L.'s":—*Held*: L. had not "caused to be printed" the infringing portion within Copyright Act, 1842 (c. 45), s. 15.—KELLY'S DIRECTORIES, LTD. v. GAVIN & LLOYDS**, [1902] 1 Ch. 631; 71 L. J. Ch. 405; 86 L. T. 393; 50 W. R. 385; 18 T. L. R. 346; 46 Sol. Jo. 295, C. A.**

See, also, No. 560, post.

SUB-SECT. 3.—AS IMPORTER.

See, now, 1911 Act, ss. 2 (2) (d), 14.

548. No attempt to sell—Copies received after notice.]—The proprietors of an English copyright discovering a piracy by an American firm, sent notice to the agents in England of that firm not to distribute the copies complained of, & immediately afterwards brought an action against the agents for an injunction to restrain them from selling or importing for sale such copies in this country. Defts. in their statement of defence stated that they had not received the copies from America until after the service of the writ in the action, & that when they did receive the copies they recognised the infringement of pltf.'s copyright & at once determined not to sell:—*Held*: (1) defts. had within the terms of the Copyright Act, 1842 (c. 45), s. 17, "imported for sale" the

copies complained of, & must therefore pay the costs of the action; (2) where an action was brought to enforce a legal right & there was no misconduct on the part of pltf. the ct. had no discretion to refuse him costs.—**COOPER v. WHITTINGHAM** (1880), 15 Ch. D. 501; 49 L. J. Ch. 752; 43 L. T. 16; 28 W. R. 720.

Annotations:—As to (1) *Reid*. Upmann v. Forester (1883), 24 Ch. D. 231; *Hayward v. East London Waterworks Co.* (1884), 28 Ch. D. 138; *Proctor v. Bayley* (1888), 42 Ch. D. 393, n.; *Carlton Illustrators v. Coleman*, [1911] 1 K. B. 771. **As to (2) *Consd.* Ruskin v. Robinson** (1885), 2 T. L. R. 18. ***Folld.* Sonnenschein v. Barnard** (1887), 57 L. T. 712. ***Apld.* Roberts v. Jones, Willey v. G. N. Ry.**, [1891] 2 Q. B. 194. ***N.F.* Walter v. Steinkopf**, [1892] 3 Ch. 489. ***Consd.* O'Connor v. Star Newspaper Co.** (1893), 68 L. T. 146. ***Reid.* Felix v. Gordon** (1884), 1 T. L. R. 96; *Jones v. Curling* (1884), 13 Q. B. D. 262; *Wood v. Cox* (1889), 5 T. L. R. 272. ***Generally, Reid.* Stevens v. Chown, Stevens v. Clark**, [1901] 1 Ch. 894; *A.-G. v. Ashborne Recreation Ground Co.*, [1903] 1 Ch. 101. ***Mentd.* Huxley v. West London Extension Ry., Hughes v. Merrett, Wood v. Madge** (1886), 17 Q. B. D. 373; *Florence v. Mallinson* (1891), 65 L. T. 354; *Forster v. Farquhar*, [1893] 1 Q. B. 564; *Hollinrake v. Truswell* (1894), 7 R. 568; *Lomer v. Waters*, [1898] 2 Q. B. 326; *Devonport Corpn. v. Tozer* (1903), 67 J. P. 269; *Russell v. Midhurst R. D. C.* (1908), 98 L. T. 530; *Gray v. Ashburton*, [1917] A. C. 26.

549. Copies printed in foreign country by owner of foreign copyright—Imported into England—Infringement of rights of owner of British international copyright.]—Pltf. was owner of the British international copyright of a book first published in Germany. Deft. imported & sold in Great Britain copies printed in Germany by the owner of the German copyright:—*Held*: pltf. was entitled to restrain this importation & sale, for International Copyright Act, 1844 (c. 12), s. 10, which, as regards any book in which there was British international copyright, prohibited the importation into Great Britain without the consent of the proprietor of such copyright, of copies printed in any foreign country except that in which the book was first published, did not form a complete code as to the importation of copies & s. 3, which provided that the enactments in Copyright Act, 1842 (c. 45), should apply to books in which there was British international copyright in the same way as if such books had been first published here, made ss. 15 & 17 of Copyright Act, 1842 (c. 45), applicable to the book in question, & as under those sects. the owner of the copyright could, if the book had been first published in Great Britain, have restrained the importation of these copies, the owner of the British international copyright could do so.—PITT PITTS v. GEORGE & Co.**, [1896] 2 Ch. 866; 66 L. J. Ch. 1; 75 L. T. 320; 45 W. R. 164; 13 T. L. R. 20; 41 Sol. Jo. 45, C. A.**

See, now, 1911 Act, s. 29.

550. Each sale a separate infringement.]—Two penalties may be incurred on the same day, on Copyright Act, 1739 (c. 36), for selling books originally written & published here, & afterwards reprinted in any other country, & imported into this, if the acts of sale be distinct.—BROOKE v. MILLIKEN** (1789), 3 Term Rep. 509; 100 E. R. 705.**

Annotation:—*Consd.* *Ex p.* Beal (1868), L. R. 3 Q. B. 387.

551. Absence of knowledge of importer immaterial.]—R. v. BALDOLI (1913), *Times*, Nov. 27.

See, also, No. 325, ante; No. 563, post.

SUB-SECT. 4.—AS PRODUCER.

See, now, 1911 Act, s. 2 (3).

552. Lessor of place of performance—Not liable as such.]—No one can be considered as an offender

PART XIII. SECT. 3, SUB-SECT. 4.
1. Performers—& workers in con-

All those who take part in performance, or in work in relation to performance,

sole right of representation are liable for so doing.—CARTE v. DENNIS (1900), 5 Terr. L. R. 30.—**CAN.**

against the provisions of Dramatic Copyright Act, 1833 (c. 15), extended to musical compositions by Copyright Act, 1842 (c. 45), s. 20, so as to be liable to an action at the suit of the author or proprietor, unless he, by himself, or his agent, actually takes part in the representation which is a violation of the copyright, & therefore one who merely lets a room to the offender is not liable, even though he supplies the benches & lights, or sells a ticket of admission, he himself deriving no other profit than that arising from the letting of the room.—*RUSSELL v. BRIANT* (1849), 8 C. B. 836; 19 L. J. C. P. 33; 14 L. T. O. S. 349; 14 Jur. 201; 137 E. R. 737.

Annotations:—*Consd.* *Lyon v. Knowles* (1863), 3 B. & S. 556. *Follid.* *Monaghan v. Taylor* (1886), 2 T. L. R. 685. *Consd.* *Kelly's Directories v. Gavin & Lloyds*, [1901] 1 Ch. 374; *Karno v. Pathé Frères* (1909), 100 L. T. 260.

553. ——— *Pieces produced selected by lessee.*—K., the licensed proprietor of a theatre under Theatres Act, 1843 (c. 68), entered into an arrangement with D., a theatrical speculator, who was travelling about the provinces with a company of comedians whereby D. was to have the temporary use of the theatre for dramatic performances, to find the actors, to select the pieces, & to have the sole control of the stage management. K. was to provide for the printing & advertising, to furnish the door-keepers, scene shifters, & supernumeraries, to pay for lighting the house, & to find the orchestra, music being a necessary part of the dramatic piece in which pltf. claimed the copyright & brought this claim against K. for infringement thereof. The money was taken at the doors by K.'s servants, & K. retained one half thereof for the hire of the theatre & handed over the other half to D.:—*Held*: there was no such causing to be represented by K. as to make him liable for an infringement of pltf.'s copyright in the sole representation of the pieces selected by D.—*LYON v. KNOWLES* (1864), 5 B. & S. 751; 10 L. T. 876; 12 W. R. 1083; 122 E. R. 1010, Ex. Ch.

Annotations:—*Consd.* *Marsh v. Conquest* (1864), 17 C. B. N. S. 418; *Kelly's Directories v. Gavin & Lloyds*, [1901] 1 Ch. 374; *Karno v. Pathé Frères* (1909), 100 L. T. 260. *Refd.* *Monaghan v. Taylor* (1886), 2 T. L. R. 685.

554. ——— *Lease for one night benefit of actor—Lessor liable.*—*MARSH v. CONQUEST*, No. 531, *ante*.

555. *Music hall proprietor—Copyright song sung by singer engaged—Proprietor liable.*—Deft., the proprietor of a music hall, engaged a singer, who on numerous occasions sang a song of the copyright of which pltf. was assignee. Deft. at the trial denied that he had directed the song to be sung. He was in the hall when it was being sung, but had never heard the whole of it. The jury found a verdict for pltf., & awarded a penalty of £2 for each occasion on which the song was sung. Upon a motion for a new trial:—*Held*: inasmuch as the

singer was hired by deft. to sing what songs he liked & no supervision or control was exercised as to copyright, there was evidence of agency & authority to sing the song complained of, & there was no ground for disturbing the verdict.—*MONAGHAN v. TAYLOR* (1886), 2 T. L. R. 685.

Annotation:—*Consd.* *Kelly's Directories v. Gavin & Lloyds* (1901), 84 L. T. 581.

556. ——— *By permission of author given to singer—Proprietor not liable.*—*COLE v. GEAR* (1888), 4 T. L. R. 246.

557. ——— *Knowledge of infringement necessary.*—*MOUL v. CORONET THEATRE, LTD.* (1903), *Times*, Feb. 4, C. A.

Annotation:—*Refd.* *Sarpy v. Holland* (1908), 77 L. J. Ch. 637.

See, also, No. 502, *ante*.

558. *Theatre manager—Does not “represent or cause to represent.”*—*FRENCH v. DAY, GREGORY, ETC.* (1893), 9 T. L. R. 548.

See, also, No. 509, *ante*.

SUB-SECT. 5.—OTHER CASES.

559. *Publisher—Knowledge of infringement must be proved.*—*LEADER v. STRANGE*, No. 540, *ante*.

560. *Joint tortfeasors—Former proceedings against one settled.*—Pltfs. commenced an action against E. & Co., for infringement of the copyright in a book by publishing a similar book, & obtained a perpetual injunction, the action being agreed to be stayed by consent on payment of a sum down & a future payment to be made by instalments, & of costs. H. & Co., were the printers of the book published by E. & Co., but pltfs. were not aware of this fact until the settlement was pending. In a subsequent action by pltfs. against H. & Co., for the infringement defts. joined E. & Co., as third parties:—*Held*: as the order in the former action had never been a matter of judgment or record, there was no satisfaction of the cause of action, & judgment could be recovered against H. & Co., relief over being given to them as against E. & Co.—*KELLY v. HAMMOND & CO. & EYRE BROTHERS* (1886), 2 T. L. R. 804.

561. *Person ordering poster—Not liable for unauthorised infringement by artist.*—A. ordered B. to produce a poster of a lion & B. infringed C.'s copyright in a photograph in doing so:—

Held: (1) A. did not “cause or procure” a copy to be made within Fine Arts Copyright Act, 1862 (c. 68), s. 6; (2) the reproduction was a “copy” within Fine Arts Copyright Act, 1862 (c. 68), s. 6.—*BOLTON v. LONDON EXHIBITIONS, LTD. & WEINERS, LTD.* (1898), 14 T. L. R. 550.

Co-owner.—*See* No. 538, *ante*.

Necessary parties.—*See* Part XIV., Sect. 2, sub-sect. 6, B., *post*.

Part XIV.—Remedies.

SECT. 1.—IN GENERAL.

562. *Where injunction refused—No other relief.*—*BAILY v. TAYLOR*, No. 593, *post*.

563. *Innocent infringement—Fraudulent intention not necessary.*—A fraudulent intention in infringing copyright is not necessary to entitle the proprietor of the copyright to relief if his right of property has been invaded.—*CLEMENT v. MADDICK* (1859), 1 Giff. 98; 33 L. T. O. S. 117; 5 Jur. N. S. 592; 65 E. R. 841.

Annotation:—*Mentd.* *Lee v. Haley* (1869), 21 L. T. 546.

See, now, 1911 Act, s. 8.

See, also, Nos. 41, 539–542, 551, *ante*.

564. *Right to pursue—No obligation to accept offer.*—*SAVORY (E. W.), LTD. v. WORLD OF GOLF, LTD.*, No. 16, *ante*.

Effect of refusal of offer—On costs.—*See* Sect. 2, sub-sect. 6, F., *post*.

SECT. 2.—CIVIL REMEDIES.

SUB-SECT. 1.—DELIVERY UP.

See, now, 1911 Act, s. 7.

565. *Delivery up.*—*VESEY v. SWEET* (1823), 5 Ves. 709, n., 2nd ed.; 31 E. R. 818.

Sect. 2.—Civil remedies: Sub-sects. 1, 2, 3 & 4, A.]

566. — No right at common law.]—(1) A pltf. who is entitled to have an account taken of profits unlawfully made by deft. is not bound to accept the statement of the account on affidavit instead of by answer, but may call for an answer from deft., without therefore disentitling himself to the costs in respect of the answer, although he afterwards waives the account.

Semble: (2) there is no common law right in the author or proprietor of a book which is pirated, to the delivery up of the copies of the illegal work.

Qu.: (3) whether the copies of the illegal work would in any case be ordered to be delivered up in a suit to which the person at whose expense & on whose account they had been printed was not a party.

(4) Where a deft. having rendered himself liable to be sued & being sued offers to submit to all the relief to which pltf. is entitled, the ct. will not give pltf. his costs of the subsequent prosecution of the suit.—*COLBURN v. SIMMS* (1843), 2 Hare, 543; 12 L. J. Ch. 388; 1 L. T. O. S. 75; 7 Jur. 1104; 67 E. R. 224.

Annotations:—*As to* (1) *Consd.* *Mansell v. Valley Printing Co.*, [1908] 2 Ch. 441. *As to* (2) *Consd.* *Mansell v. Valley Printing Co.*, [1908] 2 Ch. 441. *Generally, Mentd.* *Powell v. Aitken* (1858), 4 K. & J. 343; *Webster v. Power* (1868), L. R. 2 P. C. 69.

567. — Wrongful copying of prints or photographs lent—Detinue lies for originals & copies.]—*MAYALL v. HIGBEY*, No. 109, *ante*.

568. — For destruction.]—Pltfs. having brought an action to restrain defts. from printing & publishing their directory as being a piracy of a similar work of pltfs.:—*Held:* (1) there must be a perpetual injunction restraining defts. from printing & publishing the pirated directory; (2) an account of copies sold & unsold & monies received; (3) all unsold copies to be delivered up for destruction.—*KELLY v. HODGE* (1870), cited in *Seton's Decrees*, 7th ed. 656.

Annotations:—*As to* (3) *Consd.* *Hole v. Bradbury* (1879), 12 Ch. D. 886. *Refd.* *Chappell v. Columbia Graphophone Co.*, [1914] 2 Ch. 745.

569. — Ordered under inherent jurisdiction of court.]—*HOLE v. BRADBURY*, No. 235, *ante*.

570. — Ordered in action for injunction.]—*PITMAN v. HINE*, No. 602, *post*.

571. — Part only of work complained of—Where severable.]—Pltf., having partially succeeded in an action for infringement of copyright, is entitled, where the infringing parts can be severed, to an order for delivery up to him of such parts of deft.'s product as constitutes an infringement of pltf.'s copyright.—*BOOSEY & Co. v. WHIGHT & Co.* (No. 2) (1899), 81 L. T. 265; *subsequent proceedings*, [1900] 1 Ch. 122, C. A.

See, also, No. 485, *ante*.

572. — By action of detinue or conversion—After demand—In addition to action on the case.]—A proprietor of copyright in a book who has a remedy for infringement by "a special action on the case" under Copyright Act, 1842 (c. 45), s. 15, is not precluded from suing the offender, if he thinks fit, under s. 23, either in detinue or in trover, or, if necessary, in both combined; & all the remedies under both sections may be pursued by action in the Ch. Div.

PART XIV. SECT. 2, SUB-SECT. 1.

570 i. Delivery up—Ordered in action for injunction.]—*LIFE PUBLISHING CO. v. ROSE PUBLISHING CO.* (1906), 12 O. L. R. 386; 7 O. W. R. 337; 8 O. W. R. 28.—CAN.

PART XIV. SECT. 2, SUB-SECT. 2.

h. Not taken away by action for penalty.]—*BERNARD v. BERTONI* (1888), 14 Q. L. R. 219.—CAN.

k. Measure of—Vindictive damages allowed.]—Where there is clear proof of infringement vindictive damages

In an action for infringement by a proprietor of copyright in a book, where deft. had still in his possession some of the infringing copies & had sold others but without making any profits on the sales:—*Held:* (1) pltf. was entitled to the usual injunction, (2) to delivery up of the copies in deft.'s possession, (3) to damages representing the actual amount of the proceeds of the copies sold.—*MUDDOCK v. BLACKWOOD*, [1898] 1 Ch. 58; 67 L. J. Ch. 6; 77 L. T. 493; 46 W. R. 166; 14 T. L. R. 43; 42 Sol. Jo. 46.

573. — Distinct from damages for infringement.]—The rights conferred upon the owner of copyright by the 1911 Act, ss. 6 & 7, are based on different grounds. Under s. 6 he has, in cases of infringement, the usual civil remedies available where a similar right of property is infringed, & can recover damages for the loss sustained by the infringement or, if he prefers, payment of the profits resulting from the piracy. Under s. 7 he has an action of detinue in respect of unsold infringing copies & plates, which by virtue of the sect. are deemed to be his property, & an action for conversion in respect of such infringing copies & plates as have been sold. But under a judgment directing merely an inquiry as to the damages sustained by reason of the infringement of copyright, the damages to be assessed are confined to damages for infringement including damages occasioned by reason of the deft. having infringed the copyright by selling copies; they do not include damages for the conversion of infringing copies & plates.

Qu.: whether in assessing damages for conversion under s. 7, the cost which pltf. would have incurred in himself producing the infringing copies should be deducted.—*BIRN BROTHERS v. KEENE & Co.*, [1918] 2 Ch. 281; 88 L. J. Ch. 24; 119 L. T. 364.

—*See, also*, No. 109, *ante*.

See, also, No. 699, *post*.

SUB-SECT. 2.—DAMAGES.

See, now, 1911 Act, s. 8.

574. Damage presumed—On proof of piracy—Though no actual damage proved.]—*MOORE v. CLARKE*, No. 475, *ante*.

575. Statutory penalty under Dramatic Copyright Act, 1833—"Debt"—Within Execution Act, 1844 (c. 96), s. 57.]—Where an action of debt was brought under the above Act of 1833 to recover the penalty of 40s. for each of six several representations of a dramatic piece of which pltf. was the author, & judgment was signed by default for £12 debt, & £10 15s. costs; & deft. was taken in execution under a *ca. sa.* indorsed to levy those sums:—*Held:* he was entitled to be discharged under the above Act of 1844 & that the action was one for the recovery of a debt, within the meaning thereof.—*FITZBALL v. BROOKE* (1845), 6 Q. B. 873; 2 Dow. & L. 477; 14 L. J. Q. B. 193; 4 L. T. O. S. 355, 394; 9 Jur. 657; 115 E. R. 329.

576. Measure of—Publication of photographic portrait—Damages nominal.]—*HOLMES v. LANGFIER* (1903), *Times*, Nov. 9.

577. — Loss sustained.]—*BIRN BROTHERS v. KEENE & Co.*, No. 573, *ante*.

will be allowed.—*BERNARD v. BERTONI* (1889), 16 Q. L. R. 73.—CAN.

l. — Such amount as court considers reasonable.]—The damages should be of such amount as the ct. considers reasonable.—*CARTE v. DENNIS* (1900), 5 Terr. E. R. 30.—CAN.

Right to—Distinguished from action for conversion.]—See Nos. 572, 573, ante.

—Alternative to account of profits.]—See No. 573, ante.

SUB-SECT. 3.—ACCOUNT.

See, now, 1911 Act, ss. 6 (1), 8.

578. Net profits only—In Chancery.]—Copyright Act, 1842 (c. 45) does not give to the proprietor of a copyright in any book a right in this ct. to more than the usual account of the net profits of all copies of the book. To recover the pirated copies he must proceed at law.—DELFE v. DELAMOTTE (1857), 3 K. & J. 581; 30 L. T. O. S. 129; 3 Jur. N. S. 933; 69 E. R. 1241.

Annotation:—Reid. Hole v. Bradbury (1879), 12 Ch. D. 886.

579. Right to—Work contrary to public policy—Refused.]—WALCOT v. WALKER, No. 52, ante.

580. —Follows where injunction granted.]—BAILY v. TAYLOR, No. 593, post.

581. —Alternative to damages.]—BIRN BROTHERS v. KEENE & Co., No. 573, ante.

—Distinguished from action for conversion.]—See Nos. 572, 573, ante.

Where injunction refused.]—See No. 604, post.

SUB-SECT. 4.—INJUNCTION.

A. In General.

582. Quid timet.]—WEBB v. ROSE, No. 122, ante.

583. —No evidence of wrong doing—Injunction refused.]—MORRIS v. WRIGHT, No. 447, ante.

584. Author's right doubtful—Manuscript left with bookseller for many years—Injunction refused.]—Injunction refused to restrain publication of a work which had been left for 23 years by the author in the hands of a bookseller, to whom it was originally sent with an intention of its being published, that intention being afterwards relinquished, & the work having passed into the hands of defts., who published it without the consent or privity of the author.

The ct. will not interfere by injunction, upon the author's application, to restrain the publication of a work which is of such a nature that an action could not be maintained upon it for damages.—SOUTHEY v. SHERWOOD (1817), 2 Mer. 435; 35 E. R. 1006, L. C.

Annotations:—Reid. Stockdale v. Onwhyn (1826), 5 B. & C. 173; Prince Albert v. Strange (1849), 2 De G. & Sm. 652; Pollard v. Photographic Co. (1888), 40 Ch. D. 345. Mentd. Morgan v. M'Adam (1866), 36 L. J. Ch. 228.

585. Equitable title sufficient.]—CHAPPELL v. PURDAY, No. 281, ante.

586. Wrongful copying of prints or photographs lent.]—MAYALL v. HIGBEY, No. 109, ante.

587. On proof of serious piracy—Although only of part.]—MAWMAN v. TEGG, No. 525, ante.

588. —Without ascertaining extent.]—LEWIS v. FULLARTON, No. 84, ante.

PART XIV. SECT. 2, SUB-SECT. 3.

578 i. Net profits only.]—GANGAVISHNU SHRIKISONDAS v. MORESHVA BAPUJI HEGISHTE (1889), I. L. R. 13 Bom. 358.—IND.

PART XIV. SECT. 2, SUB-SECT. 4.—A.

n. On proof of serious piracy—Respondents' remedy not limited to injunction under Copyright Act, 1911, s. 8.]—Resps.' map was an original literary work; applts., whose map was not a mere copy in the ordinary sense of the resps.' map but was clearly

a reproduction in a substantial part thereof, had infringed the copyright:—*Held:* applts. had not proved that at the date of the infringement they were not aware & had no reasonable ground for suspecting that copyright subsisted in resps.' map, & therefore resps.' remedy was not limited to an injunction.—SANDS & McDougall Proprietary, Ltd. v. ROBINSON (1917), 23 C. L. R. 49.—AUS.

o. —.]—Where pltf.'s work was such a new arrangement of old

589. —.]—PIKE v. NICHOLAS, No. 446, ante.

See, also, No. 443, ante.

590. Work contrary to public policy—Injunction refused.]—WALCOT v. WALKER, No. 52, ante.

591. —.]—SOUTHEY v. SHERWOOD, No. 584, ante.

592. —.]—LAWRENCE v. SMITH, No. 58, ante.

593. Inconsiderable part of plaintiff's work copied—Injunction refused.]—(1) Pltf. who complains of a piracy of his work has no remedy in equity unless he establish a title to an injunction, & then the account will follow.

(2) The ct. will not grant an injunction, but will leave pltf. to seek his legal remedy where the matter which is the subject of the alleged piracy forms but a very inconsiderable part of pltf.'s work, & contains merely calculations, & when the work complained of has been published some years.

(3) In a case of alleged piracy of part of a work the ct., if it refuses the injunction, will not interfere to give any other relief.

(4) A person may have copyright in tables calculated by himself even though the very same tables should have been published long before his appeared.—BAILY v. TAYLOR (1829), 1 Russ. & M. 73; Tam. 295; 8 L. J. O. S. Ch. 49; 39 E. R. 28. *Annotation:—Generally, Mentd. Smith v. L. & S. W. Ry. (1854), Kay, 408.*

594. —Difficulty of ascertaining loss complained of.]—(1) The question of minuteness in value of the original matter extracted from a work for purposes of criticism, will have great weight with the ct. in influencing its decision on the application for an injunction.

(2) The Court is averse to the practice of its time being occupied by applications for injunctions, to restrain infringements of copyright, in which it is difficult if not impossible to take an account of the loss complained of.—BELL v. WHITEHEAD (1839), 8 L. J. Ch. 141; 3 Jur. 68, L. C.

Annotations:—As to (1) Consd. Scott v. Stanford (1867), L. R. 3 Eq. 718. As to (2) Consd. Jarrold v. Houlston (1857), 3 K. & J. 708. Reid. Moffatt & P'aise v. Gill (1901), 84 L. T. 452.

See, also, No. 611, post.

595. Special damage need not be shown.]—TINSLEY v. LACY, No. 430, ante.

596. —.]—WEATHERBY & SONS v. INTERNATIONAL HORSE AGENCY & EXCHANGE, LTD., No. 74, ante.

597. Particular remedy provided by statute—Right to injunction not excluded.]—CARLTON ILLUSTRATORS v. COLEMAN & Co., No. 693, post.

598. Effect of delay in application—Injunction refused.]—BAILY v. TAYLOR, No. 593, ante.

599. —With knowledge of piracy—Injunction refused.]—Pltfs. applied for an injunction to restrain piracy of a publication. It was shown that pltfs. had knowledge of such piracy for several years before institution of proceedings:—*Held:* injunction must be refused on ground of delay in making the application.—LEWIS v. CHAPMAN (1840), 3 Beav. 133; 49 E. R. 52.

600. —Not necessarily a bar—State of law

matter as to be an original work, & defts. had not gone to independent sources for their material, but had pirated pltf.'s work, they were restrained by injunction.—GANGAVISHNU SHRIKISONDAS v. MORESHVA BAPUJI HEGISHTE (1889), I. L. R. 13 Bom. 358.—IND.

p. Industrial society—Where issue would end corporate existence of—Injunction refused.]—General Rules for Industrial Societies under Industrial, etc., Societies Act, 1876, had been copyrighted by an official of pltf.

Sect. 2.—Civil remedies: Sub-sect. 4, A., B. & C.]

formerly doubtful.]—**BUXTON v. JAMES**, No. 179, *ante*.

601. ———.]—Copyright Act, 1842 (c. 45), does not apply to prevent a suit for an injunction to restrain a piracy of copyright by sale of a book published more than twelve months before bill filed. Mere delay in taking proceedings after knowledge of a piracy is not in itself such acquiescence as will deprive pltf. of his right to an injunction at the hearing.—**HOGG v. SCOTT** (1874), L. R. 18 Eq. 444; 43 L. J. Ch. 705; 31 L. T. 163; 22 W. R. 640.

Annotations:—**Reid. Grace v. Newman** (1875), 44 L. J. Ch. 298. **Mentd. Smith v. Smith** (1875), L. R. 20 Eq. 500; **Northumberland v. Bowman** (1887), 56 L. T. 773.

602. ——— Where no waiver or acquiescence.]—Pltf. sought to restrain deft. from publishing a book which it was alleged was an infringement of pltf.'s copyright. Deft.'s book had passed through three editions. Deft. had sent pltf. a copy of each edition. In addition to denial of infringement deft. contended pltf. was not entitled to an injunction by reason of his delay in seeking relief:—**Held**: (1) there had been no such delay in taking proceedings as to disentitle pltf. to an injunction, as there had been no waiver by pltf. of or acquiescence or assent in what had been done by deft. (2) Injunction granted. (3) All copies of deft.'s book in his possession to be given up.—**PITMAN v. HINE** (1884), 1 T. L. R. 39.

603. Infringement by publication of photographic portrait—Injunction refused.]—**HOLMES v. LANGFIER** (1903), *Times*, Nov. 9.

B. Interim or Interlocutory Injunction.

604. Only in clear case of infringement—Balance of convenience considered.]—(1) In doubtful cases it is the duty of the ct. to exercise its jurisdiction by injunction, only where the legal right of property has been ascertained.

(2) The ct. should take into its consideration in granting, or withholding, the injunction on which side the balance of harm will preponderate.

The safer mode of exercising the equitable jurisdiction is to suspend it until the legal right has been established, deft. to keep an account of his sale meanwhile.—**SPOTTISWOODE v. CLARK** (1846), 1 Coop. temp. Cott. 254; 2 Ph. 154; 8 L. T. O. S. 230; 10 Jur. 1043; 47 E. R. 844, L. C.

Annotations:—**As to** (1) **Consd. Purser v. Brain** (1848), 17 L. J. Ch. 141; **Dalglish v. Jarvie** (1850), 2 Mac. & G. 231.

605. ———.]—In case of contested copyright, the ct. is disposed rather to restrict than increase the number of cases in which it interferes by injunction before the establishment of the legal title, & it will give great weight to the consideration of the questions, which side is more likely to suffer by an erroneous or hasty judgment, & the prejudicial effect the injunction may have on the trial of the action.—**M'NEILL v. WILLIAMS** (1847), 8 L. T. O. S. 493; 11 Jur. 344.

Annotations:—**Consd. Bradbury v. Beeton** (1869), 39 L. J. Ch. 57. **Reid. Jarrold v. Houlston** (1857), 3 K. & J. 708; **Moffatt & Paige v. Gill** (1901), 84 L. T. 452.

606. ———.]—**MILLER v. GRUENWALD** (1905), 49 Sol. Jo. 795.

See, also, No. 612, *post*.

society, which was subsequently registered under that Act. The copyright in the rules was afterwards assigned to the society, which caused a new edition to be prepared to meet the requirements of Industrial, etc., Societies Act, 1893. The new rules were copyrighted in the name of the society, the date of the publication of the second

edition being given as the date of the first publication of the work. The rules had, by arrangement with pltf. society, been adopted by certain societies in Ireland to meet the requirements of s. 10 of Industrial Societies Act, 1893. Deft. society, which was not a party to this arrangement, had published rules which were practically

607. Where plaintiff's legal right doubtful—Injunction refused—Construction of agreement.]—**WALCOT v. WALKER**, No. 52, *ante*.

608. ———.]—Where the copyright of a work has been assigned by the author to pltf., & pltf. & author swear that A., a stranger to the suit, has only a qualified interest in the work, but A., in an affidavit filed by deft., swears that under a bargain between him & the author, he has the entire copyright of the work, but does not state any deed of assignment; pltf. cannot obtain an injunction till he has established his right at law.—**LOWNDES v. DUNCOMBE** (1822), 2 Coop. temp. Cott. 216; 1 L. J. O. S. Ch. 51; 47 E. R. 1134.

609. ——— **Ex parte injunction dissolved.**]—Where there is a fair doubt, whether the law would give damages for the piracy of a work, a court of equity will not maintain an injunction granted *ex parte*, but will leave pltf. to establish his legal right, before it interferes in his behalf.—**BYRON (LORD) v. DUGDALE** (1823), 1 L. J. O. S. Ch. 239.

610. ——— Not necessarily a bar—To injunction.]—**OILENDORFF v. BLACK**, No. 163, *ante*.

611. Quantity abstracted considerable—Granted *ex parte*.]—An application was made for an injunction on the part of the author of two articles which had appeared in the *Athenæum*, the copyright of which he had reserved as between himself & the proprietors of that journal, to restrain deft. from publishing a book which contained these two articles:—**Held**: the quantity of matter which had been copied into deft.'s book was sufficient to entitle pltf. to an *ex parte* injunction.—**COLE v. CLARK** (1843), 1 L. T. O. S. 106.

See, also, Nos. 593, 594, *ante*.

612. Quality rather than quantity—& balance of convenience—To be considered.]—**ENOCH & SONS v. MOROCCO BOUND SYNDICATE, LTD. & LIND** (1893), 37 Sol. Jo. 649.

613. Conduct of plaintiff—Licence to publish—Given to several others.]—A motion was made for an injunction to restrain the publishing or selling copies of the music of certain dances specified in the bill & notice of motion. Defts. contended that, the music having been published by other music sellers, they had copied the tunes, being ignorant that they were the property of pltf.s:—**Held**: if the proprietor of a work gave permission to several to publish it, & then others copied it, he would have to bring his action before he could have an injunction to restrain the pirating his copyright.—**PLATTS v. BUTTON** (1815), Coop. G. 303; 19 Ves. 447; 35 E. R. 566, L. C.

614. ——— Given to publisher.]—(1) An author having given a work to a publisher who by the sale of it reimbursed his expenses & made considerable profit, cannot at the end of the first 14 years restrain him by injunction from continuing the publication.

(2) A ct. of equity frequently refuses an injunction where it acknowledges a right, when the conduct of the party complaining has led to the state of things that occasions the application (**LORD ELDON, C.**).—**RUNDELL v. MURRAY** (1821), Jac. 311; 37 E. R. 868, L. C.

Annotation:—**As to** (1) & (2) **Consd. Saunders v. Smith** (1838), 3 My. & Cr. 711.

identical with those used by the societies acting under the arrangement:—**Held**: as an injunction restraining the use of the rules would immediately end the corporate existence of deft. society, it should not be issued.—**CO-OPERATIVE UNION, LTD. v. KILMORE, AUGHRIM & KILLUCAN DAIRY SOCIETY, LTD.** (1912), 47 I. L. T. 7.—**IR.**

615. — Apparent acquiescence.]—Injunction was refused to restrain alleged infringement of copyright, before trial at law, where the conduct of pltf. had been such as, in the opinion of the ct., was calculated to induce defts. to believe that the course taken by them would not be objected to by pltf. — *SAUNDERS v. SMITH* (1838), 3 My. & Cr. 711; 7 L. J. Ch. 227; 2 Jur. 491; 40 E. R. 1100, L. O.

*Annotations:—**Distd. Sweet v. Shaw* (1839), 8 L. J. Ch. 216. *Refd. Jarrold v. Houlston* (1857), 3 Jur. N. S. 1051.

616. Probability of damage shown.]—Where the owner of a publication claims an injunction to restrain the issue of another publication with a similar name, he must show not only that the assumption of the name by deft. is calculated to deceive the public, but also that there is a probability of pltf. being injured by such description. — *BORTHWICK v. EVENING POST* (1888), 37 Ch. D. 449; 57 L. J. Ch. 406; 58 L. T. 252; 36 W. R. 434; 4 T. L. R. 234, C. A.

*Annotation:—**Refd. Willox v. Pearson* (1901), 18 T. L. R. 220.

617. To restrain publication of plot of unacted play.]—*GILBERT v. STAR NEWSPAPER CO., LTD.* (1894), 11 T. L. R. 4; 39 Sol. Jo. 9.

618. No sufficient & immediate damage shown—Interim injunction refused.]—*CHILTON v. PROGRESS PRINTING & PUBLISHING CO.*, No. 35, *ante*.

619. Ultimate result of action doubtful—Interim injunction refused.]—*MILLER v. WANE* (1894), 11 T. L. R. 136.

620. Where facts common—No injunction.]—*COX v. LAND & WATER JOURNAL CO.*, No. 81, *ante*.

*Form of.]—*See No. 634, *post*.

621. Breach of—Honest attempt by defendant to remedy wrong—Committal refused.]—The ct. will hesitate to commit a deft. alleged to have committed a breach of an interim injunction, when it sees that he has endeavoured to set himself right in respect to the original charge against him of infringing pltf.'s copyright. — *CORNISH v. UPTON* (1861), 4 L. T. 862.

622. Dissolution—Undertaking by plaintiff to abide by order of court as to damages—Defendant entitled to inquiry as to damages.]—Pltf. claiming copyright in a work by a foreigner & assigned to him, obtained an injunction on giving an undertaking to abide by any order the ct. might make respecting damages deft. might sustain by reason of the injunction. The House of Lords decided, that a party in the situation of pltf. had no title to copyright; & the injunction was dissolved without opposition. Deft. moved for an inquiry as to damage, but one of the Vice Chancellors refused it:—*Held*: upon appeal, deft. was entitled to an inquiry what, if any, damage he had sustained. — *NOVELLO v. JAMES* (1854), 5 De G. M. & G. 876; 24 L. J. Ch. 111; 24 L. T. O. S. 165; 1 Jur. N. S. 217; 3 W. R. 127; 43 E. R. 1111, L. JJ.

*Annotations:—**Refd. Smith v. Day* (1882), 21 Ch. D. 421; *Griffith v. Flake* (1884), 27 Ch. D. 474; *Re Hallstone, Hopkinson v. Carter* (1910), 102 L. T. 877.

623. — — Limited to damages naturally flowing from injunction.]—*SCHLESINGER v. BEDFORD* (1893), 9 T. L. R. 370, C. A.

624. — Defendant ordered to keep account—Pending trial.]—*SPOTTISWOODE v. CLARK*, No. 604, *ante*.

625. Where injunction granted—Defendant not allowed to continue publication—Subject to account—Without consent of plaintiff.]—*SWEET v. MAUGHAM*, No. 650, *post*.

626. — Undertaking by plaintiff to be answerable in damages.]—In a case of alleged fraudulent imitation of a musical publication, independently of copyright, the ct. did not consider the fraud clearly made out:—*Held*: an injunction ought only to be continued on the terms of pltf. undertaking to bring an action, & to be answerable in damages.

Semble: it is now almost universally the practice, on granting an interlocutory injunction, to require an undertaking to be answerable in damages. — *CHAPPELL v. DAVIDSON* (1856), 8 De G. M. & G. 1; 44 E. R. 289, L. JJ.

*Annotation:—**Refd. Wakefield v. Buccleugh* (1865), 13 W. R. 856.

C. Form.

627. Perpetual — Against printing.]—A perpetual injunction granted against printing in breach of copyright. — *WATSON v. JEFFERIES* (1737), 2 Eq. Cas. Abr. 522, pl. 1; 22 E. R. 440.

628. — —.]—A perpetual injunction granted against printing in breach of copyright. — *HITCH v. LANGLEY* (1739), 2 Eq. Cas. Abr. 522, pl. 1; 22 E. R. 440.

629. — —.]—A perpetual injunction granted against printing in breach of copyright. — *RIVINGTON v. COOPER* (1740), 2 Eq. Cas. Abr. 522, pl. 1; 22 E. R. 440.

630. — —.]—An injunction *nisi* was granted in the case of R., author of "Pamela," against publishing & selling part of that book, upon a bill founded on Copyright Act, 1700 (c. 19), & a perpetual injunction was afterwards granted, on hearing the merits, against printing & publishing said book. — *RICHARDSON'S CASE* (1740), 2 Eq. Cas. Abr. 524, pl. 5; 22 E. R. 442, L. C.

631. — Refused.]—Pltf., C., the T. Co., & P., were respectively proprietors of three newspapers. All these papers were published for the protection of traders by giving them information about the position of persons with whom they might have to deal. The three pltf. jointly employed clerks to obtain certain lists from the Govt. offices, & bore jointly the expense of the fees for searching the registers & other expenses of making out their list. Pltf. C., besides publishing "the Commercial Compendium" in the ordinary way sold a number of copies to trade protection societies, among others to the London Association for the Protection of Trade. The numbers sold to this association had the title "Commercial Compendium" omitted & "Commercial, Private, and Confidential List" substituted, & in this shape was circulated by the association among its subscribers. Defts. were the proprietors of newspapers published in the West of England. They subscribed to the London Association for the Protection of Trade, & on receipt of the weekly "Commercial, Private and Confidential List" they copied the deeds of arrangement registered by persons resident in the counties of Devon & Cornwall, & published them in their own paper. This was a motion by pltf. to restrain this publication:—*Held*: the republication of the contents of "the Commercial

PART XIV. SECT. 2, SUB-SECT. 4.—B.

615 I. Conduct of plaintiff—Apparent acquiescence.]—*ALLEN v. LYON* (1884), 5 O. R. 615.—CAN.

q. To restrain defendant not originally made a party—Innocent in-

*fringement.]—*One of defts. was a publishing co. whose infringement was innocent & without knowledge. It was not originally made a party but an interim injunction was made against it restraining publication. In order that it might obtain some security

against damage due to the injunction order if wrongly made, it asked to be made a party, which was done, & an order made for its protection. — *EMMETT v. MEIGS*, [1921] 1 W. W. R. 35; 56 D. L. R. 63; 16 Alta. L. R. 132.—CAN.

Sect. 2.—Civil remedies: Sub-sect. 4, C.; sub-sects. 5 & 6, A., B., C. & D.]

Compendium " under a name which was not registered did not deprive the owners of the right to restrain infringement of their copyright, & injunction granted limited to matter contained in numbers of the papers already published.—*CATE v. DEVON & EXETER CONSTITUTIONAL NEWSPAPER CO.* (1889), 40 Ch. D. 500; 58 L. J. Ch. 288; 60 L. T. 672; 37 W. R. 487; 5 T. L. R. 229.

Annotations:—Refd. Walter v. Steinkopff, [1892] 3 Ch. 489; *Walter v. Lane*, [1900] A. C. 539.

632. — Granted to protect future numbers—Of periodical.]—BRADBURY v. SHARP, [1891] W. N. 143.

633. — Refused where right of limited duration—Granted for term of right.]—SAVORY, LTD. v. GYPTICAN OIL CO., LTD. (1904), 48 Sol. Jo. 573.

634. Granted against publishing selling disposing or copying—Not against imitating—Interim injunction.]—Deft. was a vendor of a literary work published in weekly numbers; in one of the numbers was contained the commencement of a work of fiction, which, with the exception of a few colourable alterations, was in all respects similar to a prior work, of which pltf. was author & publisher. On a bill by pltf. praying that deft. might be restrained from publishing, selling, or otherwise disposing of the number containing the commencement of such work of fiction, or any continuation or other part thereof, & from copying or imitating in the whole or in part pltf.'s book, the ct. granted an injunction as prayed, except as to imitating, but directed pltf. to bring an action against deft. for the invasion of his alleged copyright.—DICKENS v. LEE (1844), 8 Jur. 183.

635. When part only a piracy.]—JARROLD v. HOULSTON, No. 22, *ante*.

See, also, Nos. 33, 79, 80, 417, *ante*.

SUB-SECT. 5.—CANCELLATION.

636. Infringing passages—In acting copies of play—Dramatised from novel.]—WARNE & CO. v. SEEBOHM, No. 432, *ante*.

See, also, No. 235, *ante*.

SUB-SECT. 6.—PRACTICE.

A. Jurisdiction of Court.

637. Jurisdiction of court—To decide alleged piracies by inspection.]—The ct. will itself compare & decide upon alleged piracies by inspection, where that can be easily & safely done.—SHERIFF v. COATES (1830), 1 Russ. & M. 159; 39 E. R. 61, L. C.

638. — Direction as to admissions of title by defendant—For purpose of trial.]—Where pltf. states circumstances which are not denied, showing him to be entitled to an equitable copyright in a work, the ct., in directing an action to be brought by him to determine the question of piracy, will direct deft. for the purposes of the action, to admit a legal copyright in pltf.—SWEET v. SHAW (1839), 8 L. J. Ch. 216; 3 Jur. 217.

Annotation:—Mentd. Performing Right Soc. v. London Theatre of Varieties, [1922] 2 K. B. 433.

PART XIV. SECT. 2, SUB-SECT. 4.—C.

632 i. Granted to protect future numbers—Of periodical.]—When deft. has been illicitly copying matter from pltf.'s periodical the ct. should do more than merely restrain the repetition of such copying, & should extend

this injunction to such copying as may reasonably be expected thereafter.—*HALL & CO. v. WHITTINGTON & CO.* (1892), 18 V. L. R. 525.—AUS.

635 i. When part only a piracy.]—The parts of defts.' book which were copied from pltf.'s book being capable

639. — Inherent power to order destruction of infringing copies.]—HOLE v. BRADBURY, No. 235, *ante*.

640. — Where infringement abroad—By British subject.]—An English ct. has no jurisdiction, at the instance of the English proprietor of the performing right of a musical dramatic work of an English author, to restrain a threatened infringement by a British subject in any foreign country comprised in the International Copyright Union.

Under Dramatic Copyright Act, 1833 (c. 15), s. 1, & art. 2 of the Berne Convention, the English proprietor enjoys in any country of the Union the rights which the law of that country gives to natives of that country; & therefore proceedings by him to restrain an infringement in that country by a British subject must be taken in the cts. & according to the law of that country.—"*MOROCCO BOUND*" *SYNDICATE, LTD. v. HARRIS*, [1895] 1 Ch. 534; 64 L. J. Ch. 400; 72 L. T. 415; 43 W. R. 393; 11 T. L. R. 254; 39 Sol. Jo. 734; 13 R. 312.

641. Joinder of defendants—Not where separate infringements—Booksellers selling infringing copies.]—The proprietor of a copyright must file separate bills against each bookseller taking copies of a spurious edition for sale.—DILLY v. DOIG (1794), 2 Ves. 486; 30 E. R. 738.

See, also, No. 560, *ante*.

642. Joinder of plaintiffs—Legal owner to be joined—Though plaintiff's equitable title clear.]—The publisher of a book filed a bill for the usual relief on an invasion of copyright, but, though he had purchased the work of the author & paid for it, it did not appear that the copyright had been assigned to him:—Held: the bill was demurrable because the author was not a party to it, but as the bill contained sufficient to show that pltf. had a good title in equity he would be given leave to amend.—COLBURN v. DUNCOMBE (1838), 9 Sim. 151; 2 Jur. 654; 59 E. R. 316.

Annotation:—Refd. Performing Right Soc. v. London Theatre of Varieties, [1922] 2 K. B. 433.

643. — — — — —.]—UNIVERSITY OF LONDON PRESS, LTD. v. UNIVERSITY TUTORIAL PRESS, LTD., No. 42, *ante*.

644. — — — — — No interest claimed by infringers.]—In 1916 a firm of music publishers assigned by deed to pltf.s. the performing rights of all songs of which they then possessed or should thereafter acquire such rights. Subsequently a certain song was written, & the copyright in it together with the right of performance was assigned by the author to the firm. Defts., music hall proprietors, permitted the said song to be publicly sung in their music hall, without the consent of pltf.s. Pltf.s. sued defts. under 1911 Act, for infringement of their performing right:—Held: as pltf.s.' interest in the song was purely equitable, & as defts. were mere infringers claiming no interest in it, pltf.s. were not entitled to maintain the action in their own names without joining the publishers as co-pltf.s.

I can see nothing in the statute from which I can draw the inference that an owner of copyright, whether the first owner, or any subsequent owner by legal assignment, ceases to be an owner within the meaning of the statute when he executes an

of separation from the parts which were not so copied, the ct. limited its order prohibiting the use of defts.' book to the parts which were so copied.—*BLACKIE & SONS, LTD. v. LOTHIAN BOOK PUBLISHING CO. PROPRIETARY, LTD.* (1921), 29 C. L. R. 396.—AUS.

equitable assignment of the whole or part of his right. If this is so it follows either (a) that the equitable assignee is not an owner at all within the meaning of the statute, or (b) that the statute recognises under these circumstances two owners, the legal & the equitable, of the one right. Which ever view is correct, it appears to me that apart from authority the result in this action is the same—namely, that plffs. should not be allowed to maintain the present action without adding the legal owners of the copyright. If the first conclusion is the correct one then the action cannot proceed without them. If the second is correct then the ct. in the exercise of its discretion should not allow the action to proceed in the absence of a party who may be interested & who ought to be bound, or whose presence might afford a defence to defts. (*BANKES, L.J.*).—*PERFORMING RIGHT SOCIETY v. LONDON THEATRE OF VARIETIES*, [1922] 2 K. B. 433; 91 L. J. K. B. 908; 127 L. T. 760; 38 T. L. R. 791; 67 Sol. Jo. 62, C. A.

645. — Assignee without right of reproduction—Cannot sue alone.—*LANDEKER & BROWN v. WOLFF & Co., LTD.* (1907), 52 Sol. Jo. 45.

646. — Assignor on equitable assignment—Where joinder of assignor may afford defence.—*PERFORMING RIGHT SOCIETY v. LONDON THEATRE OF VARIETIES*, No. 644, *ante*.

See, also, No. 638, *ante*.

647. Joinder of co-plaintiffs—Action arising out of same series of transactions.—Plffs., the two Universities of Oxford & Cambridge, claimed an injunction to restrain defts., who were publishers of educational & other works, from publishing & selling books or publications bearing the titles "The Oxford & Cambridge Publications" or "The Oxford & Cambridge Edition," & from using the words "Oxford & Cambridge," so as to lead to the belief that the publications of defts. were publications of the Universities or of either of them, or issued from the University presses. Defts. had published a series of books bearing the titles complained of by plffs.:—*Held*: the action arose out of the same series of transactions; common questions of fact would arise, namely, the fact of publication & the fact that a belief would be induced that the publications of defts. were those of plffs.; therefore, the conditions necessary to bring a case within Ord. XVI., r. 1, were fulfilled; & consequently plffs. were entitled to join in one action.—*OXFORD & CAMBRIDGE UNIVERSITIES v. GILL (GEORGE) & SONS*, [1899] 1 Ch. 55; 68 L. J. Ch. 34; 79 L. T. 338; 47 W. R. 248; 15 T. L. R. 21; 43 Sol. Jo. 27.

648. — Assignees of bankrupt—On motion by bankrupt to dissolve injunction—Not necessary.—An injunction being obtained *ex p.* to restrain the publication of a work by deft., who claimed a property in, & a right to proceed with the publication, he subsequently became bankrupt:—*Held*: a motion to dissolve the injunction might

be made on behalf of deft., without his assignees being made parties.—*M'BEATH v. RAVENSCROFT* (1839), 8 L. J. Ch. 208.

See, also, Nos. 302, 307, *ante*.

Who may sue.]—*See* Part XIII., Sect. 2, *ante*.

C. Pleading.

649. Title must be shown.—Under Copyright Act, 1709 (c. 19), only the author or the assignee of the author was entitled to the sole right of printing, & it was not sufficient for pltf. applying for an injunction to say he purchased or legally acquired the copy, without saying he purchased it from the author. Hence an injunction against printing & selling "the Dunciad" was dissolved.—*GILLIVER v. SNAGGS* (1729), 2 Eq. Cas. Abr. 522; 22 E. R. 441, L. C.

650. Parts pirated need not be specified.—(1) Where a party seeks to restrain an infringement of his copyright, it is not necessary for him to specify, either in his bill or affidavit, the parts of his work which he considers to have been pirated; although he does not claim copyright in all the passages which are the same in both works.

(2) Where an injunction restraining an infringement of copyright, is continued, subject to pltf. bringing an action, the ct. will not allow deft. to continue the sale of his work, he keeping an account, unless pltf. will consent.—*SWEET v. MAUGHAM* (1840), 11 Sim. 51; 9 L. J. Ch. 323; 4 Jur. 479; 59 E. R. 793.

Annotations:—As to (1) *Reid. Chatterton v. Cave* (1878), 38 L. T. 397; *Walter v. Lane*, [1899] 2 Ch. 749.

651. Printing in England need not be alleged.—Where there were four counts in a declaration, the third count being for wrongfully & injuriously, & without the consent in writing of pltf., printing for sale copies of a book of which pltf. was proprietor, & the fourth count for, without the consent in writing of pltf., having in deft.'s possession copies of the book, which had been unlawfully & without the consent, etc., printed:—*Held*: it was not necessary to state in the bodies of the third & fourth counts that the printing had taken place in this country.—*CHAPPELL v. DAVIDSON* (1856), 18 C. B. 194; 25 L. J. C. P. 225; 2 Jur. N. S. 544; 4 W. R. 559; 139 E. R. 1341; *earlier proceedings*, 8 De G. M. & G. 1, L. J.J.

652. In action for penalties—Claim of account must be raised.—In an action under Fine Arts Copyright Act, 1862 (c. 68), seeking penalties, an injunction & other relief in respect of unlawful repetitions of a picture, the main object of the suit being the recovery of penalties:—*Held*: plffs. ought not to be permitted, upon the facts appearing at the trial, to raise a claim for relief under the same statute in respect of unlawful sales, that case not being made by their pleadings.—*DUPUY v. DILKES* (1879), 48 L. J. Ch. 682.

D. Interlocutory Proceedings.

653. Interrogatories—Allowed in action for penalty—Under Dramatic Copyright Act, 1833 (c. 15), s. 2.—This payment is treated in the Act

colourably altered from pltf.'s book.—*ROONEY v. KELLEY* (1861), 14 I. C. L. R. 158.—IR.

PART XIV. SECT. 2, SUB-SECT. 6.—D.

a. Inspection—Of works alleged to be pirated—Allowed to refresh defendant's memory.—The ct. will grant an inspection of the work alleged to be pirated in an action of copyright upon an affidavit that deft. has no recollection of having sold copies thereof but is desirous of refreshing his memory in order to be able to state positively if he has ever done so.—*GRAVES v. MERCER* (1868), 16 W. R. 790.—IR.

PART XIV. SECT. 2, SUB-SECT. 6.—C.

r. Amendment—Of date for which infringement was claimed.—Pltf. sued for infringement of copyright of his "Automobile Road Guide . . . for 1919," but did not claim for an infringement with respect to his guide for 1918:—*Held*: pltf. might amend by claiming an infringement for 1918, but in default of so doing his action would be dismissed.—*EMMETT v. MEIGS* (1920), 3 W. W. R. 299.—CAN.

s. Notice of objections—Copyright Act, 1842.—*CARTE v. DENNIS* (1900), 5 Terr. L. R. 30.—CAN.

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t. Parts pirated averred—Sufficient statement of cause of action—Plea of confession & avoidance.—The proprietor of copyright in a book need not in an action for that deft. published pltf.'s book. The declaration states a good cause of action if it avers that deft. parts of pltf.'s book. But such cause of action is not answered by a plea in confession & avoidance, to the effect that the book of pltf. & the books of deft. were composed by one & the same author, from common sources of information; & that no part of deft.'s books, or either of them, was copied or

remedies: Sub-sect. 6,

as a payment by way of damages & not by way of penalty. It is imposed not as a punishment upon deft., but as compensation to pltf. In my opinion the legislature in using the expression "whichever shall be the greater damages" intended to enable pltf. to recover as damages an amount of not less than 40s. in respect of each representation, or the full amount of the benefit or advantage derived by deft. from the representation, or the injury or loss sustained by pltf. therefrom, & this is not a penalty so as to bring the case within the rule that in actions for penalties interrogatories should not be allowed to be administered to deft. (LORD ESHER, M.R.).—ADAMS v. BATLEY, COLE v. FRANCIS (1887), 18 Q. B. D. 625; 56 L. J. Q. B. 393; 56 L. T. 770; 35 W. R. 437; 3 T. L. R. 511, C. A.

*Annotations:—*Apld. Jones v. Jones (1889), 22 Q. B. D. 426. *Consd.* Hobbs v. Hudson (1890), 54 J. P. 360; Saunders v. Wiel, [1892] 2 Q. B. 321. *Refd.* Reeve v. Gibson, [1891] 1 Q. B. 652; *Re* Derbyshire County Council & Derby Corpn., [1896] 2 Q. B. 52; Thomson v. Clannorris, [1900] 1 Ch. 718.

654. — To plaintiffs as to sales—To assist defendant as to payment into court.]—In an action for infringement of pltf.'s copyright in a book, the ct. will permit interrogatories, as to the sale of the book for a certain period before & after the date of the alleged infringement, to be administered to pltf. for the purpose of ascertaining the amount of damage sustained & enabling deft. to pay a sufficient sum into ct. to meet it.—WRIGHT v. GOODLAKE (1865), 3 H. & C. 540; 6 New Rep. 123; 34 L. J. Ex. 82; 13 L. T. 120; 13 W. R. 349; 159 E. R. 643.

*Annotations:—*Consd. Jourdain v. Palmer (1866), L. R. 1 Exch. 102; Clarke v. Bennett (1884), 32 W. R. 550.

655. — To defendant as to canvassers—Sufficiency of answer.]—Pltfs., by the interrogatories to their bill, which was to restrain an alleged piracy, required defts. to set forth "whether defts. employed any & what persons, & who, by name & address, in making personal inquiries for the purpose of obtaining original information for their directory, & to place against the name of each such person the name of each town, village, & place visited by each such canvasser & agent, & the time during which he remained at each such town & village & place making personal inquiries for the purposes of defts.' directory." The answer was that "upwards of fifty persons had been employed as canvassers, etc.," but did not set out the names & addresses of the canvassers, or the towns visited, etc.:—*Held*: the answer was insufficient.—KELLY v. WYMAN (1869), 20 L. T. 300; 17 W. R. 399.

656. Inspection—Of alleged licence to perform—Refused to plaintiffs.]—Action for damages for representing an opera of which pltf. was the proprietor. Deft. pleaded that he did what was complained of by the consent of pltf. in writing. Pltf. wanted to see the document to which the plea referred to know whether to go on with the action or not:—*Held*: he was not entitled to an inspection on this ground.—REYNOLDSON v. MORTON (1860), 2 L. T. 462.

See, now, R. S. C., Ord. 31, r. 15.

657. Discovery—Specific documents.]—GRAVES v. HEINEMANN & ARMSTRONG (1901), 18 T. L. R. 115.

*b. Particulars—Showing date of registration—& what part of work infringed.]—*In an action for infringement of copyright in a book, the statement of claim alleged that pltfs. were the proprietors of a subsisting copy-

right duly registered, but did not mention the date of registration, & further alleged that defts. printed for sale a large number of copies of another book, a part whereof was an infringement of pltfs.' copyright:—*H.*

defts. were entitled to particulars showing the date of registration of the pltfs.' copyright, & showing what part of defts.' book infringed pltfs.' right.—LIDDELL v. COFF-OLARK Co. (1901), 19 P. R. 332.—CAN.

658. — After undertaking offered—Motion to stay premature.]—In a suit to restrain a piracy of a literary work, after interrogatories filed, the principal defts., before answer, offered an undertaking in the terms of the prayer of the bill to submit to an injunction, & to pay pltf.'s costs, & they then moved to stay proceedings:—*Held*: their motion was premature, & pltf. was entitled to discovery.—STEPHENS v. BRETT (1864), 10 L. T. 231; *sub nom.* STEVENS v. BRETT, 12 W. R. 572.

See, generally, DISCOVERY, INSPECTION & INTERROGATORIES.

E. The Hearing.

659. Mode of trial—Defendant's right to trial by jury—Burden of proof.]—In an action for injunction to restrain infringement of copyright & for damages:—*Held*: deft. had no right to a trial by jury, but under Ord. 36, rr. 4 & 7 (a), the ct. had a discretion which it exercised by directing a trial without a jury. *Semble*: the burden of proof was on the party applying for a jury.—COOTE v. INGRAM (1887), 35 Ch. D. 117; 56 L. J. Ch. 634; 56 L. T. 300; 35 W. R. 390; 3 T. L. R. 483.

*Annotations:—*Refd. Fanshawe v. London & Provincial Dairy Co. (1888), 36 W. R. 418; Jenkins v. Bushby, [1891] 1 Ch. 484; Thornton v. Union Discount Co. of London (1891), 7 T. L. R. 322.

660. Evidence—To identify print infringed—Plate need not be produced.]—The assignee of a print may maintain an action under Prints Copyright Act, 1777 (c. 57), against any person who pirates it. In such an action it is not necessary to produce the plate itself in evidence; one of the prints taken from the original plate is good evidence. The date must always appear on the print.—THOMPSON v. SYMONDS (1792), 5 Term Rep. 41; 101 E. R. 23.

*Annotation:—*Refd. Newton v. Cowie (1827), 4 Bing. 234.

661. — To identify picture infringed—Engraved copy may be produced—Where picture abroad.]—Where the original picture was abroad, proof of the infringement of the copyright by photographing an engraving sworn to be an exact copy of the picture, & made under the supervision of the artist, was allowed by production of the engraving by a person who had seen the original picture.—LUCAS v. WILLIAMS & SONS, [1892] 2 Q. B. 113; 61 L. J. Q. B. 595; 66 L. T. 706; 8 T. L. R. 575, C. A.

*Annotation:—*Mentd. Hanstaenglo v. Baines (1894), 42 W. R. 681.

662. — Piracy not denied—Prints complained of not produced at hearing.]—In a suit to restrain the sale of pirated copies of a print, where the answer did not suggest that the prints complained of were not pirated copies:—*Held*: a decree would be made, under the particular circumstances, though the prints, which had been exhibited to the witness who proved the offence, were not produced at the hearing.

Where pltf. is entitled to have the injunction made perpetual, deft. will have to pay the costs of the suit, however trivial the subject matter of the suit may be, if he did not, after the injunction was granted, tender the costs up to that time.—FRADELLA v. WELLER (1831), 2 Russ. & M. 247; 39 E. R. 388.

663. Reference to master—To examine infringement.]—Injunction to stay the printing of a book.

On showing cause to continue the injunction, it was referred to the master to see if the books published by pltf., & deft. were the same, or in what respect they differed.—*JEFFERY v. BOWLES* (1770), Dick. 429; 21 E. R. 336.

664. ———.]—A work alleged to be a piracy referred to the master for determination by comparison.— *v. LEADBETTER* (1799), 4 Ves. 681; 31 E. R. 351, L. O.

665. ———.]—*VESEY v. SWEET* (1823), 5 Ves. 709, n. 2nd ed.; 31 E. R. 818.

F. Costs.

See, now, 1911 Act, s. 6 (2).

666. Where plaintiff successful—Court has no discretion to refuse—Except for misconduct.]—*COOPER v. WHITTINGHAM*, No. 548, *ante*.

667. ———.]—*WALTER v. STEINKOPFF*, No. 23, *ante*.

668. ——— Grounds for refusal—Acquiescence in infringement.]—M., the proprietor of a magazine, had for eight years regularly sent to S., the proprietor of a country newspaper, his magazine for the purpose of being reviewed. S. from time to time published reviews & extracts, & occasionally entire stories, from these magazines, always acknowledging whence he took them, & sending M. the paper containing such review, extract, or story. In Nov. 1873 S. published an entire story from the Nov. number of the magazine. Shortly afterwards M., without giving S. any notice, filed a bill to restrain S. from pirating his works. S. alleged in justification the custom of the trade:—*Held*: (1) M. was entitled to an injunction, but under the circumstances each party was ordered to pay his own costs; (2) the alleged custom was no justification.—*MAXWELL v. SOMERTON* (1874), 30 L. T. 11; 22 W. R. 313.

Annotation:—As to (2) *Consd. Walter v. Steinkopff*, [1892] 3 Ch. 489.

See, also, No. 548, *ante*.

669. ——— Effect of County Courts Act, 1888 (c. 43), s. 116.]—Where an author claimed & recovered four penalties of 40s. each for four infringements of his dramatic copyright:—*Held*: although he was not entitled to costs, under the above Act, s. 116, having recovered less than £10 in an action of tort, yet he might have his costs taxed on the footing of obtaining a full indemnity under Limitations of Actions & Costs Act, 1842 (c. 97), s. 2. The question of costs was governed by the statute. Judicature Acts & Rules do not overrule the provisions of special statutes granting special costs in particular cases.—*REEVE v. GIBSON*, [1891] 1 Q. B. 652; 60 L. J. Q. B. 451; 39 W. R. 420, C. A.

670. ——— Costs of interim or interlocutory injunction—As between party & party.]—In a suit to restrain the piracy of a literary work, a pltf., who in opposition to deft.'s denial of his title,

obtains an injunction, is entitled to an answer from deft., for the purpose of having his title admitted, in case, by arrangement between the parties, the title is not established at law; & also of having an account from deft. of the profits made by the sale of the spurious work. Pltf., therefore, under such circumstances, is entitled to the costs of the suit, including the answer, as between party & party; & if by the refusal of deft. to pay those costs pltf. is compelled to bring his cause to a hearing, he will be entitled to the whole costs of the suit, as between party & party, although at the hearing he may waive the account. Pltf.'s equity in this respect will not be affected by his having offered to waive his right to an answer, with a view to obtain terms more beneficial to himself than the ct. would, under any circumstances, accord to him; as, for instance, with a view to receive costs as between solicitor & client.—*KELLY v. HOOPER* (1841), 1 Y. & C. Ch. Cas. 197; 62 E. R. 852.

Annotation:—*Reid. Colburn v. Simms* (1843), 2 Hare, 543.

671. ——— Costs of answer—To establish title.]—*KELLY v. HOOPER*, No. 670, *ante*.

672. ——— To determine account of profits.]—*COLBURN v. SIMMS*, No. 566, *ante*.

673. ——— Costs of action—On refusal by defendant to pay costs of injunction—Though subject matter trivial.]—*FRADELLA v. WELLER*, No. 662, *ante*.

674. ———.]—*KELLY v. HOOPER*, No. 670, *ante*.

675. ——— After successful application for injunction.]—*MAYHEW v. MAXWELL*, No. 13, *ante*.

676. ——— Only after application to & refusal by defendant to have costs disposed of on motion.]—Where upon an interlocutory motion in an action pltf. obtains the relief which he seeks, he is bound to make an application to deft. to have the costs disposed of on motion, & unless he does so, is precluded from having the extra costs occasioned by going on to trial. But if deft. refuses to allow the matter to be disposed of on motion, or if there is any question remaining open between the parties to be decided, the case cannot be so dealt with.—*SONNENSCHN v. BARNARD* (1887), 57 L. T. 712.

677. ——— Costs of unnecessary proceedings—Second reference to chief clerk—Refused.]—Where in a suit for the infringement of copyright the chief clerk's certificate, made in pursuance of the decree, was, on the application of pltf., referred back to the chief clerk & subsequently confirmed, the ct. refused to make any order as to the costs of the summons & subsequent reference.—*KELLY v. HODGE* (1873), 29 L. T. 387.

678. ——— Offer by defendant before action brought—Plaintiff has right to order of court restraining infringement.]—*SAVORY (E. W.), LTD. v. WORLD OF GOLF, LTD.*, No. 16, *ante*.

PART XIV. SECT. 2, SUB-SECT. 6.—F.

666 i. Where plaintiff successful—Costs in discretion of court.]—*CARTE v. DENNIS* (1900), 5 Terr. L. R. 30.—CAN.

673 i. ——— Costs of action—On defendants contesting plaintiffs' right of action—Though infringement innocent & regret expressed.]—Defts. were ordered to pay costs of an action for infringement of copyright although they had acted innocently, & at once expressed regret, inasmuch as they had 'contested pltf.'s' right in ct.—*ANGLO-CANADIAN MUSIC PUBLISHERS ASSOCN., LTD. v. WINNIFRITH BROTHERS* (1888), 15 O. R. 164.—CAN.

673 ii. ——— & of reference to

ascertain damages—On refusal by defendant to pay fixed sum into court.]—Judgment was pronounced by consent declaring that deft. had infringed pltf.'s copyright, restraining him from continuing to infringe, & directing a reference to ascertain the damages sustained by reason of the infringement, & the master found that the damages were only \$6.70, etc.:—*Held*: pltf. were entitled to costs of the action; & also to costs of the reference, deft. not having, when consenting to judgment, offered to pay a fixed sum for damages & to pay it into ct.—*ANGLO-CANADIAN MUSIC PUBLISHING ASSOCN. v. SOMERVILLE* (1900), 19 P. R. 113.—CAN.

i. ——— Defendant not originally

a party—But so made at his request—Additional costs due thereby.]—One of defts. was a publishing co. whose infringement was innocent & without knowledge. It was not originally made a party but an interim injunction was made against it restraining publication. In order that it might obtain some security against damage due to the injunction order if wrongly made, it asked to be made a party, which was done, & an order made for its protection. It took no further part in the action:—*Held*: it should not be required to pay any of pltf.'s costs further than the additional costs due to its becoming & being a party.—*EMMETT v. MEIGS*, [1921] 1 W. W. R. 35; 56 D. L. R. 63; 16 Alta. L. R. 132.—CAN.

(2) pltf. was entitled to bring an action, under s. 8, to recover a penalty for the breach; (3) pltf. was also entitled to an injunction to restrain future breaches.—*CARLTON ILLUSTRATORS v. COLEMAN & Co.*, [1911] 1 K. B. 771; 80 L. J. K. B. 510; 104 L. T. 413; 27 T. L. R. 65.

694. — Sale need not be fraudulent—Sale with knowledge of alteration sufficient.]—*CARLTON ILLUSTRATORS v. COLEMAN & Co.*, No. 693, *ante*.

695. Order for seizure without warrant—Under Musical (Summary Proceedings) Copyright Act, 1902 (c. 15)—Order for destruction—Summons necessary to notify defendant.]—Where printed copies of music have been seized by a constable under sect. 2 of the above Act, a ct. of summary jurisdiction has no power to make an order under sect. 2 forfeiting, destroying, or otherwise dealing with such copies unless the person from whom they have been seized has, by means of a summons, been notified of the intention to apply for such order.—*Ex p. FRANCIS*, [1903] 1 K. B. 275; 72 L. J. K. B. 120; 88 L. T. 176; 67 J. P. 153; 51 W. R. 267; 19 T. L. R. 146; 47 Sol. Jo. 205; 20 Cox, C. C. 381.

696. — Sale at private house.]—A magistrate may issue, under sect. 1 of the above Act, an order authorising a constable to seize without warrant copies of alleged pirated music, even although it appears that the music is being sold at a private house, but such an order does not confer on the constable the power of a search warrant.—*Re FRANCIS' APPLICATION* (1903), 88 L. T. 806; 51 W. R. 698; 19 T. L. R. 507; 47 Sol. Jo. 549; *sub nom. FRANCIS v. FISHER*, 67 J. P. 301.

697. — Order does not confer power of search warrant.]—*Re FRANCIS' APPLICATION*, No. 696, *ante*.

698. — Does not apply to perforated rolls.]—*MABE v. CONNOR*, No. 487, *ante*.

699. Amount of fine—Where sales unsuccessful.]—*R. v. MUTCH* (1913), *Times*, Oct. 24.

700. Having in possession—Under 1911 Act,

s. 11 (2)—Defence of no knowledge.]—*R. v. BALDOLI* (1913), *Times*, Nov. 27.

Effect of conviction & imprisonment on default—Followed by composition with creditors.]—See *BANKRUPTCY & INSOLVENCY*, Vol. IV., p. 330, No. 3098.

SECT. 4.—CRIMINAL PROCEEDINGS.

701. Conspiracy—Combination to pirate—Evidence of ownership.]—If two or more persons combine together to make pirated music for sale & so to get the profits out of that music to which they have no right, that is a conspiracy to deprive the owner of the copyright of his property, & is punishable as a criminal conspiracy.

Certified copies of the book of registry of the proprietorship of copyright are admissible in a criminal prosecution as *prima facie* proof of the proprietorship of copyright, & are not rebutted by evidence that the original assignments of the copyright are in writing but not produced.—*R. v. WILLETTS* (1906), 70 J. P. 127.

702. Larceny—Sale of pirated music is not.]—The mere sale of pirated music is not larceny at common law, notwithstanding Copyright Act, 1842 (c. 45), s. 23, which provides that books unlawfully printed or imported without the consent of the proprietor of the copyright thereof shall be deemed to be his property, & that after demanding them in writing he may sue for their recovery, or for damages for their detention or conversion.—*R. v. KIDD & WALSH* (1907), 72 J. P. 104.

See CRIMINAL LAW & PROCEDURE.

SECT. 5.—DETENTION AT CUSTOMS.

See, *now*, 1911 Act, s. 14.

703. By injunction—As to statutes only—Not other books.]—*STATIONERS' CO.'S CASE* (1681), 2 Cas. in Ch. 76; 22 E. R. 854.

k. Search warrant—For copies of infringing book.]—A magistrate may issue a search warrant for the produc-

tion of copies of an infringing book, proofs, plates, printed or set up, & for the purpose of making an order under

Indian Copyright Act, 1914.—*KISHORI MOHAN BAGCHI v. HARI DAS BYSACK* (1919), I. L. R. 47 Cal. 164.—IND.

CORN.

See AGRICULTURE; ECCLESIASTICAL LAW.

CORN RENT.

See ECCLESIASTICAL LAW.

CORNWALL, DUCHY OF.

See CONSTITUTIONAL LAW.

CORONERS.

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<i>Murder and Manslaughter</i>	„ CRIMINAL LAW AND		LAW AND PRO-
	PROCEDURE.		CEDURE.

Part I.—Status of Coroner and Coroner's Court.

1. Coroner—Judge of court.]—(1) The ct. of the coroner is a court of record of which the coroner is the judge.

(2) The ct. of the coroner is a preliminary inquiry which may or may not end in the accusation of a particular individual; it may be requisite that a suspected person should not in so early a stage be informed of the suspicion that may be entertained against him & of the evidence on which it is founded, but nothing that is done will be conclusive upon the person to be affected by it. All is traversable (LORD TENTERDEN, C.J.).

(3) A coroner in the exercise of his discretion as judge may legally exclude from his ct. any individual not connected with the proceedings or whose presence he may deem injurious to the ends of justice.

(4) Even though he act illegally he is not amenable by civil action for what was done in his judicial capacity.

(5) But if he do an illegal act, not from any error in judgment, but wantonly or corruptly, he may be punished by another course of law.—GARNETT v. FERRAND (1827), 6 B. & C. 611; 9 Dow. & Ry. K. B. 657; 4 Dow. & Ry. M. C. 441; 5 L. J. O. S. K. B. 221; 108 E. R. 576.

Annotations:—As to (1) Consd. Jewison v. Dyson (1842), 9 M. & W. 540. Refd. Cowdell v. Neale (1856), 1 C. B. N. S.

332. *As to (2) Refd. Daubney v. Cooper (1829), 5 Man. & Ry. K. B. 314, 325; Bird v. Keep, [1918] 2 K. B. 692. As to (3) Consd. Ebon v. Neville (1861), 10 W. R. 6. Refd. Kemp v. Neville (1861), 10 C. B. N. S. 523; Pease v. Chaytor (1861), 31 L. J. M. C. 1; Thomas v. Churton (1862), 2 B. & S. 475; Ryalls v. Leader (1866), 4 H. & C. 555; Willis v. MacLachlan (1876), 1 Ex. D. 376. Generally, Refd. R. v. Herford (1860), 24 J. P. 628; R. v. Dover Coroner (1865), 5 New Rep. 307. Mentd. Tozer v. Child (1857), 7 E. & B. 377.*

2. — Officer of Crown—Although appointed by corporation—Under Municipal Corporations Act, 1835 (c. 76).]—A borough coroner appointed under the above Act is not a corporate officer within 9 Ann. c. 20.

It seems to me that the coroner, although appointed by the corpn., is in truth an officer of the Crown, & not a corporate officer; his duties have reference to the Crown & not to the corpn. (PATTESON, J.).—R. v. GRIMSHAW (1847), 2 New Mag. Cas. 291; 17 L. J. Q. B. 19; 10 L. T. O. S. 171; 12 Jur. 134; 11 J. P. Jo. 855.

3. — Civil officer.]—Re WARD, No. 102, *post*.

4. Coroner's court—Whether a court of record.]—GARNETT v. FERRAND, No. 1, *ante*.

5. — —.]—JEWISON v. DYSON, No. 22, *post*.

6. — —.]—THOMAS v. CHURTON, No. 106, *post*.

7. — Court of preliminary inquiry.]—GARNETT v. FERRAND, No. 1, *ante*.

Part II.—Coroners by Virtue of Office.

8. Chief Justice of England—Chief coroner of England.]—If the Chief Justice of the K. B. who is supreme coroner of all England, in person, upon the view of the body of him killed in open rebellion, makes a record of it & returns it into the King's Bench, he shall forfeit his lands & goods, as it was done & resolved in the time of Henry VII.—SADLERS' (WARDENS & COMMONALTY OF) CASE (1588), 4 Co. Rep. 54 b; 76 E. R. 1012.

Annotations:—Mentd. Menvill's Case (1585), 13 Co. Rep. 19; Harrison's Case (1598), 5 Co. Rep. 28 b; Reynel's Case (1612), 9 Co. Rep. 95 a; Holland v. Fisher (1662), O. Bridg. 181; Bankers Case (1695), Skin. 601; R. v. Hornby (1695), 5 Mod. Rep. 29; Ex p. Roberts (1743), 3 Atk. 5; A.-G. v. Duplessis (1752), Park. 144; Burgess v. Wheate (1759), 1 Eden, 177; Doe d. Hayne v. Redfern (1810), 12 East, 96; Tobin v. R. (1864), 16 C. B. N. S. 310.

9. — —.]—(1) The Chief Justice of the King's Bench can hold an inquest in any place within the Kingdom, for the Chief Justice of England is chief coroner of all England.

(2) The coroner should allow both counsel & witnesses on both sides as well for a *felo de se* as for the King if it be demanded, for though the law has so greatly favoured inquests before coroners

in such case as not to permit them to be traversed, they must not do wrong & conceal the truth.

(3) Filing will be refused because coroner refused to let counsel for administrator of *felo de se* examine witnesses on behalf of deceased.—BARCLEES CASE (1658), 2 Sid. 101; 82 E. R. 1279.

Annotations:—As to (2) Refd. Cox v. Coleridge (1822), 1 B. & C. 37; Bird v. Keep (1918), 87 L. J. K. B. 1199. Generally, Mentd. R. v. Stanlake (1673), 1 Mod. Rep. 82; R. v. Clerk (1702), 1 Salk. 377; R. v. Wakefield (1717), 1 Stra. 69; Scott v. Shearman (1774), 2 Wm. Bl. 977; R. v. Carter (1876), 45 L. J. Q. B. 711.

—.]—THOMAS v. CHURTON, No. 106,

post.

11. Court of King's Bench—Appointment of commissioners.]—R. v. STANLAKE, No. 307, *post*.

12. — —.]—In cases of coroners, the ct. as supreme coroner of the kingdom will order a return of the depositions as the ground on which they go.—ANON. (1773), Lofft, 347; 98 E. R. 687.

13. Lord Mayor of London.]—The Lord Mayor of London for the time being is perpetual coroner.—GARRARD v. R. (1619), Cro. Jac. 531; 79 E. R. 455.

Annotation:—Consd. R. v. Yandell (1792), 4 Term Rep. 521.

v. THOMPSON (1868), 7 N. S. W. S. C. R. 349.—AUS.

c. — A criminal court.]—A coroner's ct. is a criminal ct.—R. v. HENDERSHOTT (1895), 26 O. R. 678.—CAN.

d. — —.]—R. v. HAMMOND (1899), 29 O. R. 211.—CAN.

PART I.

a. Coroner — Whether a magistrate.]—KEER v. BRITISH AMERICA ASSURANCE CO. (1872), 32 U. C. R. 569.—CAN.

Or judge — An officer within Fugitive Offenders' Act, 1881, s. 29.]—A coroner, if not a magistrate

or judge, is at least an officer, within above sect., who may complete the authentication of a document otherwise duly authenticated.—Ex p. LILLY-WHITE (1901), 19 N. Z. L. R. 502.—N.Z.

41. Coroner's Court — Whether a court of record.]—A coroner sits & acts as a judge of a ct. of record.—CHIPPETT

Part III.—Appointment and Removal of Coroners.

SECT. 1.—APPOINTMENT.

SUB-SECT. 1.—COUNTY CORONERS.

Formerly county coroners were elected by freeholders of the county.

See, now, Local Government Act, 1888 (c. 41), s. 5.

14. What qualifications essential—Freeholder of county—Place of residence.]—(1) A freeholder of the county, having a place in the county where he has a right to reside, is capable of being elected coroner.

(2) Such a person, being elected coroner, will not be removed from the office, because he has also a residence in a town comprised within the ambit of the county, but not being part of the county, which has been his more usual place of abode.

(3) *Qu.*: whether a coroner will be removed on account of his more usual place of abode being in a town situate within the ambit of the county, but not part of the county, when no inconvenience has arisen from the circumstance.—*Re NOTTINGHAM CORONER ELECTION* (1828), 7 L. J. O. S. Ch. 61.

15. Who entitled to be appointed—For county district—Not coroner for liberty within county.]—The coroner for such part of the liberty & franchise of the Duchy of Lancaster as is within the county of Middlesex is not entitled to be appointed coroner of one of the districts of the county.—*Ex p. PAYNE* (1862), 6 L. T. 536.

16. By whom appointed—County Council—Extent of powers—Local Government Act, 1888 (c. 41), ss. 3, 59.]—(1) The right of a county council to appoint coroners is confined to cases where coroners were formerly elected by the freeholders under a writ *de coronatore eligendo*, & does not extend to cases where they were appointed by lords of franchises or otherwise than by election by freeholders.

(2) The merger of the liberty of the Tower of London in the administrative county of London under the provisions of s. 48 of the above Act "for all the purposes of the Act" will not, therefore, include the appointment of a coroner for that liberty under the terms of its charter so as to transfer the power of appointment to the London County Council.—*Re LOCAL GOVERNMENT ACT, 1888, Ex p. LONDON COUNTY COUNCIL*, [1892] 1 Q. B. 33; 61 L. J. Q. B. 27; 65 L. T. 614; 56 J. P. 279; 8 T. L. R. 24.

Removal of.]—*See Sect. 2, post.*

SUB-SECT. 2.—BOROUGH CORONERS.

See Coroners Act, 1887 (c. 71), s. 33.

See, generally, Municipal Corporations Act, 1882 (c. 50), s. 171, as amended by Local Government Act, 1888 (c. 41), s. 537.

17. Validity of—Whether dependent on charter of incorporation.]—Where a charter of incorporation had been granted, the ct. discharged a rule for a *quo warranto* information at the instance of a private relator against a coroner appointed under

the charter, on the ground that all the objections taken to his title applied equally to the charter itself, & that the charter itself could not be attacked through him.—*R. v. TAYLOR* (1840), 3 Per. & Dav. 652; 11 Ad. & El. 949; 9 L. J. Q. B. 219; 113 E. R. 675.

Annotations:—Consd. A.-G. v. Avon Corpn. (1863), 33 Beav. 67. *Reid. R. v. Boucher* (1842), 3 Q. B. 641.

18. ———.]—The coroner for the county palatine of L. may exercise the powers of that freehold office over every part of that county, including the town of M., unless they have to that extent been superseded by the good appointment of another coroner. He has, therefore, a right to call for proof that such appointment has been made, which depends upon the question whether the town council of M. has well petitioned for a Ct. of Quarter Sessions, & that must depend upon the earlier question, whether the charter itself has been legally granted.—*RUTTER v. CHAPMAN* (1841), 8 M. & W. 1; H. & W. 93; 10 L. J. Ex. 495; 5 J. P. 417; 151 E. R. 925, Ex. Ch.; *subsequent proceedings*, 8 M. & W. 388.

Annotations:—Reid. R. v. Boucher (1842), 3 Q. B. 641. *Mentd. Holford v. Hankinson* (1844), 5 Q. B. 584; *R. v. Dulwich College* (1851), 21 L. J. Q. B. 36; *R. v. Aberavon Corpn.* (1864), 13 W. R. 90; *Graham v. Berry* (1865), 3 Moo. P. C. C. N. S. 207.

19. ——— Before grant of quarter sessions completed—After notification of grant—Coroner acting under appointment & recognised by council.]—The borough of W., having petitioned for a grant of a separate ct. of quarter sessions, under Municipal Corporations Act, 1835 (c. 76), s. 103, received a letter from the Secretary of State informing them that the Crown had made the grant, & within ten days from the receipt of this letter, but before the actual grant had passed the great seal, the town council appointed R. coroner of the borough, not under seal, who exercised the office, & was recognised as coroner by the town council repeatedly, & within ten days after the actual grant of the quarter sessions had been received by the council. A general quarterly meeting was held Nov. 9, when a mayor was elected, & other general business transacted, & the meeting was, by a resolution then passed, adjourned to Nov. 16, on which day a resolution was passed by the council, removing R. from the office of coroner & appointing G. in his stead. No notice was given of this meeting, except the ordinary three days' notice required by s. 69 of the above Act, which did not specify the business to be transacted at the meeting:—*Held*: (1) the office was full, as, even if the council had no right to appoint until after the actual grant of the ct. of quarter sessions, the recognition of R. as coroner by them, within ten days after the actual grant, was a good ratification of the prior appointment; (2) the election of G. was invalid; (3) under s. 69 of the above Act no notice need be given of such business transacted at the adjourned meeting as had been entered upon on Nov. 9, but notice ought to have been given of any other business transacted at the adjourned meeting.—*R. v. GRIMSHAW* (1847), 10 Q. B. 747; 2 Saund. & C. 146; 16 L. J. Q. B. 385; 9 L. T. O. S. 221; 11 J. P. 710; 11 Jur.

PART III. SECT. 1, SUB-SECT. 1.

1. What qualifications essential—Place of residence.]—The coroner is bound to reside within the division of the county for which he is appointed.—*Re MAGRE* (1848), Bl. D. & Osb. 250;

12 I. L. R. 169.—IR.

1. Who entitled to be appointed—Member of rural district council of county.]—The county council of C. appointed A. coroner. He had been a member of the rural council of the

district of C. within six months before appointment:—*Held*: A. was not disqualified under Local Govt. (Application of Enactments) Order, 1898, Art. 12 (3).—*R. (M'DONALD) v. BYRNE* (1915), 49 I. L. T. 69.—IR.

Sect. 1.—Appointment: Sub-sects. 2 & 3. Sect. 2: Sub-sects. 1, 2 & 3. Part IV. Sect. 1.]

965; 116 E. R. 284; *subsequent proceedings*, 17 L. J. Q. B. 19.

Annotation:—As to (1) Refd. Addison v. Preston Corpn. (1852), 21 L. J. Q. B. 146.

20. — Election at adjourned quarterly meeting of council—Notice not served upon members.]

—R. v. GRIMSHAW, No. 19, *ante*.

Removal of.]—See Sect. 2, *post*.

SUB-SECT. 3.—FRANCHISE CORONERS.

See Coroners Act, 1887 (c. 71), s. 42.

21. County council not empowered to appoint—Under Local Government Act, 1888 (c. 41).]—Re LOCAL GOVERNMENT ACT, 1888, *Ex p.* LONDON COUNTY COUNCIL, No. 16, *ante*.

22. For Duchy of Lancaster—Right to appoint—Construction of Royal Charter—Admissibility of evidence to prove right of Crown.]—Edward III., by a charter of the 23rd year of his reign, granted to the Earl of L. the return of all writs of the king & his heirs, & summons of the Exchequer, & the attachment as well of pleas of the crown, *attachia-menta de placitis corona*, as of other pleas whatsoever, in all his lands & fees, so that no sheriff or other bailiff or minister of the king, or his heirs, might enter those lands or fees to execute the same writs & summons, or to make attachments of pleas of the Crown, or other pleas aforesaid, or to do any other office there, unless in default of the Earl & his bailiffs & ministers, in his lands & fees aforesaid.

The chancellor & council of the duchy, by an order dated 1670, reciting that the ct. was informed that the P. coroners had usually returned all their inquests into the Crown Office, without taking notice therein that the same did arise within the liberties of the duchy, ordered the coroners thenceforth to specify in their returns when & where the inquests were held:—*Held*: (1) this was a grant of an exclusive right to appoint coroners for the duchy of L.; (2) & notwithstanding modern usage to the contrary, the county coroner had no concurrent jurisdiction within the territory of the duchy, nor any right to execute his office therein; unless in default of the performance of their duties by the duchy coroners.

(3) Evidence of appointments by the duchy authorities of other coroners within the duchy, but not in the honour of P., were admissible to prove that the Crown, in right of the duchy of L., by the above charter had the power of appointing a coroner within the honour of P.

(4) The Order of 1670 was admissible in evidence, although no proof was given of anything done under it.

It has been said that the coroner's ct. is a ct. of record. I am very unwilling to enter into that discussion; but I must own if it were *res integra*, I think it would be wise to consider whether that extra-judicial opinion, delivered by the Lord Chief Justice of the Queen's Bench in the case, that has been cited [*Garnett v. Ferrand*, No. 1, *ante*] is a sufficient authority for saying that the coroner's ct. is a ct. of record (LORD ABINGER, C.B.).—*JEWISON v. DYSON* (1842), 9 M. & W. 540; 6 State Tr. N. S. 1; 11 L. J. Ex. 401; 152 E. R. 228.

PART III. SECT. 1, SUB-SECT. 3.

g. For liberty of Newry—Right to appoint—Construction of royal charter.]—An ancient patent gave to the patentee, his heirs, & assigns, for ever the privilege of holding cts. & markets & of holding pleas & of appointing

bailiffs & seneschals within the liberty of Newry:—*Held*: the right of appointing a coroner did not pass to the patentee.—*BOYD v. MAGEE* (1848), 13 L. L. R. 435.—*IR.*

PART III. SECT. 2, SUB-SECT. 1.

25 i. Jurisdiction of Lord Chancellor

23. For liberty of Tower of London—Right to appoint—Not transferred to London County Council—Under Local Government Act, 1888 (c. 41), s. 48.]

—*Re LOCAL GOVERNMENT ACT, 1888, Ex p. LONDON COUNTY COUNCIL*, No. 16, *ante*.

King's coroner & attorney.]—See Part IX., *post*.

SECT. 2.—REMOVAL.

SUB-SECT. 1.—JURISDICTION TO REMOVE.

See Coroners Act, 1887 (c. 71), ss. 8 (1), 33.

24. Jurisdiction of Lord Chancellor.]—(1) I have no doubt as to the authority of the Great Seal with regard to the removing of coroners, where they misbehave or live out of the county (LORD HARDWICKE, C.).

(2) The ct. will not order a writ *de coronatore exonerando*, till there is an affidavit of service at the last place of his abode.—*ANON.* (1744), 3 Atk. 184; 26 E. R. 908, L. C.

25. — Apart from statute.]—(1) Confinement in prison out of the county is a sufficient ground for the removal of a coroner from his office, although, during his absence, another coroner of the same county has performed his duties.

(2) The Great Seal has power, independently of Coroners Act, 1752 (c. 29), to remove coroners from their office for neglect of duty.

(3) Notice to a coroner of a petition for his removal is not necessary.

(4) The practice is to issue the writs *de coronatore exonerando* & *de coronatore eligendo* at the same time; the latter is dated last, but it is not irregular to execute it before a return is made to the former.—*Ex p. PARNELL* (1820), 1 Jac. & W. 451; 37 E. R. 439, L. C.

Annotation:—As to (3) Refd. Re Ward (1861), 3 De G. F. & J. 700.

SUB-SECT. 2.—GROUNDS FOR.

*See, generally, Coroners Act, 1887 (c. 71), s. 8 (2). Misbehaviour.]—See Part V., Sect. 3, sub-sect. 1, *post*.*

26. Residential disqualification—General rule.]—ANON., No. 24, *ante*.

27. — Confinement in prison outside county.]—Ex p. PARNELL, No. 25, *ante*.

28. — Not where coroner having residence in county—Resides more usually at residence in town—Within ambit of but not part of county.]—Re NOTTINGHAM CORONER ELECTION, No. 14, *ante*.

29. Removal of coroner's successor—Original appointment informal—Subsequent ratification.]—R. v. GRIMSHAW, No. 19, *ante*.

SUB-SECT. 3.—PROCEDURE ON REMOVAL AND APPOINTMENT OF SUCCESSOR.

See, now, Coroners Act, 1887, s. 8 (2).

30. Writ reciting cause of removal—Not traversable.]—The King may remove a coroner by writ directed to him for a cause which shall not be traversed.—SPECOT'S CASE (1590), 5 Co. Rep. 57 a; 77 E. R. 141.

Annotations:—Mentd. Brediman's Case (1606), 6 Co. Rep. 56 b; *Deckrow v. Jenkins* (1630), Cro. Car. 178; *Aylet*

—*Apart from statute.]—Held*: the Great Seal had full power to make an order of removal though there was no statute in force therefor.—*Ex p. PASLEY* (1842), 3 Dr. & War. 84.—*IR.*

v. Oats (1848), *Sty.* 125; *Gerrard v. Gerrard* (1895), 1 *Salk.* 54; *R. v. Cambridge University* (1723), 8 *Mod. Rep.* 148; *Master v. Miller* (1791), 4 *Term Rep.* 320; *R. v. Canterbury* (1812), 15 *East*, 117; *Auchterarder v. Kinnoull* (1839), *Macl. & Rob.* 220; *Gorham v. Exeter* (1849), 2 *Rob. Eccl.* 1; *Marshall v. Exeter* (1860), 7 *O. B. N. S.* 653; *Heath v. Burder* (1862), *Brod. & F.* 212; *Heywood v. Manchester* (1884), 12 *Q. B. D.* 404.

31. Writ de coronatore exonerando—Court will not order issue of—Till affidavit of service of petition for removal—At last place of abode.]—*ANON.*, No. 24, *ante*.

32. — & de coronatore eligendo—Issue at same time.]—*Ex p. PARNELL*, No. 25, *ante*.

33. — — — — —.]—*Re WARD*, No. 102, *post*.

34. Writ de coronatore eligendo—May be executed—Before return made to writ de coronatore exonerando.]—*Ex p. PARNELL*, No. 25, *ante*.

35. — Issue after judgment of ouster against

person returned as duly elected coroner—No jurisdiction to determine which of two candidates duly elected.]—(1) After judgment of ouster upon an information in the nature of a *quo warranto* against a person returned by the sheriff as duly elected to the office of coroner, a new writ *de coronatore eligendo* issues as of course.

(2) *Semble*: the sheriff cannot, under the provisions of Coroners Act, 1844 (c. 92), s. 13, enter into the question of a scrutiny.—*Re HEMEL HEMPSTEAD CORONERSHIP* (1855), 5 *De G. M. & G.* 228; 24 *L. T. O. S.* 284; 3 *W. R.* 192; 43 *E. R.* 857, *L. C.*

Annotation:—*As to* (1) *Reid. R. v. Diplock* (1869), 17 *W. R.* 823.

36. Notice to coroner of petition for removal—Not necessary.]—*Ex p. PARNELL*, No. 25, *ante*.

See, also, No. 24, *ante*.

Part IV.—Remuneration and Compensation payable to Coroners.

SECT. 1.—REMUNERATION.

See, now, County Coroners Act, 1860 (c. 116) & Coroners Act, 1887 (c. 71), s. 43.

37. County coroners—Formerly not entitled to be paid—When inquisition not signed by all jurors.]—A coroner is not entitled to be paid for an inquisition taken upon a dead body under Coroners Act, 1752 (c. 29), unless it be signed by all the jurors.—*R. v. NORFOLK JJ.* (1792), *Nolan*, 141. *Annotation*:—*Mentd. R. v. G. W. Ry.* (1842), 3 *Q. B.* 333.

38. — — — — — When inquest unduly held—In opinion of justices.]—A mandamus to the justices in sessions to allow an item of charge in the coroner's account, was refused, the justices being of opinion under the circumstances, that there was no ground to suppose deceased had died any other than a natural, though a sudden death, & therefore that the inquisition had not been duly taken; & the ct. seeing no reason for interfering with that judgment.—*R. v. KENT JJ.* (1809), 11 *East*, 229; 103 *E. R.* 992.

Annotations:—*Expld. & Apprvd. R. v. Carmarthenshire JJ.* (1847), 10 *Q. B.* 796. *Consd. R. v. Gloucestershire JJ., Ex p. Gaisford* (1857), 27 *L. J. M. C.* 15. *Mentd. Re Woolley, R. v. G. W. Ry.* (1842), 11 *L. J. M. C.* 86.

39. — — — — —.]—A rule had been obtained for a mandamus to the justices of D. to make an order for payment of fees to one of the coroners for the county of D. in respect of an inquest taken by him. It appeared that the body of G. had been found dead, & information given to the coroner, by a constable, that the man died under circumstances such as rendered it necessary that an inquest should be held. The coroner also received a communication from a surgeon that the man had been found dead in his bed, & that it was considered necessary that an inquest should be held. The verdict of the jury was "natural death." A resolution had been passed at the quarter sessions as to the cases in which the accounts of coroners should be passed; & a rule had been laid down, that when the verdict was "natural death" they would inquire whether the coroner ought to have held the inquest: & the onus of showing that he was justified was thrown upon him. The matter having been referred to a committee of five magis-

trates, they disallowed the claim of the coroner, & the quarter sessions adopted their decision:—*Held*: there was so much doubt in the case, & as to the general principle on which the jurisdiction of the quarter sessions ought to be exercised, that the ct. thought the rule should be made absolute.—*R. v. DEVONSHIRE JJ.* (1846), 7 *E. & B.* 811, *n.*; 7 *L. T. O. S.* 228; 3 *Jur. N. S.* 981, *n.*; 10 *J. P. Jo.* 371; 119 *E. R.* 1448.

40. — — — — —.]—(1) A coroner is not entitled to any remuneration for holding an inquest, unless, in the judgment of the Ct. of Quarter Sessions, it was proper that such inquest should have been held; & the Ct. of Queen's Bench will not review the judgment of the Sessions on this point.

(2) Disbursements made by the coroner, under 7 *Will.* 4, & 1 *Vict.* c. 68, after the termination of the inquest, must be repaid to him, whether it was proper that such inquest should be held or not; & the sessions have no power to disallow them.—*R. v. CARMARTHENSIRE JJ.* (1847), 10 *Q. B.* 796; 2 *New Sess. Cas.* 679; 2 *New Mag. Cas.* 223; 16 *L. J. M. C.* 167; 9 *L. T. O. S.* 267; 11 *J. P.* 518; 11 *Jur.* 819; 116 *E. R.* 302.

Annotation:—*Generally, Reid. R. v. Gloucestershire JJ.* (1857), 7 *E. & B.* 805.

.]—A coroner is not entitled to the fee of 20s. mentioned in Coroners Act, 1752 (c. 29), for holding an inquest, unless in the judgment of the Ct. of Quarter Sessions it was proper that such inquest should have been held; & the Ct. of Queen's Bench will not review the judgment of the sessions on this point, & refused to grant a mandamus to the sessions to pay such fees.—*R. v. GLOUCESTERSHIRE JJ.* (1857), 7 *E. & B.* 805; 22 *J. P.* 242; 5 *W. R.* 655; 119 *E. R.* 1445; *sub nom. R. v. GLOUCESTERSHIRE JJ., Ex p. GAISFORD*, 27 *L. J. M. C.* 15; 29 *L. T. O. S.* 180; 3 *Jur. N. S.* 980.

42. — — — — — Travelling expenses—For home-ward journey.]—A county coroner, under Coroners Act, 1752 (c. 29), s. 1, is not entitled to any compensation for the miles travelled by him in returning to his usual place of abode from taking an

PART III. SECT. 2, SUB-SECT. 3.

h. Writ de coronatore exonerando & de coronatore eligendo—Issue at same time—Dated

WEST RIDING OF YORK CORONER (1828), 1 *Ir. L. Rec.* 1st ser. 373.—*IR.*

36 *l. Notice to coroner of petition for removal—Not necessary.*]—A

coroner can be removed without notice personally served on him.—*Re WEST RIDING OF YORK CORONER* (1828), 1 *Ir. L. Rec.* 1st ser. 373.—*IR.*

Sect. 1.—Remuneration. Sect. 2. Part V. Sect. 1: Sub-sects. 1, 2 & 3, A. & B.]

inquisition.—R. v. OXFORDSHIRE JJ. (1818), 2 B. & Ald. 203; 106 E. R. 341.

43. ——— For more than one inquest where several inquests held at same place.]—Where a coroner holds two or more inquisitions at the same place on the same day, he is only entitled to one sum of 9*d.* a mile for travelling expenses, from the place of his abode to the place where the inquisitions are held.—*R. v. WARWICK JJ. (1826), 5 B. & C. 430; 8 Dow. & Ry. K. B. 147; 4 Dow. & Ry. M. C. 38; 4 L. J. O. S. K. B. 206; 108 E. R. 160.*

See, now, County Coroners Act, 1860 (c. 116), & Coroners Act, 1887 (c. 71), s. 43.

44. ——— Salary fixed for five years under County Coroners Act, 1860 (c. 116), s. 4—May be decreased on quinquennial revision.]—Where the salary of a county coroner, holding office at the time of the passing of the above Act has been fixed under that Act at not less than the average amount of the fees, mileage, & allowances received during five years before the 31st Dec. 1859, & the salary of such coroner is subsequently revised after a period of five years, the salary may be fixed at less than the average amount of the fees, mileage, & allowances which would have been received during the preceding five years.—*Ex p. DRIFFIELD (1871), L. R. 7 Q. B. 207; 20 W. R. 240.*

45. ——— Ends with death of coroner—Successor entitled to have new settlement.]—(1) The quinquennial period of five years, for which a county coroner's salary is fixed under County Coroners Act, 1860 (c. 116), ends with the coroner's death, & his successor on his election is entitled to have a new settlement or fixing of his salary, & such salary so fixed continues for a period of five years from the time it is so fixed, without reference to the time when it was last fixed for his predecessor.

(2) The coroner is entitled to the salary so fixed for the whole of the term of five years, even although in the meantime the district to which the coroner was assigned has been by order of the Privy Council subdivided & a new coroner appointed & assigned to a part of that district.

(3) The coroner cannot bring an action against the justices of the county *quod* justices, claiming a declaration of rights that he is entitled to the full salary fixed, or a mandamus to enforce those rights. The only appropriate remedy is the prerogative writ of mandamus to the justices.—*BAXTER v. LONDON COUNTY COUNCIL (1890), 63 L. T. 767; 55 J. P. 391; 7 T. L. R. 142.*

Annotations:—As to (3) Consd. Smith v. Chorley District Council, [1897] 1 Q. B. 532. Rejd. Davies v. Gas Light & Coke Co., [1909] 1 Ch. 248.

46. ——— Coroner entitled to salary for whole term—Right unaffected by subdivision of district & appointment of new coroner.]—*BAXTER v. LONDON COUNTY COUNCIL, No. 45, ante.*

47. ——— Remedy for enforcement of rights as to—Prerogative writ of mandamus.]—*BAXTER v. LONDON COUNTY COUNCIL, No. 45, ante.*

48. Franchise coroners—Formerly not entitled to fees given by Coroners Act, 1752 (c. 29)—If not contributing to county rates.]—The coroners of franchises, that do not contribute to the county rates, are not entitled to the fees given by the above Act, or to any fees to be paid by the county.—*R. v. WEST RIDING OF YORKSHIRE JJ. (1796), 7 Term Rep. 48; 101 E. R. 849.*

Borough coroners.]—*See Municipal Corporations Act, 1882 (c. 50), s. 171, & Coroners Act, 1887 (c. 71), ss. 27, 33.*

SECT. 2.—COMPENSATION ON DIVISION OF COUNTY INTO DISTRICT.

49. Under Coroners Act, 1844 (c. 92), s. 6—Power to order compensation—Extent of power.]—The power of ordering compensation to coroners for the loss of emoluments arising out of a change made under the above Act in the divisions of a county for the purpose of holding inquests, is confined to cases where such county has been customarily divided into districts for the purpose of holding inquests during the space of seven years before the passing of the Act, as provided by sect. 6.—*R. v. LECHMERE (1851), 16 Q. B. 284; 20 L. J. Q. B. 169; 16 L. T. O. S. 385; 15 J. P. 565; 15 Jur. 558; 117 E. R. 887.*

Part V.—Duties, Privileges and Liabilities of Coroners.

SECT. 1.—DUTIES.

SUB-SECT. 1.—INQUESTS SUPER VISUM CORPORIS.
See Part VII., Sect. 4, sub-sect. 4.

SUB-SECT. 2.—INQUESTS ON TREASURE TROVE.

50. Jurisdiction—Limited to determining “who was finder & who was suspected thereof”—Questions of title excluded—Coroners Act, 1887 (c. 71), s. 36.]—The jurisdiction of a coroner is limited by the above Act to the determination of “who was the finder, & who was suspected thereof.” He has no jurisdiction to inquire into a question of title between the Crown & a subject, the title of the Crown to all treasure trove being independent of any finding of the coroner's jury.—

A.-G. v. MOORE, [1893] 1 Ch. 676; 62 L. J. Ch. 607; 68 L. T. 574; 41 W. R. 294; 9 T. L. R. 144; 37 Sol. Jo. 132; 3 R. 213.
Annotation:—Mentd. A.-G. v. Albany Hotel Co., [1896] 2 Ch. 696.

SUB-SECT. 3.—TO ACT IN PLACE OF SHERIFF.

A. When Duty arises.

See, generally, SHERIFFS & BAILIFFS.

51. Where sole sheriff interested.]—*WIMBISH v. WILLIOUGHBY (1552), 1 Plowd. 73; 75 E. R. 116.*
Annotations:—Distd. Cham v. Matthew (1597), Cro. Eliz. 581. Mentd. Sadlers' Case (1588), 4 Co. Rep. 54 b; Doemanny v. Davenant (1704), 6 Mod. Rep. 198.

52. ——— As party to proceedings.]—*CUMBERLAND (EARL) v. CUMBERLAND (DOWAGER COUNTESS), No. 71, post.*

PART V. SECT. 1, SUB-SECT. 3.—A.

*k. Where sole sheriff interested—Bias of sheriff.]—**MURCHISON v. MARSH (1845), 2 Kerr, 608.—CAN.*

*l. ———.]—**BROWN v. MALTBY (1880), 20 N. B. R. 92.—CAN.*

52 i. ——— As party to proceedings—Writ of replevin.]—*GILCHRIST v. CONGER (1854), 11 U. C. R. 197.—CAN.*

52 ii. ———.]—*HOCKEN v. DOUGETT (1892), 31 N. B. R. 369.—CAN.*

52 iii. ———.]—*PICKERING v. THOMPSON (1811), 45 I. L. T. 212.—IR.*

*p. Where sole sheriff under disability.]—**ALDBOROUGH (EARL) v. BLAND (1857), 7 I. C. L. R. 571.—IR.*

53. ———.]—In covenant to levy a fine, if the sheriff be a party the writ shall be directed to the coroners.—*DONE v. SMETHIER & LEIGH* (1635), Cro. Car. 416; 79 E. R. 961.

54. ———.]—Where a sheriff is pltf., a *latitat* directed to himself is ill.—*WESTON v. COULSON* (1764), 1 Wm. Bl. 506; 96 E. R. 292.

55. ———.]—(1) A writ of *ca. sa.* sued out against a deft. by a pltf. who is in fact sheriff of the county into which the process issues, should be directed to the coroners.

(2) The fact of the pltf. being sheriff, need not appear on the face of the writ.

(3) Where a prisoner is charged in execution under such writ, it is no objection that the proceedings have not been entered of record.

(4) A writ directed to the coroner was delivered to the keeper of the county gaol in whose custody deft. was:—*Held*: sufficient to charge deft. in execution in the hands of the coroner without a warrant from the coroner to the keeper of the county gaol.—*BASTARD v. TRUTCH* (1835), 3 Ad. & El. 451; 5 Nev. & M. K. B. 109; 4 L. J. K. B. 214; 111 E. R. 485; *sub nom.* *BASTARD v. GUTCH*, 1 Har. & W. 321.

—— In trial of indictment.]—After a *tales* panel, on an indictment for libel, had been quashed for unindifferency in the sheriff:—*Held*: (1) a *venire facias juratores* might be awarded to the coroners.

(2) Upon the prayer & award of a *tales de circumstantibus* at *Nisi Prius*, it is not compulsory on the coroner or sheriff to select the talesmen from among the bystanders accidentally in ct.; they may be selected out of persons previously appointed by the coroner or sheriff, to be in attendance, in the expectation that a *tales* would become necessary.—*R. v. DOLBY* (1823), 2 B. & C. 104; 2 State Tr. N. S. App. A. 939; 3 Dow. & Ry. K. B. 311; 2 Dow. & Ry. M. C. 71; 1 L. J. O. S. K. B. 241; 107 E. R. 322.

Annotation:—As to (2) *Reid*. *R. v. Hughes* (1843), 1 Car. & Kir. 235.

—— Issue of warrant for jury to assess compensation—Under Lands Clauses Consolidation Act, 1845.]—See COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., pp. 204, 205, Nos. 829–833.

57. One of two sheriffs interested—Process directed to & returnable by uninterested sheriff.]—If one of the sheriffs of London bring an action against the chamberlain, the fact may be surmised on the roll, & the process of *venire facias* directed to, & returned by, the co-sheriff.—*RICH v. PLAYER* (1683), 2 Show. 286; Skin. 104; 89 E. R. 943.

Annotations:—*Folld.* *R. v. Warrington* (1692), 12 Mod. Rep. 22; *Letsom v. Bickley* (1816), 5 M. & S. 144. *Reid*. *Thompson v. Farden* (1840), 1 Man. & G. 535.

58. ———.]—Where two persons are sheriffs, & one is challenged, the *venire facias* shall be directed to the other.—*R. v. WARRINGTON* (1692), 1 Salk. 152; Carth. 214; Comb. 191; Holt, K. B. 166; 4 Mod. Rep. 65; 12 Mod. Rep. 22; 91 E. R. 140.

Annotations:—*Folld.* *Letsom v. Bickley* (1816), 5 M. & S. 144. *Reid*. *Thompson v. Farden* (1840), 1 Man. & G. 535; *Worsley v. South Devon Ry.* (1851), 16 Q. B. 539.

59. ———.]—Where a *testatum capias* was directed to the coroner, where one of the two sheriffs of B. was party to the suit, it was:—*Held*:

PART V. SECT. 1, SUB-SECT. 3.—B.

65 i. Grounds for issue of writ to coroner—Need not be stated.]—*R. v. MCGUIRE* (1898), 34 N. B. R. 430.—CAN.

r. Issue to all coroners if more than one.]—A writ should be directed

generally to the coroners of the county, if there are more than one; & if directed to a particular coroner by name, there being several in the county, may be amended.—*HOCKEN v. DOUGERT* (1892), 31 N. B. R. 369.—CAN.

Except under statute.]—

irregular; for it ought to have gone to the other.—*LETSOM v. BICKLEY* (1816), 5 M. & S. 144; 105 E. R. 1004.

Annotation:—*Reid*. *Worsley v. South Devon Ry.* (1851), 16 Q. B. 539.

60. Under-sheriff interested—Process directed to & returnable by sheriff.]—If the *venire facias* be awarded to coroners, on a suggestion that the under-sheriff is cousin to pltf., the judgment shall be reversed, for it is not cause of challenge.—*SYMONDS v. WALSH* (1619), Cro. Jac. 547; 79 E. R. 469, Ex. Ch.

61. Sheriff & coroner interested.]—*WIMBISH v. WILLOUGHBY* (1552), 1 Plowd. 73; 75 E. R. 116.

Annotations:—*Reid*. *Cham v. Matthew* (1597), Cro. Eliz. 581. *Mentd.* *Sadlers' Case* (1588), 4 Co. Rep. 54 b; *Docmanny v. Davenant* (1704), 6 Mod. Rep. 198.

62. ——— Process directed to elisors—Not mere serviceable process.]—The mayor, bailiffs, & burgesses of B., being pltf. in the suit, the writ was directed to the coroner, who was sworn to be one of the burgesses. It being, however, mere serviceable process, the ct. refused to set it aside; although it was objected that it should have been directed to elisors named by the prothonotary.—*BERWICK UPON TWEED CORPN. v. WILLIAMS* (1825), 10 Moore, C. P. 266; 3 L. J. O. S. C. P. 124.

63. ———.]—Where the sheriffs & coroners are members of a corporate body who sue in such character, the ct. will direct the prothonotary to name & appoint elisors to whom the process may be directed.—*NORWICH CORPN. v. GILL* (1831), 3 Bing. 27; 1 Moo. & S. 91; 1 L. J. C. P. 46; 131 E. R. 310.

64. ———.]—When the coroner is deft. in the cause, an attachment against the sheriff must issue to elisors in the first instance.—*R. v. GLAMORGANSHIRE SHERIFF* (1841), 5 Jur. 1010.

See No. 81, *post*.

B. Issue to and Execution of Process by Coroners.

65. Grounds for issue of writ to coroner—Need not be stated—Nor entered on roll previous to issue.]—*BASTARD v. TRUTCH*, No. 55, *ante*.

—— Sheriff interested.]—See Sub-sect. 3, A., *ante*.

66. Return to process issued to coroner—Cannot be made by sheriff.]—If process of *habeas corpora juratorum* be awarded to the coroners, it will be a mis-trial if the sheriff afterwards return a *tales de circumstantibus*.—*GREGORY v. BOOKER* (1597), Cro. Eliz. 586; 78 E. R. 829.

67. ———.]—If the sheriff return a *tales* after the *venire facias* has been awarded to coroners it will be error.—*MORGAN v. WYE* (1597), Cro. Eliz. 574; 78 E. R. 818, Ex. Ch.

68. ———.]—If after the *venire* is awarded to coroners, the sheriff return a *tales*, it is error.—*CORN v. PASLOW* (1602), Cro. Eliz. 894; 78 E. R. 1117, Ex. Ch.

69. ——— Must show name of office.]—A return by coroners in their proper names, omitting their name of office, is erroneous.—*SCROGS v. SPENCER* (1599), Cro. Eliz. 703; 78 E. R. 939.

70. ——— Must be in name of all coroners.]—The return of a writ by two coroners, when it ought to have been by four, cannot be assigned for error.—*LAMB v. WISEMAN* (1615), Cro. Jac. 383; Hob. 70; 79 E. R. 328, Ex. Ch.

Annotation:—*Mentd.* *Phillips v. Bury* (1694), Skin. 447.

R. v. MCGUIRE (1898), 34 N. B. R. 430.—CAN.

70 i. Return to process issued to coroner—Must be in name of all coroners—Though it may be executed by one coroner.]—*NOBLE v. TEMPLE, PELTON v. TEMPLE* (1868), 1 Han. 274.—CAN.

Sect. 1.—Duties: Sub-sect. 3, B., C. & D.; sub-4. Sects. 2 & 3:

71. Enforcement of process—Posse comitatus.]—(1) *Estrepement* judicial was awarded out of the ct. to the coroners of the county of W. in the action of waste, brought by the Earl of C. against the Countess Dowager, because he was sheriff of the same shire, by which writ the coroners were commanded to suffer no waste to be done in the lands.

(2) The Countess Dowager's people had done waste after the writ was published & made known to them, but the ct. would not commit them, because it was not a writ directed immediately to her & her servants commanding them to do no waste as it might have been, & then it had been immediate contempt to the ct. But in this case the coroner himself was to provide against the waste by taking *posse comitatus*, if there be no remedy, or the like.—*CUMBERLAND (EARL) v. CUMBERLAND (DOWAGER COUNTESS)* (1615), Hob. 85; 80 E. R. 234.

72. Writ directed to county coroner—May be delivered to keeper of county gaol—When defendant in custody of sheriff.]—*BASTARD v. TRUTCH*, No. 55, *ante*.

C. Juries.

73. Power to make selection — In striking special jury.]—In striking a special jury, the coroner is not bound to take the jurors as they occur upon the sheriff's books, but is to make a selection; & where he had made such selection impartially, the ct. refused to cancel the list of persons so selected.—*R. v. WOOLER* (1817), 1 B. & Ald. 193; 106 E. R. 71.

74. — Tales de circumstantibus.]—*R. v. DOLBY*, No. 56, *ante*.

75. Issue of new jury process to coroner—Special application to court.]—Where upon a challenge to the array for unindifferency in the sheriff, the jury panel was quashed:—*Held*: the proper course to obtain a trial of the cause was to direct new jury process to the coroners of the county, at the instance of the prosecutor but not without applying to the ct. specially for that purpose.—*R. v. DOLBY* (1822), 1 Dow. & Ry. K. B. 145; 1 Dow. & Ry. M. C. 49; 107 E. R. 322; *subsequent proceedings* (1823), 2 B. & C. 104.

D. Liability for Misconduct, Negligence, etc.

Liabilities of coroners for misconduct generally.]

—See Sect. 3, sub-sect. 1, *post*.

Liabilities of sheriffs.]—See SHERIFFS & BAILIFFS.

76. Whether liability joint or several—When one of several coroners in default.]—If, on a *capias* to the county palatine of L., the chancellor direct his precept to the six coroners of the county, an action on a false return of *non est inventus* will lie against the six jointly, although only one of them omitted to make the arrest. *Qu.*: in what county it must be brought.—*NAYLOR v. SHARPLY* (1675), 1 Mod. Rep. 198; 2 Mod. Rep. 23; 86 E. R. 826, 919; *sub nom.* *NAYLER v. —*,

—*v. Ketison* (1695), 1 Ld. Raym. 105; *Litchfield Corpn. v. Slater* (1743), Willes, 431.

77. — — —.]—Where a writ is directed to two coroners, & one of them executes it, & permits

an escape, & the other has no notice of the writ; *Qu.*: whether he is liable to pltf. in the writ.—*TAYLOR v. CLARKE & DENNY* (1694), 3 Lev. 399.

78. — — —.]—If one of two coroners be insolvent, & suffer an escape, yet the other shall not be charged.

If there be two coroners, one whereof, being a beggar, suffer an escape, it is very hard to charge the other with it. The case came before me once & I would not take upon myself to determine it. And that case has been argued several times in the Common Pleas, but not adjudged (*HOLT, C.J.*).—*ANON.* (1703), 6 Mod. Rep. 37; 87 E. R. 800.

79. — — —.]—*CONINGSBY (LORD) v. STEED* (1723), 8 Mod. Rep. 192; 88 E. R. 140.

80. Whether liable to attachment—For misconduct.]—*CONINGSBY (LORD) v. STEED* (1723), 8 Mod. Rep. 192; 88 E. R. 140.

81. — — —.]—Where motion was made for an attachment against the coroners of M. for not attaching the sheriff, against whom an attachment directed to the coroners had issued, for not bringing in the body of the deft. pursuant to a rule of the ct. & that the same might be directed to elisors:—*Held*: that attachment be granted, to be directed to elisors to be named by pltf. & approved by the prothonotary.—*ANDREWS v. SHARP* (1773), 2 Wm. Bl. 911; 96 E. R. 538.

Annotations:—*Folld. R. v. Peckham* (1778), 2 Wm. Bl. 1218. *Distd. Berwick upon Tweed Corpn. v. Williams* (1825), 10 Moore, C. P. 266.

82. — — —.]—The coroners of M. not having returned an attachment for contempt against the sheriffs, the ct. granted a peremptory rule in the first instance for an attachment against the coroners, directed to elisors.—*R. v. PECKHAM & CLARKE* (1778), 2 Wm. Bl. 1218; 96 E. R. 716.

83. — Failure to return process improperly delivered.]—Delivery of an attachment against a sheriff to the managing clerk of the London agent of the coroner, is not sufficient to allow of an attachment issuing against the coroner for not returning the attachment.—*FEVER v. AUBIN* (1835), 1 Har. & W. 332.

84. Liability for default of sheriff's officer—In executing process directed to coroner.]—The sheriff of M. having obtained a judgment and issued a *fieri facias* to the coroner, the sheriff's attorney indorsed on the writ the name of a sheriff's officer, who executed the writ & received the proceeds of the sale of the goods seized from the coroner's broker, but did not pay them over to the sheriff. The goods sold having been afterwards claimed & taken away from the purchaser by a third party, the purchaser brought an action against the sheriff for the purchase-money:—*Held*: it was not maintainable, as the officer was the officer of the coroner, & not of the sheriff, & deft. was not so connected with the transaction as to be liable.—*SARJEANT v. COWAN* (1833), 1 Cr. & M. 491; 3 Tyr. 538; 2 L. J. Ex. 235; 149 E. R. 493.

SUB-SECT. 4.—JUDGMENT IN OUTLAWRY.

See, now, Crown Office Rules 1906, rr. 88–101; Civil Procedure Acts Repeal Act, 1879 (c. 59).

85. Duty to pronounce.]—Judgment of out-

PART V. SECT. 1, SUB-SECT. 3.—C.

a. Number of jurors to be summoned—Under special writ of venire.]—Coroners when they summon juries do not do so under 36 Geo. 3, c. 2, or under the general jury law, but they

obey a special writ of *venire* awarded in the particular case, which is to summon twelve men. It is not an irregularity that where they have been commanded to summon twelve, they have not summoned thirty-six or forty-eight.—*FRASER v. DICKSON* (1848), 5 U. C. R. 231.—*CAN.*

PART V. SECT. 1, SUB-SECT. 3.—D.

b. Whether liable to same extent as sheriff.]—All common law as well as statutory liabilities of a sheriff attach to the coroner acting in a case where the sheriff is an interested party.—*HORSFALL v. SUTHERLAND* (1899), 31 N. S. R. 471.—*CAN.*

lawry must be by the coroner.—*BUTTON v. AWDLEY* (1619), Cro. Jac. 521; 79 E. R. 446.

Annotation :—*Consd. R. v. Yandell* (1792), 4 Term Rep. 521.

86. Must show name of coroner.]—P. being outlawed upon a *quo warranto* brought against him, brought a writ of error to reverse the outlawry. Because he was outlawed *per judicium coronatorum* & he did not show the name of any of the coroners :—*Held* : the outlawry should be reversed.—*PATRICK'S CASE* (1619), Cro. Jac. 528; 79 E. R. 452.

Annotation :—*Consd. R. v. Yandell* (1792), 4 Term Rep. 521.

87. No outlawry in county without coroner.]—There can be no outlawry in a county in which there is no coroner.—*WILBRAHAM v. DOYLEY* (1700), 1 Ld. Raym. 591; 91 E. R. 1296.

See, further, CRIMINAL LAW & PROCEDURE.

SECT. 2.—PRIVILEGES.

88. Freedom from arrest—Extends to deputy coroner—While discharging duties.]—A deputy coroner, appointed under 6 & 7 Vict. c. 83, is privileged from arrest whilst preparing to hold an inquest.—*Ex p. MIDDLESEX DEPUTY CORONER* (1861), 6 H. & N. 501; 30 L. J. Ex. 77; 3 L. T. 754; 7 Jur. N. S. 103; 9 W. R. 281; 158 E. R. 206.

Deputy coroners.]—See Part VI.

89. Protection from libellous attacks—Whether entitled to criminal information—When not free from blame.]—The ct. refused to grant a criminal information for libels upon a coroner, with regard to his conduct upon holding a particular inquest; where it appeared that he had at a public meeting, & in the House of Commons, vindicated his own conduct, & spoken contemptuously of the libellous publications in question; & that his conduct in the course of the inquest was not wholly free from blame.—*Ex p. WAKLEY* (1847), 8 L. T. O. S. 466; subsequent proceedings, *sub nom. WAKLEY v. COOKE*, 16 M. & W. 822; (1849), 4 Exch. 53, 511; *sub nom. WAKLEY v. HEALEY* (1849), 7 C. B. 591, Ex. Ch.

90. May continue to act as magistrate.]—A justice of the peace does not become disqualified from acting as such, by reason of his being elected coroner for the county or division for which he so acts as justice.—*DAVIS v. PEMBROKESHIRE JJ.* (1881), 7 Q. B. D. 513.

SECT. 3.—LIABILITIES.

SUB-SECT. 1.—REMOVAL OR PUNISHMENT FOR MISBEHAVIOUR.

Jurisdiction to remove.]—See Part III., Sect. 2, sub-sect. 1, *ante*.

Procedure on removal & appointment of successor.]—See Part III., Sect. 2, sub-sect. 3, *ante*.

Liabilities of coroner acting as sheriff.]—See Sect. 1, sub-sect. 3, D., *ante*.

91. General rule—Liable to be removed for misbehaviour.]—*ANON.*, No. 24, *ante*.

92. ———.]—*Ex p. PARNELL*, No. 25, *ante*.

93. Improperly withholding inquisition.]—*BUCKHURST (LORD), WENTWORTH & BELLASIS CASE* (1662), 1 Keb. 278, 280; 83 E. R. 944, 946.

94. Improper insertion of names in inquisition—Verdict of jury materially altered—Forgery.]—

M. was found guilty of murder upon the coroner's inquest & afterwards the coroner inserted the names of two other persons who, together with M., had been indicted upon the inquest, which being tried at bar, they were all acquitted. Afterwards two of the jury made oath that they found the indictment only against one. On an information being brought against the coroner for a forgery, he was found guilty.—*R. v. MARSH* (1703), 3 Salk. 172; 91 E. R. 758.

95. Inducing wrong verdict—By exclusion of some of jurors sworn.]—*R. v. STUKELY*, No. 336, *post*.

96. ———.]—The coroner of L. took an inquisition *super visum corporis* of a man that hanged himself whereby he was found *felo de se*. It appeared to the jury that the man was lunatic, but the coroner in order to cover the goods told them the finding him *felo de se* was only matter of course, & they found accordingly. Being afterwards better informed they told the coroner they were satisfied the man was lunatic & desired him to take the verdict so, whereupon he drew up a second inquisition & they signed & sealed it. A *certiorari* being brought he returned the first inquisition in order that he might still cover the goods :—*Held* : the filing would be stayed, & the coroner was committed.—*R. v. WAKEFIELD* (1717), 1 Stra. 69; 93 E. R. 390.

Annotation :—*Reid. R. v. Johnson* (1725), 1 Stra. 644.

See, also, No. 266, *post*.

—— Ground for quashing inquisition & granting new inquest.]—See Part VII., Sect. 5, sub-sect. 5.

97. Corruption—No disposition to abscond.]—On an information against a coroner for corruption in his office, he was found guilty. The judge refused to commit the deft., or to hold him to bail, no disposition to abscond being shown.—*R. v. WHITCOMB* (1823), 1 C. & P. 124, N. P.

98. Extortion—Taking money for not holding inquest.]—H., coroner of the county of C., was convicted for extortion in his office in taking a sum of money for not holding an inquest on the body of a young woman, which he had no authority for doing. The court fined & imprisoned him & removed him from his office.

The coroner had no pretence or authority for taking any inquisition at all; but if the case had warranted his so doing, he was equally criminal in having extorted money to refrain from doing his office (*GROSE, J.*).—*R. v. HARRISON* (1800), 1 East, P. C. 382.

99. ——— Excessive charge for copies of depositions.]—*R. v. WHITE*, No. 370, *post*.

100. Holding inquest improperly—To obtain fees.]—A criminal information lies against a coroner who improperly holds an inquest for the purpose of obtaining fees.—*R. v. BREWER* (1859), 23 J. P. Jo. 755.

101. Non-attendance at trial.]—*Re URWIN* (1827), cited *Jervis on Coroners*, 6th ed. 52.

102. Attending inquest in state of intoxication—Jury dismissed before being sworn—For no adequate reason.]—(1) A sudden death having occurred in a coroner's district he summoned a jury, but on the day appointed he attended in a state of intoxication, & without swearing the jury dismissed

PART V. SECT. 2.

c. Freedom from arrest—While discharging official duties.]—A coroner when engaged in the discharge of his official duty is privileged from civil arrest.—*CALLAGHAN v. TWISS* (1847), 9 L. L. R. 422.—*IR.*

PART V. SECT. 3, SUB-SECT. 1.

91 i. General rule—Liable to be removed for misbehaviour.]—A coroner, who has neglected his duty, will be removed.—*Re WEST RIDING OF YORK CORONER* (1828), 1 Ir. L. Rec. 1st ser. 373.—*IR.*

d. Mental derangement—Drunkenness—Crime.]—A coroner was occasionally mentally deranged & intemperate & had been convicted of a conspiracy to obtain money on false pretences & imprisoned: he was removed from office.—*Ex p. PASLEY* (1842), 3 Dr. & War. 34.—*IR.*

Sect. 3.—Liabilities: Sub-sects. 1, 2 & 3. Parts VI. & VII. Sects. 1, 2 & 3.]

them for no adequate reason. On petition to the Lord Chancellor, under the 23 & 24 Vict. c. 116, the coroner was ordered to be removed on the ground of "misbehaviour in his office."

(2) The practice of issuing the writs *de coronatore exonerando* and *de coronatore eligendo* at the same time continued.

(3) This is a very ancient & important office in the realm of England. The coroner, next to the sheriff, is the most important civil officer in the county, & he performs the duties of the sheriff when the sheriff is disabled from doing so; & there are peculiar duties ascribed to him more particularly to inquire into the manner in which persons have come to their deaths where there is any reason to suppose that they may not have been by natural means; & on that inquiry, a jury being sworn, the jury have all the rights of a grand jury to find a verdict of murder, & on that finding the party accused may be tried & may be sentenced to death (LORD CAMPBELL, C.).—*Re WARD* (1861), 3 De G. F. & J. 700; 30 L. J. Ch. 775; 4 L. T. 458; 25 J. P. 725; 7 Jur. N. S. 853; 9 W. R. 843; 45 E. R. 1049, L. C.

103. Unnecessarily delaying inquest—Body in state of decomposition—Delay for identification & registration under right name—Body in mortuary.]—*Re HULL*, No. 114, *post*.

Duty of coroner to hold inquest.]—See Part VII., Sect. 2.

SUB-SECT. 2.—FOR ACTS IN EXERCISE OF JURISDICTION.

104. General rule.]—GARNETT v. FERRAND, No. 1, *ante*.

105. For trespass—Person ejected from room

in which inquest about to be held.]—GARNETT v. FERRAND, No. 1, *ante*.

106. For slander—Defamatory language falsely & maliciously used in addressing jury.]—(1) An action is not maintainable against a coroner for defamatory words falsely & maliciously spoken by him while addressing a jury in the course of an inquest.

(2) The coroner's ct. is a ct. of record of very high authority, so much so that the Lord Chief Justice of this ct. is the supreme coroner of England (CROMPTON, J.).—*THOMAS v. CHURTON* (1862), 2 B. & S. 475; 31 L. J. Q. B. 139; 6 L. T. 320; 8 Jur. N. S. 795; 26 J. P. Jo. 308; 121 E. R. 1150.

Annotations:—As to (1) *Reid*. *Seaman v. Netherclift* (1876), 1 C. P. D. 540; *Anderson v. Gorrie*, [1895] 1 Q. B. 668.

Liability of judges for acts done in exercise of judicial function, *see, generally*, PUBLIC AUTHORITIES & PUBLIC OFFICERS.

SUB-SECT. 3.—FOR ACTS IN EXCESS OF JURISDICTION.

107. Inquisition quashed for want of jurisdiction—Action for false imprisonment—Liability for expenses of quashing inquisition.]—Deft. by a warrant of commitment on a coroner's inquisition held without jurisdiction caused pltf. to be imprisoned. Pltf. was bailed, & afterwards, while on bail, procured the inquisition to be quashed. In an action for false imprisonment:—*Held*: pltf. was entitled, under an allegation that he had incurred expense in procuring his discharge from custody, to recover damages for the expense of quashing the inquisition.—*FOXALL v. BARNETT* (1853), 2 E. & B. 928; 22 L. T. O. S. 100; 2 W. R. 61; 2 C. L. R. 273; 118 E. R. 1014; *sub nom.* *FOXHALL v. BARNETT*, 23 L. J. Q. B. 7; 18 J. P. 41; 18 Jur. 41.

Annotation:—Mentd. *Everett v. Griffiths*, [1921] 1 A. C. 631.

Part VI.—Deputy Coroners.

See, now, Coroners Act, 1892 (c. 56).

108. Right to hold inquest—Absence of coroner—"Lawful & reasonable cause"—Coroner holding another inquest.]—Under Coroners Act, 1843 (c. 83), s. 1, it is a "lawful or reasonable cause" for the absence of the coroner, & the acting of his deputy, on an inquest, that the coroner was engaged in holding another inquest.

Where the jury are sworn, & the inquest commences, properly before the deputy, he should continue holding the inquest to its conclusion, although, in the course of it, the principal coroner may be accidentally present.

This inquisition held by the deputy is properly described as taken before the principal coroner, & it is properly signed in the name of the principal coroner, "by E., his deputy."—*R. v. PERKIN* (1845), 7 Q. B. 165; 14 L. J. M. C. 87; 5 L. T. O. S. 71; 9 J. P. 279; 9 Jur. 686; 115 E. R. 450.

Annotation:—Reid. *R. v. Johnson* (1873), 42 L. J. M. C. 41.

109. ——— Question for judge.]—

PART V. SECT. 3, SUB-SECT. 2.

105 i. Whether action maintainable against coroner—For trespass—Person ejected from room in which inquest about to be held.]—A person can maintain no action against the coroner for excluding him from the room, where an inquest is being held.—*AGNEW v.*

STEWART (1862), 21 U. C. R. 396.—CAN.

*e. ——— In absence of malice.]—*A coroner held an inquisition on the body of N.; the jury found that deceased had died from the effects of laudanum prescribed by B. who was culpably negligent in his

Prisoner was indicted for perjury committed upon an inquest held before a deputy coroner, & an objection was taken that there was no "lawful or reasonable cause" for the absence of the coroner under Coroners Act, 1843 (c. 83), s. 1:—*Held*: the question of "lawful or reasonable cause" was one for the judge, not for the jury.—*R. v. JOHNSON* (1873), L. R. 2 C. C. R. 15; 42 L. J. M. C. 41; 27 L. T. 801; 37 J. P. 181; 12 Cox, C. C. 264, C. C. R.

110. Where inquest properly commenced under—Duty to continue—Though coroner afterwards present in court.]—*R. v. PERKIN*, No. 108, *ante*.

111. Privileged from arrest—While discharging duties.]—*Ex p.* MIDDLESEX DEPUTY CORONER, No. 88, *ante*.

Privileges of coroners.]—See Part V., Sect. 2, ante.

Signing of inquisition by deputy coroner.]—See No. 108, ante; Nos. 253, 259, post.

directions; the coroner issued his warrant for B.'s arrest & committal for wilful murder, & B. was arrested. He sued the coroner in trespass without alleging he had acted maliciously:—*Held*: as deft. was acting judicially, trespass would not lie against him.—*GARNER v. COLEMAN* (1868), 19 C. P. 106.—CAN.

Part VII.—Inquests.

SECT. 1.—NATURE AND OBJECTS.

Result of inquiry.]—See No. 1, *ante*.

Object of inquiry.]—See No. 402, *post*.

SECT. 2.—DUTY OF CORONER TO HOLD.

See Coroners Act, 1887 (c. 71), ss. 3 & 4.

112. When duty arises—On notification of death by violence.]—BUCKHURST (LORD), WENTWORTH & BELLASIS CASE (1662), 1 Keb. 278, 280; 83 E. R. 944, 946.

113. ——— Right to prompt notice.]—R. v. CLERK, No. 163, *post*.

114. ——— Cause of death not apparent—Medical certificate refused.]—A coroner is not justified in delaying the inquest upon a dead body in a state of decomposition for so long a period as five days in order that the body may be identified, & buried & registered under the right name, & the mere fact that it has been placed in a mortuary can make no difference.

A coroner received from the proper police authorities a report with a view to an inquest, that a man within his district, aged 61, had been found dead in his bed. It did not appear on the one hand that there had been any previous disease or illness, or on the other hand that there was any suspicion of violence, suicide, or crime. A medical man, moreover, refused to give a certificate of the cause of death, & the friends & relatives of the deceased made no objection to an inquest:—*Held*: the coroner had, in the absence of further information as to the cause of death, no discretion to refuse to hold an inquest upon the ground that it was unnecessary.—*Re HULL* (1882), 9 Q. B. D. 689; *sub nom. Re WEST SURREY CORONER*, 47 J. P. 166, L. C.

115. ——— Credible information of circumstances warranting inquiry.]—A coroner has jurisdiction, & it is his duty, to hold an inquest where he has information, which he honestly believes, that death may be due to some other cause than common illness. His jurisdiction is not affected by such information being eventually proved to be untrue: it is enough that he *bonâ fide* believes & has reasonable ground for believing that the information is such as to call for an inquest.

In cases where a coroner has jurisdiction to hold an inquest, it is a misdemeanour to destroy the dead body in order to prevent the holding of an intended inquest upon it, & to do so amounts to the obstruction of an officer in the discharge of his duty.—*R. v. STEPHENSON* (1884), 13 Q. B. D. 331; 53 L. J. M. C. 176; 52 L. T. 267; 49 J. P. 486; 33 W. R. 44; 15 Cox, C. C. 679, C. C. R.

Annotation:—*Mentd. Bastable v. Little* (1906), 96 L. T. 115.

116. Whether delay in holding inquest justifiable—For identification, burial & registration under right name—Dead body in state of decomposition—Placed in mortuary.]—*Re HULL*, No. 114, *ante*.

Liability for prevention of inquests.]—See Part VII., Sect. 7, *post*.

Liability of coroner for misconduct.]—See Part V., Sect. 3, sub-sect. 1, *ante*.

PART VII. SECT. 2.

1. Whether duty to hold on Sunday—Invalidity.]—*Re COOPER* (1870), 5 P. R. 256.—CAN.

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PART VII. SECT. 3.

g. Can only act within jurisdiction.]—A coroner is a local officer who can act only within his own jurisdiction.—*Re ANDERSON & KINRADE*

(1909), 18 O. L. R. 362; 13 O. W. R. 1082; 14 Can. Crim. Cas. 448.—CAN.

h. Death in city—Within county—Jurisdiction in county coroner.]—*R. v. BERRY* (1881), 9 P. R. 133.

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SECT. 3.—LOCAL JURISDICTION OF CORONERS.

See, now, Coroners Act, 1887 (c. 71), ss. 3 & 7.

117. Former law—Whether determined by place of cause of death.]—L. was arraigned on the verdict of a London coroner's jury that he had on a given date with a shovel struck a man in the county of M. so that he died within a year. The ct. discharged the prisoner on this indictment, the matter being not within the jurisdiction of a London coroner's jury; since it was not a felony without the *percussus*. In such a case the use is to convey the corpse into the county wherein the blow was struck & there to find that that blow was the cause of the death.—*R. v. LONG* (1490), Y. B. 6 Hen. 7, fo. 10, pl. 7.

Annotation:—*Reid. R. v. G. W. Ry.* (1842), 3 Q. B. 333.

118. ———.]—Where a death occurs in the county of W. from an injury received in the county of S., the coroner's inquest is rightly held in the county of W.—*R. v. GRAND JUNCTION RY. Co.* (1839), 11 Ad. & El. 128, n.; 3 Per. & Dav. 57; 113 E. R. 362.

Annotation:—*Reid. R. v. Polwart* (1841), 1 Gal. & Dav. 211.

119. ——— Death from accidental injury—2 & 3 Edw. 6, c. 24.]—(1) The above Act which enacts that where a mortal wound is given feloniously in one county & death ensues from it in another county a coroner shall have jurisdiction to take the inquisition in the county where the death happens, does not apply to deaths arising from accidental injury. (2) *Semble*: nor where death ensues in a borough from a felonious injury inflicted out of the borough. (3) Where death ensues in a borough from an accidental injury inflicted out of the borough, the borough coroner has no jurisdiction to take an inquisition either by common law or statute.—*R. v. GREAT WESTERN RY. Co.* (1842), 3 Q. B. 333; 3 Ry. & Can. Cas. 161; 2 Gal. & Dav. 773; 11 L. J. M. C. 86; 6 J. P. 599; 6 Jur. 823; 114 E. R. 533.

Annotations:—*Folld. R. v. Lancashire JJ.* (1845), 9 J. P. Jo. 324. *Reid. R. v. Hinde, Re Webster, Nowland & Byrne* (1844), 13 L. J. M. C. 150. *Mentd. Newbould v. Coltman* (1851), 16 L. T. O. S. 488.

120. ———.]—The coroner of L. had, prior to Coroners Act, 1843 (c. 12), power to take inquests within the borough of M., when the death took place within the borough, but the cause of death arose without the borough, but in the county.—*R. v. LANCASHIRE JJ.* (1845), 5 L. T. O. S. 92; 9 J. P. Jo. 324.

121. ——— Coroners Act, 1843 (c. 12).]—In a case of manslaughter, the cause of the death & the death occurred in the county of S., & the body after death was removed to the city of L., the coroner of L. held the inquest, & J. E. was tried for the manslaughter on the inquisition. *Semble*: the inquest was properly held under the above Act although that Act is a little obscurely worded.—*R. v. ELLIS* (1846), 2 Car. & Kir. 470.

See, now, Coroners Act, 1887 (c. 71), ss. 3, 7.

122. Death in county prison—Prison within limits of city—Jurisdiction in county coroner—Not in coroner for city.]—Notwithstanding the transfer of prisons to the Secretary of State by Prison Act, 1877 (c. 21), a prison, as to which no rules have been made under s. 30 of that Act, & which at

Sect. 3.—Local jurisdiction of coroners. Sect. 4: Sub-sects. 1, 2 & 3.]

the commencement of Prison Act, 1865 (c. 126), was a prison belonging to a county, is still the county prison, although locally situate within the limits of a city, & therefore the jurisdiction to hold inquests on prisoners dying in such prison is in the coroner for the county & not in the coroner for the city, & such jurisdiction is not affected by Municipal Corporations Act, 1882 (c. 50), s. 171 (1).—*R. v. ROBINSON* (1887), 19 Q. B. D. 322; 57 L. T. 275; 52 J. P. 22; 35 W. R. 843; 16 Cox, C. C. 287, D. C.

123. Death within arms of the sea—Land visible from one side to the other—Jurisdiction in county coroner—Not Admiralty.]—The admirals ought not to meddle with anything done within the realm, but only with things done upon the sea. If a man be killed or slain within the arms of the sea where a man may see from one part of the land to the other, the coroner shall inquire of it, & not the admiral.—*ADMIRALTY CASE* (1609), 13 Co. Rep. 51; 77 E. R. 1461.

Annotation:—Mentd. R. v. Mullman (1766), Park. 241.

124. ————.]—Where a man may see from one side to the other of the water:—*Held*: the admiral would have no jurisdiction, but the coroner of the county shall inquire of felonies committed there.—*LEIGH v. BURLEY* (1609), Owen, 122; 74 E. R. 946.

125. ————.]—It cannot be said to be the sea where one can stand on the land on one side & see the land on the other; & the coroner has jurisdiction over the act done upon the water.—*ANON.* (1315), cited in Moore, K. B. 892; 72 E. R. 978.

126. Death on warship in harbour—Inquest not held by Admiralty coroner—Remedy for obstruction of county coroner.]—Where a captain of a man-of-war, in commission, lying at P., prevented the coroner of P. from holding an inquest on board the ship, upon a person who had hanged himself in a cabin; no inquisition having been held by the Admlty. coroner:—*Held*: an information would be granted.—*R. v. SOLEGUARD* (1738), Andr. 231; 95 E. R. 376; *sub nom. R. v. SOLGARD*, 2 Stra.

127. Body found within concurrent jurisdiction of city & Admiralty—Removed beyond city limits into county—Jurisdiction as between city & county coroners.]—On an inquisition taken under Coroners Act, 1843 (c. 12), if a person is found drowned in a river within the concurrent jurisdiction, exclusive of all others, of the coroner for a city & the Admlty., & the body is taken to a place on shore beyond the city limits:—*Held*: the coroner & jury of the city could not view the body at such place for the purpose of an inquest; & an inquisition taken on such view would be quashed.—*R. v. HINDE* (1844), 5 Q. B. 944; 13 L. J. M. C. 150; 8 Jur. 927; 114 E. R. 1504.

128. ———— Jurisdiction as between county & Admiralty deputy coroner.]—L. was coroner of the city of R., & deputy coroner of the Admlty. for the river M. An inquisition had been held by H., coroner for the county of K., on the body of a child found in the river M., at a part out of the borough, but within the jurisdiction of the Admlty. H. claimed to hold the inquisition as within his jurisdiction as county coroner; while L. contended that as deputy coroner to the Admlty. he had

exclusive jurisdiction to hold the inquest:—*Held*: Coroners Act, 1843 (c. 12), s. 1, did not apply, there being a deputy coroner for the Admlty. in this case, & therefore the jurisdiction was as at common law.—*R. v. HINDE* (1848), 12 L. T. O. S. 193; 12 J. P. Jo. 278; *previous proceedings, sub nom. Ex p. LEWIS*, 11 L. T. O. S. 89.

129. County palatine of Lancaster—Extent of jurisdiction.]—*RUTTER v. CHAPMAN*, No. 18, *ante*.

SECT. 4.—PROCEEDINGS AT INQUEST.

SUB-SECT. 1.—SCOPE OF INQUIRY.

130. Coroner cannot inquire into accessories after the fact.]—A coroner upon an indictment of murder *super visum corporis* finds the murderer & that A. received the murderer after the killing, & that A. *fugam fecit*:—*Held*: this finding as to receipt & flight was void, for the coroner has nothing to do except as to who killed the man & as to accessories before the fact, but not as to accessories after the fact.—*ANON.* (1488), Jenk. 177; 145 E. R. 116.

131. ————.]—A coroner, upon the sight of the body, cannot inquire as to an accessory after the murder.—*ANON.* (1561), Moore, K. B. 29; 72 E. R. 419.

132. Material facts to be ascertained—How, when & where deceased met with his death.]—A. died in prison nearly a month after admission, & the verdict at the inquest was, that A. died from paralysis following upon injury to the skull, such injury having been occasioned before his admission to prison, but there was no finding as to how A. came by this injury. At the time of the inquest there was a suggestion, known to the coroner, that the injury might have been received in chance medley during the assaults, in respect of which the deceased was convicted & sent to prison. It subsequently transpired that A. had brought a cross-summons for assault against K., which was dismissed by the justices, & that certain persons accused K. of inflicting the injury with a door knocker:—*Held*: the facts of the case that A. had died in prison, & that the justices had held an inquiry into the alleged assault by K., did not exonerate the coroner from inquiring "how, when & where the deceased met his death," & there having been a suggestion that the injury was received in an affray, a fresh inquest must be held.—*R. v. GRAHAM* (1905), 93 L. T. 371; 69 J. P. 324; 21 T. L. R. 576; 49 Sol. Jo. 552, D. C.

SUB-SECT. 2.—WHO MAY ATTEND.

133. Counsel & witnesses—For all persons interested.]—*BARCLEES CASE*, No. 9, *ante*.

134. The public.]—*SCOTT v. SHEARMAN*, No. 279, *post*.

135. ————.]—The examination before the coroner is an inquest of office; it is a transaction of notoriety to which every person has a right of access (*KENYON, C.J.*).—*R. v. ERISWELL* (1790), 3 Term Rep. 707; 100 E. R. 815.

Annotations:—Mentd. Smith v. Edge (1796), 6 Term Rep. 562; *R. v. Ferry Frystone* (otherwise *Ferrybridge*) (1801), 2 East, 54; *Johnson v. Lawson* (1874), 2 Bing. 86; *Wright*

PART VII. SECT. 4, SUB-SECT. 1.
k. All circumstances attending death.]
—The duty of the coroner is not confined to ascertaining the cause of death, but he should inquire into all

the circumstances attending it.—*R. v. COURTNEY* (1856), 7 Cox, C. C. 111.—*IR.*

PART VII. SECT. 4, SUB-SECT. 2.
1. Counsel.]—A barrister cannot

insist upon being present at a coroner's inquest, & upon examining witnesses.—*AGNEW v. STEWART* (1862), 21 U. C. R. 396.—*CAN.*

v. Doe d. Tatham (1837), 7 Ad. & El. 313; *Figgs v. Wedderburne* (1841), 11 L. J. Q. B. 45; *R. v. Hill* (1851), 2 Den. 254; *Haines v. Guthrie* (1884), 13 Q. B. D. 818; *Bird v. Keep*, [1918] 2 K. B. 692.

136. Discretion of coroner to exclude persons—Not connected with proceedings—Or whose presence injurious to ends of justice.]—*GARNETT v. FERRAND*, No. 1, *ante*.

SUB-SECT. 3.—THE JURY.

137. Number of jurors to be summoned.]—In the case of a trial by the petit jury, the presentment can be by no more nor less than twelve, & all assenting to the verdict.—*COBAT'S CASE* (1368), 2 Hale, P. O. 161, n.

See, now, Coroners Act, 1887 (c. 71), s. 3 (1).

138. Challenge of jurors—For kindred with parties—Decree of relationship material.]—A challenge of a juror in any trial by inquest or jury for kindred with pltf. or deft. is not a good challenge if the juror challenged is a bastard or his ancestor was a bastard; but it is otherwise if both challenged & challenger descend from the bastard after the marriage of the bastard, then the challenge is good.—*ANON.* (1368), Jenk. 47; 145 E. R. 35.

139. Qualification of jurors—Must be good & lawful men.]—A person arraigned for murder may plead 11 Hen. 4, c. 9, in avoidance of the coroner's inquisition or the indictment; & then plead over to the felony.—*WITHIPOLLE'S CASE* (1628), Cro. Car. 134, 147; 79 E. R. 718, 730.

*Annotations:—*Consd. *R. v. Sheridan* (1811), 31 State Tr. 543; *R. v. Ingham* (1864), 5 B. & S. 257. *Reid. R. v. Mitchel* (1848), 6 State Tr. N. S. 545. *Mentd. Conway & Lynch v. R.* (1845), 1 Cox, C. C. 210; *R. v. Charlesworth* (1861), 1 B. & S. 400.

140. ———.]—*BARKSH' (COUNTY DE) CASE* (1622), Palm. 282; 81 E. R. 1083.

141. ——— Must be inhabitants of district.]—*PERTUS' CASE* (1670), 2 Keb. 705; 84 E. R. 445.

142. ———.]—Where a coroner's inquisition purported to have been taken before A. B., coroner for the borough of W., & a jury of the county palatine of L.:—*Semble*: that it was bad.—*Ex p. BLUNDEL* (1844), 4 L. T. O. S. 138 a; 9 J. P. 154.

143. ———.]—Motion for a rule to show cause why the inquisition taken by B. in a case of death inquired into before him should not be quashed on three grounds, (a) that the coroner did not accompany the jury to view the body, & never saw the body, (b) that the coroner held the inquest in the county of M., though the body was in the county of G., (c) that the jury were not qualified to sit as jurors on an inquest held in the county of G. This objection rested on affidavits setting forth that eight of these persons were not, nor was any one of them, a resident within the county of G., nor qualified to act as a juror therein:—*Held*: rule would be made absolute.—*R. v. BARNETT* (1853), 20 L. T. O. S. 236; 17 J. P. Jo. 38.

144. ———.]—A person not an inhabitant householder, nor occupying any premises within the jurisdiction of the coroner, but being only a shareholder in a limited co. carrying on business within the jurisdiction, is not liable to serve on summons as a jurymen on an inquest held within the jurisdiction, or to be fined for disobedience to a jury summons left at the place of business of the co.—*R. v. WALDO, Ex p. HUDSON* (1903), 67 J. P. 103.

145. Liability for service—Not by holding shares in company carrying on business within jurisdiction—No fine inflexible for non-attendance—Summons left at office of company.]—*R. v. WALDO, Ex p. HUDSON*, No. 144, *ante*.

146. Exemption from service—Exemption conferred by Juries Acts—Extends to coroners' juries—Solicitors' managing clerks.]—The exemption of solrs.' managing clerks from service on juries which is conferred by Juries Act, 1825 (c. 50), s. 52, & Juries Act, 1870 (c. 77), s. 9, & sched., extends to service on coroners' juries.—*Re DUTTON*, [1892] 1 Q. B. 486; *sub nom. R. v. DUTTON*, 61 L. J. Q. B. 190; 66 L. T. 324; 56 J. P. 455; 40 W. R. 270; 8 T. L. R. 214; 36 Sol. Jo. 218.

147. Swearing of jury—By coroner.]—(1) Where a coroner's inquest has been irregularly assembled & afterwards adjourned the ct. will not compel the coroner by *mandamus* to proceed with the inquisition.

(2) The jurisdiction of a coroner is only *super visum corporis*, & the view of the body must be taken by the jury & the coroner at the same time.

(3) An inquest in which the jury are not sworn by the coroner himself & *super visum corporis* is absolutely void.

A coroner's clerk, in the absence of his principal, summoned a jury & charged them *super visum corporis* & examined witnesses, & after sitting several days, the coroner himself proceeded in person with the inquest, & afterwards had a view of the body without the presence of the jury, & then proceeded with the inquest without reswearing the jury or the witnesses previously examined:—*Held*: the proceedings were altogether illegal, & an inquisition found under such circumstances might be quashed.—*R. v. FERRAND* (1819), 3 B. & Ald. 260; 106 E. R. 659; *sub nom. R. v. FARRANT*, 1 Chit. 745.

Annotation:—As to (2) *Consd. R. v. Ingham* (1864), 5 B. & S. 257.

148. ——— Super visum corporis.]—*R. v. FERRAND*, No. 147, *ante*.

149. ———.]—*R. v. INGHAM*, No. 237, *post*.

150. ——— Need not be simultaneous.]—*R. v. INGHAM*, No. 237, *post*.

151. ——— Must be before any evidence given—Whole evidence must be heard viva voce.]—After a jury had viewed the body & heard part of the evidence, another person was sworn, viewed the body & took part in the proceedings on hearing evidence, previously taken, read to him:—*Held*: this was sufficient ground for a *certiorari* to remove the inquisition, & it made no difference that there was a sufficient number of jurymen without the one in question.—*R. v. YORK COUNTY CORONER* (1863), 3 New Rep. 165; 9 L. T. 424; 28 J. P. 9; 9 Cox, C. C. 373.

152. Discharge of jury—On failure to agree.]—*R. v. REINHARTZ*, No. 196, *post*.

See, now, Coroners Act, 1887 (c. 71), s. 3 (3).

Jurors not duly sworn—Whether inquisition quashed.]—*See* Part VII., Sect. 5, sub-sect. 5, A. (b) vi.

Misdirection of—Liability of coroner for.]—*See* No. 96, *ante*.

— As ground for quashing inquisition.]—*See* Part VII., Sect. 5, sub-sect. 5, A. (b) vii.

Verdict of jury.]—*See* Part VII., Sect. 4, sub-sect. 10.

PART VII. SECT. 4, SUB-SECT. 3.

m. Qualification of jurors—Con- stable who summoned jury.]—The con- stable to whom the coroner delivered the summons for the jury is not

precluded from being on the jury.—*R. v. WINEGARNER* (1889), 17 O. R. 208.—*CAN.*

n. Swearing of jury—Refusal to be sworn—Fine imposed.]—Persons

summoned as jurors on an inquest by the coroner, having appeared & declined being sworn unless paid one shilling each, were amerced at the assizes next ensuing the inquest.—*Re BARKER* (1835), 1 Craw. & D. 208.—*IR.*

Sect. 4.—Proceedings at inquest: Sub-sects. 3, 4 & 5, A., B., C. & D.; sub-sects. 6, 7 & 8.]

— Form & requisites of.]—See Part VII., Sect. 5, sub-sect. 1, C.

SUB-SECT. 4.—VIEW OF THE BODY.

See Coroners Act, 1887 (c. 71), s. 4 (1).

153. Essential to jurisdiction of coroner.]—A coroner cannot take any inquest, unless it be *super visum corporis*.—ANON. (1627), Poph. 209; 79 E. R. 1298.

154. —.]—R. v. FERRAND, No. 147, ante.

155. — Felonies.]—R. v. HERFORD, No. 418, post.

156. — When fresh inquiry ordered—After former inquisition quashed.]—R. v. CARTER, No. 332, post.

Whether second inquest held *super visum corporis*.]—See Nos. 332, 341, post.

157. Whether coroner must accompany jury to view body.]—R. v. FOXHALL, No. 308, post.

158. Jury ought to view whole body.]—Filing of an inquisition taken *super visum corporis* five years after the death, when only the head was to be found, stayed. The jury ought to view the whole body.—R. v. BOND (1717), 1 Stra. 22; 93 E. R. 360.

159. Simultaneous view by all jurors—Not essential.]—R. v. INGHAM, No. 237, post.

160. When view cannot be had—Inquiry by justices—Commission of inquiry.]—A coroner's inquest *super visum corporis*, which found that P. felonice seipsum threw into a river, & in rivo præd' seipsum emergit, & sic seipsum occidit & murdravit was quashed, because *emergo* is to arise out of the water, & not to drown himself in the water. Then it was moved what should be done, for the party being dead & buried for two years, there could be no other view in this case:—*Held*: the inquisition might be supplied by commission of inquiry; or the justices of peace, or of assize, might inquire of it without commission, but in either of these cases the inquisition was traversable, though the inquisition of the coroner himself in such case was not traversable, & it was ruled that the death should be presented next assizes at Y., & the inquisition traversed & tried at the same assizes.

Anciently the coroner's inquest was traversable in this case, but never in *fugam fecit* (HALE, C.J.).—R. v. PARKER (1675), 2 Lev. 140; 1 Freem. K. B. 522; 3 Keb. 489; 83 E. R. 488.

Annotation:—*Mentd.* Edwards v. R. (1854), 23 L. T. O. S. 39.

161. —.]—The coroner's inquest having found a man *felo de se*, his exors. moved that they might traverse the inquisition:—*Held*: it would be granted; for the coroner's inquest finding one *felo de se* was traversable, but a *fugam fecit* was not traversable. Afterwards the inquest was quashed for want of the word *murdravit*, and a new inquisition was appointed to be taken before the justices of peace.—R. v. ALDENHAM (ALDERMAN OF ROWEL) (1676), 2 Lev. 152; 83 E. R. 494; *sub nom.* R. & ALDERMAN, 3 Keb. 604.

Annotation:—*Refd.* R. v. Clerk (1702), 7 Mod. Rep. 16.

162. — Inquiry by grand jury.]—ANON., No. 315, post.

163. Disinterment—Time for.]—A coroner's

inquest *super visum corporis* of one who had killed himself is traversable. *Qu.*: if a coroner's inquisition of *felo de se* is good without the word murder.

A coroner's inquisition omitting to state that the deceased died of the wound is void, & where an inquisition being thus quashed, though the body had lain buried seven months, the coroner took it up again & had another inquisition found, which was complained of as irregular, & moved to be set aside:—*Held*: the inquisition would be traversed & tried at the assizes.

The coroner need not go *ex officio* to take the inquest, but ought to be sent for, & that when the body is fresh; & to bury the body before, or without sending for the coroner, is a misdemeanour. The body may be dug up again, but it ought to be upon fresh pursuit, not at such a distance of time; for it is a nuisance, & may infect people. In Barkley's Case there was leave of the ct. for that purpose (HOLT, C.J.).—R. v. CLERK (1702), 1 Salk. 377; 7 Mod. Rep. 16; 91 E. R. 328; *sub nom.* ANON., 7 Mod. Rep. 10.

Annotations:—*Consd.* Re Hull (1882), 9 Q. B. D. 689; R. v. Stephenson (1884), 53 L. J. M. C. 176.

164. — For fresh inquiry—Leave of court.]—Where there was a motion for leave for the coroner to take up the body, & take a new inquisition:—*Held*: it would be granted, & it was said the coroner could not do it without leave of the ct.—R. v. SAUNDERS (1719), 1 Stra. 167; 93 E. R. 452.

165. —.]—The ct. granted a rule for the coroner of W. to take up a body in order for a new inquisition, the former having been quashed.—ANON. (1722), 1 Stra. 533; 93 E. R. 682.

Annotation:—*Mentd.* Re Culley (1833), 2 Nev. & M. K. B. 61.

Whether jurors must be sworn *super visum corporis*.]—See No. 147, ante.

SUB-SECT. 5.—EVIDENCE.

A. In General.

166. Insanity not presumed—From act of suicide.]—The coroner ought not to presume insanity from the act of suicide.

A coroner's inquisition finding that the deceased *seipsum emersit* is not good.

If a coroner's inquest finds the substance, it may be amended for defect of form.—R. v. SALOWAY (1686), 3 Mod. Rep. 100; 87 E. R. 63.

167. Duty of coroner to direct jury—On material facts.]—R. v. BAYLEY (1828), Car. C. L. 3rd ed. 243.

B. Admission and Rejection of.

See, generally, Coroners Act, 1887 (c. 71), s. 4.

168. Duty of coroner to receive evidence—On behalf of accused or suspected person.]—BARCLEES CASE, No. 9, ante.

169. —.]—A coroner, on an inquisition *super visum corporis*, ought to hear evidence on oath, not only on the part of the Crown, but on the part of the person accused.—R. v. SCOREY (1748), 1 Leach, 4th ed. 43.

170. Grounds for rejection—Not incrimination of witness.]—A coroner has no right to refuse to examine persons upon oath at an inquest, merely on the ground that their evidence might criminate themselves.—WAKLEY v. COOKE (1849), 4 Exch.

PART VII. SECT. 4, SUB-SECT. 5.—B.

a. Previous statements of witness.]—At a coroner's inquest evidence is properly receivable under R. S. C. c. 174, s. 234, that a witness at such inquest has made at other times a statement inconsistent with his testi-

mony at the inquest.—R. v. SANDERSON (1888), 15 O. R. 106.—CAN.

p. Whether evidence of juror admissible.]—A jurymen is not precluded from giving evidence.—R. v. WINEGARNER (1889), 17 O. R. 208.—CAN.

q. Effect of improper admission—No ground for certiorari to bring up inquisition.]—The improper reception of evidence is no ground for a *certiorari* to bring up a coroner's inquisition.—R. v. SANDERSON (1888), 15 O. R. 106.—CAN.

511; 19 L. J. Ex. 91; 14 L. T. O. S. 158; 13 J. P. 749; 154 E. R. 1316.

Annotation:—*Reid*. R. v. Ingham (1864), 5 B. & S. 257.

Effect of improper admission—Of unsworn testimony—Whether inquisition quashed.—*See* Sect. 5, sub-sect. 5, A. (b) vi.

Effect of improper rejection—Inquisition quashed & fresh inquiry directed.—*See* Sect. 5, sub-sect. 5, A. (b) ix.

Admission at trial of depositions taken at inquest.—*See* Sect. 5, sub-sect. 6, B., (a), *post*.

C. Depositions.

171. Whether must be read to & signed by witnesses.—It is the duty of a coroner before whom an inquisition *super visum corporis* is taken, to read over to every witness, examined on such inquest, the evidence he has given, & to desire the witness to sign it.—R. v. PLUMMER (1844), 1 Car. & Kir. 600; 8 J. P. 615; 8 Jur. 921, N. P.

172. Whether must be signed by witnesses.—It is not the duty of a coroner to take down the evidence of witnesses in the form of depositions, & to return them, except in cases involving probable charges against third parties.

An inquisition terminated in a verdict of insanity:—*Held*: it was competent to deft.'s counsel, in an issue from Chancery directed to try the soundness of the mind of deceased, to cross-examine a witness for pltf. as to the nature of his evidence before the coroner, & he was not bound to put in the deposition.

In cases of inquests before coroners terminating in a verdict of insanity, as this has done, & where there is no suggestion made of any one having caused & accelerated the death of deceased, it is no part of the duty of the coroner to compel the witnesses before him to sign their evidence or depositions, or indeed to reduce their evidence into writing at all (POLLOCK, C.B.).—WOOD v. HUTTON (1849), 14 L. T. O. S. 257.

173. Duty of coroner to take down evidence in form of—Only arises where charges against third parties probable.—WOOD v. HUTTON, No. 172, *ante*.

See Coroners Act, 1887 (c. 71), s. 4 (2).

Depositions taken before coroner—Whether admissible as evidence at trial—Inquisition charging murder or manslaughter.—*See* Sect. 5, sub-sect. 6, *post*.

D. Publication of.

174. Punishable by criminal information—At common law—Though statement be correct—Absence of malice.—The ct. will grant a criminal information for publishing, in a newspaper, a statement of the evidence given before a coroner's jury, accompanied with comments, although the statement be correct, & the party has no malicious motive in the publication.—R. v. FLEET (1818), 1 B. & Ald. 379; 106 E. R. 140.

Annotations:—*Consd.* R. v. Burdett (1821), 1 State Tr. N. S. 1; *Usall* v. Hales (1878), 3 C. P. D. 319. *Reid*. R. v. Gray (1865), 10 Cox, C. C. 184; *Ex p.* Jolliffe (1873), 42 L. J. Q. B. 121; R. v. Parke, [1903] 2 K. B. 432.

175. Action for libel—Evidence of correctness of report admissible in mitigation of damages—Truth of evidence at inquest cannot be challenged.—In an action for libel, purporting to be a report of a coroner's inquest, evidence of the correctness

of the report is admissible under the general issue, in mitigation of damages; but no evidence of the truth or falsehood of the facts stated at the inquest is admissible on either side.—EAST v. CHAPMAN (1827), 2 C. & P. 570; Mood. & M. 46.

Annotation:—*Mentd.* R. v. Garbett (1847), 1 Den. 236.

176. Injunction to restrain—Publication of evidence with improper comments—Refused.—Pltf. moved for an injunction to restrain the printers & publishers of a paper from publishing, while the inquest on pltf.'s husband was still pending, comments on the relationship between husband & wife, as calculated to frustrate the administration of justice:—*Held*: the motion must be refused as there was no jurisdiction, though such comments were most improper.—WELDON v. MOIGNARD (1889), 87 L. T. Jo. 356.

See, now, Law of Libel Amendment Act, 1888 (c. 64), s. 3.

SUB-SECT. 6.—EXAMINATION AND EXPENSES OF

177. Cross-examination—Whether suspected person has right of.—R. v. WALL (1830), Russell's Crimes & Misdemeanours, 7th ed., Vol. II., p. 2246.

178. Expenses of attendance at inquest—Cannot be allowed by the judge at trial.—The judge on a trial for murder has no power to allow expenses of witnesses on their attendance at the coroner's inquest.—R. v. REES (1832), 5 C. & P. 302, N. P.

Fees of medical witnesses.—*See* Nos. 184, 185, *post*.

SUB-SECT. 7.—ATTENDANCE OF PERSONS IN CUSTODY.

179. Jurisdiction of court to grant writ of habeas corpus—Not exercised for purposes of identification.—Where a prisoner is committed for trial, under a magistrate's warrant, on a charge of murder:—*Qu.*: whether the ct. can grant a writ of *habeas corpus* to bring him before the coroner, sitting upon the body of the deceased; such power will at any rate be exercised only where a case of necessity is shown.

Where the ground suggested was that the party charged was to be identified before the coroner, & it was not shown that such identification could not be effected without producing the party, the writ would be refused.—*Re* COOK (1845), 7 Q. B. 653; 14 L. J. M. C. 188; 9 Jur. 869; 115 E. R. 635; *sub nom.* *Re* COCKE, 9 J. P. 730.

—**Generally.**—*See* CROWN PRACTICE.

SUB-SECT. 8.—MEDICAL WITNESSES AND POST-MORTEM EXAMINATIONS.

See Coroners Act, 1887 (c. 71), ss. 21, 22, 26.

180. When medical evidence requisite.—Death after pugilistic encounter.—It is the duty of a coroner in a case of death occurring in a pugilistic encounter, to examine a surgeon as to the cause of the death.—R. v. QUINCH (1831), 4 C. & P. 571; 2 Man. & Ry. M. C. 519.

181. Post-mortem examination not made—

PART VII. SECT. 4, SUB-SECT. 5.—C.

r. Object of depositions.—The object of taking depositions is not to afford information to the prisoner, but to secure the testimony.—R. v. HAMILTON (1866), 16 C. P. 340.—CAN.

PART VII. SECT. 4, SUB-SECT. 8.

s. Power to summon medical witnesses & to hold post-mortem.—Practising physicians & surgeons, acting under an oral direction from the coroner of the place where a death

occurred & where the body lay, entered the house of deceased, & made a post-mortem examination of the body. A warrant to impanel a jury for the purpose of holding an inquest had issued:—*Held*: the coroner having authority to hold an inquest, & having

Sect. 4.—Proceedings at inquest: Sub-sects. 8, 9 & 10. Sect. 5: Sub-sect. 1, A. & B.]

Whether second inquest ordered—More definite result improbable.]—O. was coroner at an inquest on the body of A., who shot her brother, & then, during a struggle with her husband, who tried to wrest the gun from her, was herself shot by the gun going off. It was put to the jury whether she was shot by accident or by her husband, but the body was not examined as to what direction the bullet took:—*Held*: a second inquest on the ground of insufficiency was not necessary, as, from the incidents of the struggle, the point as to suicide or murder was not likely to be satisfactorily explained.—*R. v. COULSON* (1890), 55 J. P. 262, D. C.

182. — Further evidence forthcoming—Jury dissatisfied with prior verdict.]—The body of a girl was found in a burned and charred condition. No post-mortem examination having taken place, an inquest was held. The evidence of only two witnesses was taken, & there was no medical evidence. The jury returned an open verdict. Subsequently, suspicion of foul play having arisen directed towards certain persons, the jury expressed to the coroner, through their foreman, their dissatisfaction with their verdict. The coroner communicated with the Home Office, & an order was made for the exhumation of the body. An application was made under Coroners Act, 1887 (c. 71), s. 6 (1), by the fiat of the A.-G., for an order quashing the inquisition found by the coroner's jury:—*Held*: the order would be made & a second inquest would be directed to be held.—*R. v. WOOD, Ex p. ATCHERLEY* (1908), 73 J. P. 40, D. C.

183. — Former inquiry insufficient.]—*Ex p. A.-G.* (1913), 29 T. L. R. 199; *sub nom. R. v. LEWES CORONER, Ex p. A.-G.*, 48 L. Jo. 25, D. C.

184. Fees of medical witnesses—For post-mortem ordered by coroner—Not allowed at trial.]—On the trial of an indictment for manslaughter, the surgeon will only be allowed for his attendance on the trial, & not for his fee for opening the body by order of the coroner.—*R. v. TAYLOR* (1832), 5 C. & P. 301; 1 Nev. & M. M. C. 358.

185. — Not recoverable by "medical officer" of "public hospital"—Institution receiving payment from patients—Post-mortem by honorary surgeon.]—A hospital chiefly intended for children, was founded to meet the requirements of a large population in a particular district, & was free for the admission of poor patients from that district, & of patients outside that area upon payment of a small weekly sum. It had the management, apparatus, etc., of an ordinary hospital. Pltf. was honorary medical officer of the hospital, receiving no remuneration for his services, & as such medical officer he attended a patient who died in the hospital, & by order of the coroner he made a post-mortem examination & attended at the

inquest to give evidence. In an action by pltf. to recover his fees from the coroner:—*Held*: the hospital was a "public hospital," & pltf., though he received no remuneration for his services, was "medical officer" within Coroners Act, 1887 (c. 71), s. 22, & was not entitled to recover his fees from the coroner under that sect.—*HORNER v. LEWIS* (1898), 67 L. J. Q. B. 524; 78 L. T. 792; 62 J. P. 345; 14 T. L. R. 354; 42 Sol. Jo. 450, D. C.

Annotations:—Reid. Ormskirk Union v. Chorlton Union, [1903] 2 K. B. 498. *Mentd. Shaw v. Halifax Corpn.* (1916), 79 J. P. 257.

SUB-SECT. 9.—ADJOURNMENTS.

186. Grounds for—Refusal of jury to give verdict.]—A coroner gave evidence to the jury, *super visum corporis*, but they would give up no verdict, wherefore he adjourned them from time to time, & from place to place, but still they would not agree upon a verdict. The coroner went to the assizes at H., & acquainted the judges with it:—*Held*: the jury were to be fined, if they would not give up their verdict.—*R. v. TAVERNER* (1616), 3 Bulst. 171; 81 E. R. 144.

Annotation:—Mentd. R. v. Rice (1803), 3 East, 581.

187. — Jury persisting in insensate verdict—Adjournment to great distances by way of punishment.]—Where a coach & horses beat down a post stuck in the ground, which struck a man so that he died, the coroner's inquest would only find, that the post moved to his death. The coroner having refused to receive the presentment adjourned the inquest to several places, & at last to the assizes; but nothing could prevail upon the jurors to make any other presentment. The coroner moved the ct. to know what he should do:—

Held: (1) the coroner had no remedy, but ought to accept such presentment as the jury made.

(2) The coroner should not have adjourned the jurors to places at great distance, by way of punishment, but to the assizes was well, where the judge will inform them better (*HOLT, C.J.*).—*SMITH'S CASE* (1696), Comb. 386; 90 E. R. 544.

188. — Jury unable to agree—Power to discharge jury.]—*R. v. REINHEATZ*, No. 196, *post*.

See Coroners Act, 1887 (c. 71), s. 4 (5).

189. — To draw up inquisition—Whether justifiable.]—*R. v. MALLEY & CHILCOTE*, No. 330, *post*.

190. Postponement without formal adjournment—Inquest wholly void—Though court adjourned to draw up formal inquisition.]—If a coroner's inquest on a dead body be adjourned, & on the day appointed the ct. be not formally opened & further adjourned, the proceedings drop & the ct. is dissolved, & everything else done in the matter of the inquest is *coram non judice*; & this is the case, even where the adjournment takes place only for the purpose of drawing up a formal inquisition after the jury have, in substance, agreed upon their verdict.—*R. v. DOVER CORONER*

determined that it should be held, had power to summon medical witnesses & to direct them to hold a *post-mortem*.—*DAVIDSON v. GARRETT* (1899), 30 O. R. 653.—*CAN.*

t. Post-mortem examination—Whether lawful before jury impanelled—Whether consent of county attorney requisite.]—*DAVIDSON v. GARRETT* (1899), 30 O. R. 653.—*CAN.*

a. Fees of medical witnesses—Where no post-mortem examination.]—A medical witness attended during two inquests held on fifty-two persons, & occupying several days; no post-mortem examinations were made:—

Held: entitled to a fee for each day's attendance, not for each body, together with his mileage in travelling.—*Re ASKIN & CHARTERIS* (1856), 13 U. C. R. 498.—*CAN.*

b. — Second medical practitioner summoned to perform post-mortem examination.]—Where a coroner under O. S. U. C. c. 125, summoned a second medical practitioner as a witness at an inquest & to perform a post-mortem examination, but such practitioner had not been named in writing nor was his attendance required by a majority of the jurymen, as provided for by s. 9 of above Act, a *mandamus* to the coroner to make his order on the county

treasurer for the fees of such witness, was refused.—*Re HARBOTTLE & WILSON* (1870), 30 U. C. R. 314.—*CAN.*

c. — Not recoverable by "medical officer" of "union workhouse"—Post-mortem on body of person dying in workhouse.]—The medical officer & surgeon of an union workhouse is not entitled to fee or remuneration for instituting a post-mortem examination pursuant to the directions of the coroner, or for attendance at an inquest held on the body of a person dying within the union workhouse, it being a public institution, within 9 & 10 Vict. c. 37, s. 32.—*Re KAYE* (1855), 7 Ir. Jur. 387.—*IR.*

(1864), 5 New Rep. 198; 11 L. T. 488; 29 J. P. 86; 10 Jur. N. S. 1150; 13 W. R. 206; *sub nom.* R. v. PAYN, 34 L. J. Q. B. 59; *subsequent proceedings, sub nom.* R. v. DOVER CORONER (1865), 5 New Rep. 307.

Annotation:—*Mentd.* Re Beverley Election Comrs., *Ex p.* Fitzgerald (1869), 34 J. P. 244.

191. ———.]—An inquest was adjourned to a given day in order that the inquisition & verdict might, in the meantime, be formally prepared for signature. Before the day arrived, the coroner wrote to the jurors not to attend on that day, nor until they received a further notice. Pursuant to a further notice, they met & signed the inquisition & verdict:—*Held*: the inquisition & verdict were void, having been signed *coram non judice*.—R. v. MARGATE CORONER (1865), 11 L. T. 707; 10 Cox, C. C. 64.

192. When inquest assembled irregularly & adjourned—Mandamus to proceed not granted.]—R. v. FERRAND, No. 147, *ante*.

SUB-SECT. 10.—VERDICT OF JURY.

See Coroners Act, 1887 (c. 71), s. 4 (3).

193. Must find person responsible for or cause of death.]—It seems that upon the sight of the corpse the jury are bound to indict some one for the death or state some other cause for it.—ANON. (1505), Keil. 68; 72 E. R. 228.

194. Refusal of jury to return verdict—Jurors liable to fine.]—R. v. TAVERNER, No. 186, *ante*.

195. Perverse presentment—Adjournment to assizes.]—SMITH'S CASE, No. 187, *ante*.

196. Failure to agree—Adjournment to assizes.]—When a coroner's jury cannot agree, the coroner cannot discharge them, but they must be remitted to the judges of the next assizes for the county, & if they still cannot agree, the judge of assizes trying prisoners will discharge them, but the judge appointed to deliver the gaol at the next gaol delivery, & not sitting as judge of assize has no power whatever in the matter.—R. v. REINHEATZ (1866), 4 F. & F. 1094, N. P.

See Coroners Act, 1887 (c. 71), s. 4 (5).

197. Whether well found by requisite number of jurors—Validity presumed.]—In *assumpsit* against exors., the declaration stated that testator made a promissory note & thereby promised to pay Y. on demand £200, & delivered the note to him, whereby testator became liable to pay, but did not pay, & at the time of his death was indebted to Y. for the amount of the sum secured by the note, & interest. It then averred that afterwards & after the death of Y., the money specified in the note remaining wholly due & unsatisfied, before one of the coroners for the county of N., it was found, upon view of the body of Y., then & there lying dead, by the oaths of honest & lawful men, that Y. feloniously did kill & murder himself, as by the inquisition before the coroner remaining of record more fully appeared, by reason of which inquisition, & by force of the felony, Y. forfeited to the King the promissory note & the money due thereon. On motion, to enter a nonsuit:—*Held*: assuming it to be necessary in order to vest the chattels of a *felo de se* in the Crown that the coroner's inquest should be found by twelve men, it must be taken after verdict that the inquest was so found.—

PART VII. SECT. 4, SUB-SECT. 10.

198. Irrelevant reflections on persons added to verdict—Certiorari to quash verdict refused.]—A coroner's jury found disease to be the cause of death, adding that it was accelerated by an

overdose of drugs improperly compounded, prescribed & administered by F., who deserved severe censure for his gross carelessness. On certiorari to quash the verdict:—*Held*: (1) the imputation which it contained did not amount to an indictable offence;

LAMBERT v. TAYLOR (1825), 4 B. & C. 138; 6 Dow. & Ry. K. B. 188; 3 L. J. O. S. K. B. 160; 107 E. R. 1010.

Annotations:—*Mentd.* Doe d. Watt v. Morris (1835), 1 Hodg. 215; Plummer v. Lee (1837), 5 Dowl. 755; Gwynne v. Burnell (1840), 7 Cl. & Fin. 572; R. v. Toole (1867), 16 W. R. 439.

198. Verdict arrived at after threat of committal by coroner—Set aside.]—R. v. MALLEY & CHILCOTE, No. 330, *post*.

199. Irrelevant reflections on persons added to verdict—Certiorari to quash verdict refused—Whether jurors liable for libel.]—Re GRIFFIN (1844), 3 L. T. O. S. 102; 8 J. P. Jo. 310.

200. ——— Coroner exceeding duties in recording additions.]—*Ex p.* BERNCASTLE (1848), 12 J. P. Jo. 405.

Form & requisites.]—See Part VII., Sect. 5, sub-sect. 1, C.

Inquisition quashed when verdict defective.]—See Part VII., Sect. 5, sub-sect. 5, A. (b) iii.

Evidence insufficient to support findings—Whether inquisition quashed.]—See Part VII., Sect. 5, sub-sect. 5 A. (b) viii.

SECT. 5.—THE INQUISITION.

SUB-SECT. 1.—FORM AND REQUISITES.

A. In General.

201. When inquisition must be drawn up—Immediately after verdict.]—R. v. MALLEY & CHILCOTE, No. 330, *post*.

202. Whether necessary to be on parchment—Inquisition on charge of murder.]—A coroner's inquisition on a charge of murder was written on paper:—*Held*: the inquisition must be quashed as it should have been written on parchment.—R. v. BEAVERS (*temp.* 1756–1788), 1 East, P. C. 383.

203. ——— Verdict of *felo de se*.]—Where a coroner's inquisition which recorded a verdict of *felo de se* was written on paper:—*Held*: a verdict of *felo de se* was equivalent to a verdict of murder, & the inquisition ought therefore to have been written on parchment, & it would be quashed on that ground.—R. v. WHALLEY (1849), 7 Dow. & L. 317; 19 L. J. Q. B. 14.

204. ——— Inquisition on paper instead of parchment—Admissibility in evidence.]—A coroner's inquisition on paper instead of parchment but not having been quashed, is admissible in evidence, not as an inquisition proving the statements therein contained, but to show that an inquiry into the subject-matter of it did in fact take place.—R. v. GREGORY (1846), 8 Q. B. 508; 2. New Sess. Cas. 229; 15 L. J. M. C. 38; 6 L. T. O. S. 367; 10 J. P. 262; 10 Jur. 387; 115 E. R. 966; *subsequent proceedings* (1847), 16 L. J. Q. B. 281; *sub nom.* GREGORY v. R. (1848), 15 Q. B. 957, 974, Ex. Ch.

Annotation:—*Consd.* Bird v. Keep, [1918] 2 K. B. 692.

See, now, Coroners Act, 1887 (c. 71), s. 18 (2) (as amended by Indictments Act, 1915 (c. 90), s. 9), & sched. 2; Stat. R. & O., 1916, Nos. 374, 375 ([1916] W. N. Pt. II., p. 296).

B. The Caption.

205. Place where inquest held—Must be stated.]—A coroner's inquisition must state the place, the

(2) there were no the verdict.—R. v. U. C. R. 384.—CAN.

PART VII. SECT. 5, SUB-SECT. 1.—B.

a. All rectly stated—Caption good.]—A caption

Sect. 5.—The inquisition: Sub-sect. 1, B. & C.]

jurors names, & that they were sworn.—PINNER'S CASE (1584), Cro. Eliz. 31; 78 E. R. 296.

206. Place where death happened or body found—Must be stated.]—A coroner's inquest found that the death was occasioned by a coach & horses the property of A. & B. & Co. It omitted to state the place where the death happened, or where the body was found; the names of the jurors were not inserted in the body of the inquisition, & it was subscribed by them with the initials only of their christian names:—*Held*: (1) the finding could not be altered upon affidavits that the property was in A. & B. alone. (2) The omissions were defects in substance & could not be amended, & the inquisition was quashed.—R. v. EVERT (1827), 6 B. & C. 247; 9 Dow. & Ry. K. B. 237; 4 Dow. & Ry. M. C. 313; 5 L. J. O. S. M. C. 132; 108 E. R. 444.

207. Jurisdiction of coroner—Must be shown.]—A. was indicted of murder. Exceptions were taken that the inquisition was taken before the coroner of Lord B. but did not show that he was coroner of the county, or of what liberty; that it was not shown how Lord B. could make a coroner, by patent or prescription; & that it was *quod percussit cum gladio*, & did not say *felonice*:—*Held*: the indictment would be discharged.—DEARING'S CASE (1590), Cro. Eliz. 193; 78 E. R. 449.

208. ——— Liberty of honour.]—An inquest taken by a coroner for a liberty of an honour must show on the face of it that it was taken within such honour.—R. v. POMFRET CORONER (1844), 3 L. T. O. S. 208; 8 J. P. 676; 8 Jur. 910.

Local jurisdiction of coroners.]—See Part VII., Sect. 3, *ante*.

209. Date—Year of King necessary.]—R. v. HETHERSAL, No. 288, *post*.

See, now, Coroners Act, 1887 (c. 71), s. 18 (2), Sched. 2.

210. ——— Must be in words or Roman numerals.] Where the year of our Lord in the caption was in common figures:—*Held*: it ought to have been in words at length or at least in Roman numerals.—R. v. PHILIPS (1720), 1 Stra. 261; 93 E. R. 510.

211. ——— Statement that inquest held on particular day & adjournment on successive days—Inquisition purporting to be signed & sealed on first day—Sufficient.]—(1) An inquisition, to which is affixed a printed stamp opposite the signatures of the coroner & jurymen respectively, & concluding with the usual averment that it was given under their hands & seals, is sufficient.

(2) An inquisition was stated to have been held on a certain day, & by adjournment, on several successive days; but it purported to have been signed & sealed on the day first aforesaid:—*Held*: sufficient.

(3) The principal was described in the inquisition as "T. W., otherwise J. W.," omitting the word "called." *Qu.*: whether the inquisition was bad for uncertainty.—R. v. SKEATS & BILES (1846), 7 L. T. O. S. 433.

212. Name of deceased—Unknown at date of inquest—Subsequently ascertained.]—A coroner's inquisition found that the prisoner killed a man unknown. Eventually, & before the trial of the prisoner at the assize the name of the deceased was ascertained. The grand jury having ignored the bill, the prisoner was arraigned on the inquisition:—*Held*: the date must refer to the present time, & not to that of the inquisition, & the name of the deceased being known, the inquisition was bad.—R. v. GODDARD (1846), 10 J. P. 553.

213. Alternative description of offender—"T. W. otherwise J. W."—Omission of word "called"—Whether void for uncertainty.]—R. v. SKEATS & BILES, No. 211, *ante*.

214. Jurors—Names must be stated.]—PINNER'S CASE, No. 205, *ante*.

215. ——— Initials insufficient.]—R. v. EVERT, No. 206, *ante*.

216. ———.]—If the names of the jurors be not set out in the caption of a coroner's inquisition, & the inquisition be not signed by the jurors, with their names at length, the inquisition is bad. If some of the jurors sign with their marks, such marks ought to be verified by an attestation.—R. v. BOWEN (1820), 3 C. & P. 602.

Annotations:—*Consd.* R. v. Stockdale & Darlington Ry. (1840), 8 Dowl. 516. *Reid.* R. v. Brownlow (1839), 11 Ad. & El. 119.

217. ——— Juries with similar christian & surnames—Need not be distinguished by abode or addition.]—R. v. NICHOLAS, No. 262, *post*.

218. ——— Swearing of—Must be stated.]—PINNER'S CASE, No. 205, *ante*.

219. ——— Affirmation by.]—If a coroner's inquisition states it to have been taken on the oath of eleven men & the affirmation of one, it should state that man to be either a Quaker or a Moravian.—R. v. POLFIELD (1831), 2 Dowl. 469.

See, now, Oaths Act, 1888 (c. 46).

220. ——— Description of—No necessity to state that jurors were of neighbouring townships.]—R. v. CROSSE (1664), 1 Sid. 204; 82 E. R. 1058.

— *Attestation by.*—See Part VII., Sect. 5, sub-sect. 1, D.

C. The Verdict.

See Coroners Act, 1887 (c. 71), s. 4 (3).

221. Whether void for uncertainty or insufficiency—Finding of murder—Felonious act not stated.]—DEARING'S CASE, No. 207, *ante*.

222. ——— Finding of manslaughter—Felonious act not stated.]—R. v. DALZELL (1888), 4 T. L. R. 725.

223. ——— Finding of felo de se—Without word "murder."]—R. v. CLERK, No. 163, *ante*.

224. ——— Principals in second degree charged with manslaughter—"Feloniously" present, there & then aiding, etc.]—R. v. NICHOLAS, No. 262, *post*.

225. ——— Finding that death occasioned by neglect of duty—Duty of particular person not stated.]—ANON. (1648), Aleyn, 51; 82 E. R. 911.

226. ———.]—Upon a motion to quash an information taken by the coroner of S.,

to an inquisition stated that the inquest was held at H., etc., on Jan. 11, in 51 Vict. & that the inquisition was "an inquisition indented, taken for H.M. in view of the body of an infant child of A. then & there lying," & upon the oath of named jurors good & lawful men of the country, & who being then & there duly sworn & charged to inquire for H.M., when, where, how & by what means the child came to her death, did upon their oaths say, etc.:—*Held*: suffi-

cient.—R. v. WINEGARNER (1889), 17 O. R. 208.—CAN.

PART VII. SECT. 5, SUB-SECT. 1.—C.

1. Whether void for uncertainty or insufficiency—Finding of murder or manslaughter uncertain.]—An inquisition intended to charge the crime of murder by A. omitted the word "murder" & stated that he did the act which resulted in death "wilfully & of malice aforethought":—*Held*:

(1) the omission of the word "murder" was a fatal & substantial defect; (2) the statement that the act was wilful & of malice aforethought was inconsistent with a charge of manslaughter.—R. v. BREDEN (1858), 16 U. C. R. 487.—CAN.

g. ——— No criminal offence disclosed with certainty.]—A coroner's inquisition found that G. did feloniously & maliciously kill M., in self-defence without malice or intent to kill:—

upon view of a body drowned in the river P. it appeared the directors of the B. & E. Ry. had built a bridge across the river P., & against these a boat containing two persons was driven, & upset, & the two individuals were drowned. The coroner's jury returned a verdict of manslaughter against the entire body of the railway directors. The inquisition set out that it was the duty of the directors to remove certain posts & obstructions in the river, but that, instead of so doing, they suffered them to continue. The inquisition showed in fact the accident was caused by the wind & tide, which rendered the boat unmanageable, whereby it was driven against the obstruction & upset:—*Held*: the rule must be made absolute.—*R. v. RICKERTS* (1843), 2 L. T. O. S. 128.

227. — — — — —.]—A coroner's inquisition alleged that defts. were trustees of a road under an Act of Parliament, & it was their duty to contract for the reparation of that road: that they feloniously did neglect & omit to do so, whereby the road became very ruinous, & a cart, which deceased was driving along the road, went into a hole, & deceased, being thrown out, sustained injuries of which he died:—*Held*: bad, for not showing any such neglect of duty as could render the trustees guilty of manslaughter.

How can it be said that the omission to raise a rate, or to contract for the reparation of the road, directly causes the death? If so, the surveyors or the inhabitants of the parish would be equally guilty of manslaughter; for the law casts upon them the duty of keeping the roads in repair. To uphold this inquisition would be to extend the criminal law in a most alarming manner, for which there is no principle or precedent (*CAMPBELL, C.J.*).—*R. v. POCOCK* (1851), 17 Q. B. 34; 17 L. T. O. S. 91; 15 J. P. Jo. 307; 5 Cox, C. C. 172; 117 E. R. 1194.

Annotation:—*Refd. R. v. McIntosh* (1858), 32 L. T. O. S. 146.

228. — — — — —.]—A coroner's inquisition stated that the cause of death of the deceased was injury resulting from a fall into a quarry, & by the neglect of three named persons to fence the quarry the deceased fell therein, therefore the three persons did feloniously kill him:—*Held*: as the inquisition qualified the finding of manslaughter by a statement of the ground of the finding, & that statement showed no legal ground for it, the inquisition was bad on the face of it, & might be quashed.—*R. v. OXFORD CIRCUIT (CLERK OF ASSIZE)*, [1897] 1 Q. B. 370; 66 L. J. Q. B. 271; 76 L. T. 260; 61 J. P. 197; 18 Cox, C. C. 518; *sub nom. R. v. OXFORD CIRCUIT (CLERK OF ASSIZE)*, *Ex p. DANIELL v. SAISE, R. v. SAME, Ex p. TREE*, 45 W. R. 543; 13 T. L. R. 161; 41 Sol. Jo. 211.

229. — — — — — **Death of new-born infant by exposure & neglect—Duration of neglect not stated.**]—A coroner's inquisition charged the prisoner with concealing her child, & deserting it:—*Held*: the inquisition was bad, for not alleging for how long a time she deserted it.—*R. v. PINHORN* (1844), 2 L. T. O. S. 519; 8 J. P. 699; 1 Cox, C. C. 70.

230. — — — — — **Non-observance of statutory regulations—Without felonious intent.**]—*R. v. DALZELL* (1888), 4 T. L. R. 725.

Held: no criminal offence on G.'s part was disclosed with certainty.—*R. v. GOLDING* (1876), 39 U. C. R. 259.—*CAN.*

to cause of death.]—An inquisition was quashed because the finding of the jury did not definitely state the cause of death of the person on whom the inquisition was held.—*Re GALVIN'S INQUISITION* (1889), *Crime (Ireland) Act Cases* 318.—*IR.*

k. Rider to verdict—Whether relevant & within province of jury.]—At an inquest held upon the body of a boy who had committed suicide, the verdict, after finding the cause of death, stated that from evidence submitted the jury judged that the boy's master had not done justice to him according to his agreement with the boy's father:—*Held*: the latter part of the verdict was relevant & within the province of the jury.—*Re MILLER*

231. — — — — — **Presumption as to cause of death—"Certe credimus."**]—On motion to quash an inquisition taken before a coroner, where the jury found that a post in the highway was *unica causa movens ad mortem*, because it was *nos certe credimus esse causam mortis*:—*Held*: whereas it ought to be certain therefore it would be quashed.—*ANON.* (1696), 12 Mod. Rep. 112; 88 E. R. 1201.

232. — — — — — **Persons charged with the death—Not clearly designated—Two persons implicated.**]—An inquisition stated that J., with a stick or stave, assaulted L., & B., with a stick, assaulted A., thereby giving him bruises, of which he died:—*Held*: the inquisition was bad; for it was not clear whether the death was caused by the blows given by one of the prisoners or by the other.—*R. v. JONES & BICK* (1843), 1 Car. & Kir. 243; 2 L. T. O. S. 230; 1 Cox, C. C. 11.

Annotation:—*Mentd. R. v. Parker* (1870), 21 L. T. 724.

233. — — — — — **Nor connected with the death.**]—A coroner's jury had found that the death of A. was occasioned by means of a locomotive engine of B. being driven against him & that the same did feloniously cast to the ground the said A.:—*Held*: (1) not a sufficient description of the cause of the death of A. (2) Some of the jurors being marksmen, & their marks not being attested, the inquisition was bad on that ground also.—*R. v. STOCKDALE & DARLINGTON RY. CO.* (1840), 8 Dowl. 516.

234. — — — — — **Corporate description as "directors."**]—*R. v. GREAT WESTERN RY. CO. (DIRECTORS)*, No. 298, *post*.

235. **Date of offence—Clerical error—Word "of" omitted.**]—(1) It is no objection to the laying of the time in a coroner's inquisition, that the offence is stated to have been committed on the "26th day June," omitting the word "of."

(2) Where one of the names signed to the inquisition differed from the name of any of the jurors stated in the caption:—*Held*: that was fatal.—*R. v. HUGGINS* (1828), 3 C. & P. 414.

236. — — — — — **Impossible date.**]—A coroner's inquisition for manslaughter stated the inquest to have been held on Jan. 5, in the 7th Will. 4, in the year 1837, & stated that J. M., on Dec. 28, in the year aforesaid, committed an assault:—*Held*: bad, as the offence was charged to have been committed on an impossible day.—*R. v. MITCHELL* (1837), 7 C. & P. 800.

See, now, Coroners Act, 1887 (c. 71), s. 20.

237. — — — — — **Omission to state not vital—In finding of murder or manslaughter—Coroner's Act, 1843 (c. 83), s. 2.**]—(1) Offences against the Person Act, 1861 (c. 100), s. 6, applies to a coroner's inquisition.

(2) It is not necessary that the jurors on a coroner's inquisition should be sworn *super visum corporis*.

(3) Nor that the jurors should be sworn at the same time.

(4) Nor that the jurors should all view the body at the same time.

(5) It is no ground for a *certiorari* to bring up a coroner's inquisition that evidence not upon oath was received.

(1857), 15 U. C. R. 244.—*CAN.*

1. — — — *Indirectly to accuse certain parties of manslaughter.*]—A jury added that they were of opinion that there was culpable neglect on the part of named persons which resulted in deceased's death:—*Held*: an indirect attempt to accuse such persons of manslaughter & the inquisition was quashed.—*Re GALVIN'S INQUISITION* (1889), *Crime (Ireland) Act Cases*, 318.

Sect. 5.—The inquisition: Sub-sect. 1, C. & D.;

(6) Nor that the direction of the coroner to the jury was improper.

(7) Nor that there was no evidence to warrant the finding of the jury.

A coroner's inquisition found B. guilty of manslaughter, but omitted to state the time at which the offence was committed:—*Held*: the objection was cured by Coroners Act, 1843 (c. 83), s. 2.—*R. v. INGHAM* (1864), 5 B. & S. 257; 4 New Rep. 141; 33 L. J. Q. B. 183; 10 L. T. 450; 28 J. P. 580; 10 Jur. N. S. 968; 12 W. R. 793; 9 Cox, C. C. 508; 122 E. R. 827.

Annotations.—*As to* (5) *Consd. Bird v. Keep*, [1918] 2 K. B. 692. *Refd. R. v. L. G. Board, Ex p. Arlidge*, [1914] 1 K. B. 160. *As to* (6) & (7) *Consd. Bird v. Keep*, [1918] 2 K. B. 692.

See, now, Coroners Act, 1887 (c. 71), s. 20.

238. Manner & cause of death—Whether verdict void for error in description of.]—R. v. PARKER, No. 160, *ante*.

239. ———.]—R. v. SALOWAY, No. 166, *ante*.

240. ——— Whether omission to state vital—Finding of *felo de se*.]—R. v. CLERK, No. 163, *ante*.

241. ——— In finding of murder or manslaughter—Offences against the Person Act, 1861 (c. 100), s. 6.]—R. v. INGHAM, No. 237, *ante*.

242. Time of death or cause of death—Must be stated.]—R. v. BROWNLOW, No. 323, *post*.

243. Rider to verdict—Not part of inquisition—Inadmissible in evidence.]—A rider to the verdict of a coroner's jury is not part of the inquisition & cannot be given in evidence.—R. v. HARDING (1908), 25 T. L. R. 139; 1 Cr. App. Rep. 219, C. C. A.

D. Attestation.

244. General rule—Inquisition must be signed—By coroner & jury.]—R. v. DOVER CORONER, No. 245, *post*.

245. ——— At court duly constituted—Not at meeting after informal adjournment.]—(1) Where a coroner, proceeding by inquisition, adjourns the ct., to a day named, & neglects to hold the ct. on that day, the proceedings cannot afterwards be resumed.

(2) The signature of the coroner & the jury must be attached to the inquisition at a ct. duly constituted.—*R. v. DOVER CORONER* (1864), 5 New Rep. 198; 11 L. T. 488; 29 J. P. 86; 10 Jur. N. S. 1150; 13 W. R. 206; *sub nom. R. v. PAYN*, 34 L. J. Q. B. 59; *subsequent proceedings, sub nom. R. v. DOVER CORONER* (1865), 5 New Rep. 307.

Annotation.—*Mentd. Re Beverley Election Comrs., Ex p. Fitzgerald* (1869), 34 J. P. 244.

246. ———.]—R. v. MARGATE CORONER, No. 191, *ante*.

247. By jurors—Necessity for all jurors to sign.]—R. v. NORFOLK JJ., No. 37, *ante*.

248. ——— Unable to write—Presumption that mark made in presence of other jurors.]—A juror who has put his mark to a coroner's inquisition must be taken *prima facie* to have done so in the presence of the other jurors.—LEWEN'S CASE (1834), 2 Lew. C. C. 125.

249. ——— Mark must be attested.]—R. v. BOWEN, No. 216, *ante*.

250. ———.]—Re APPLETON, No. 322, *post*.

251. ———.]—R. v. STOCKDALE & DARLINGTON RY. CO., No. 233, *ante*.

PART VII. SECT. 5, SUB-SECT. 1.—D.

247 i. By jurors—Necessity for all jurors to sign.]—The inquisition was only signed & agreed to by eight jurors. After the signature & seal

of the foreman, there followed the signatures & seals of only seven other jurors, with the Christian & surnames of most of them at length:—*Held*: it was a fatal objection that twelve jurors did not concur in the finding.

252. ——— Whether effectively signed—Variance between signature & names in caption.]—R. v. HUGGINS, No. 235, *ante*.

253. ———.]—Objection was raised to a prisoner being put on his trial for murder on the coroner's inquisition after the grand jury had thrown out the bill for murder, & another objection to two differences in the names of the jurors as recorded in the body of the inquisition & in their signatures. In the body of the inquisition occurred the name J. T. B., but the only signature which corresponded with that was J. B. There was a further objection as to the signature of the deputy coroner. In the body of the inquisition it said before "S., deputy to O., one of the coroners":—*Held*: (1) the coroner's inquisition could only be disposed of by a verdict of the jury, or by no evidence being offered, in which event the verdict of the jury was also taken. (2) There was no reason to doubt that J. B. who signed the inquisition was the J. T. B. appearing in the body of the inquisition. (3) It sufficiently appeared in the inquisition that the person holding the inquest was the deputy-coroner.—R. v. COLEMAN (1911), 75 J. P. Jo. 448.

254. ——— Abbreviations of christian names—Full names not set out in caption.]—R. v. EVERT, No. 206, *ante*.

BOWEN, No.

216, *ante*.

256. ———.]—Ex p. VICTORIA STEAMSHIP PROPRIETORS (1838), 2 J. P. 726.

257. ——— Full names appearing in caption.]—It is no objection to a coroner's inquisition, that one of the jurors did not sign his christian name at length, if the names be set out at length in the body of the inquisition.—R. v. BENNETT (1833), 6 C. & P. 179.

258. ———.]—R. v. BROWNLOW, No. 323, *post*.

259. By deputy coroner—Whether effectively signed—"A., deputy steward & coroner."]—A coroner's inquisition may be quashed in part for uncertainty, & stand good for the residue.

Where an inquisition was signed "A., deputy steward & coroner":—*Held*: the ct. would refuse to quash it *in toto*, as necessarily void for want of authority.

Semble: there may be a valid custom for a coroner to appoint a deputy; or that such signature may be read as "A., coroner & deputy steward."—*Re BRUNSWICK THEATRE, Ex p. CARRUTHERS* (1828), 2 Man. & Ry. K. B. 397; 1 Man. & Ry. M. C. 435.

Annotations.—*Refd. R. v. Grand Junction Ry.* (1839), 11 Ad. & El. 128, n. *Mentd. R. v. Polwart* (1841), 1 Q. B. 818.

260. ——— "R., coroner, by E., his deputy."]—*R. v. PERKIN*, No. 108, *ante*.

261. ——— "Before S., deputy to O., one of the coroners, etc."]—*R. v. COLEMAN*, No. 253, *ante*.

262. Final averment—" & so the jurors do say "—Need not state date or place.]—(1) If several jurors on a coroner's inquest have the same christian & surname, it is not necessary, in the caption of the inquisition, to distinguish them by abode or addition.

(2) An inquisition for manslaughter, which charges that the principals in the second degree were feloniously present, then & there abetting,

The Christian & surnames of all the jurors need not be appended to the inquisition where they are given in the body of it.—*R. v. GOLDING* (1876), 39 U. C. R. 259.—OAN.

aiding, & assisting, is bad, as the word "feloniously" only extends to the word "present."

(3) The concluding averment "& so the jurors do say" does not require either time or place to be stated in it.—*R. v. NICHOLAS* (1836), 7 C. & P. 538.

Annotation.—As to (2) *Reid. R. v. Phelps, Southan & Smith* (1841), Car. & M. 180.

263. — Under hands & seals — Whether printed stamp sufficient.]—*R. v. SKEATS & BILES*, No. 211, *ante*.

264. Date of — Inquisition held on particular date & by adjournment on successive days — Purporting to be signed & sealed on first day — Sufficient.]—*R. v. SKEATS & BILES*, No. 211, *ante*.

See, generally, Coroners Act, 1887 (c. 71), ss. 18 (1), 20.

SUB-SECT. 2.—CUSTODY AND FILING.

NOTE.—Formerly all inquisitions of *felo de se* were returned into the Crown Office where they were filed subject to an application to the King's Bench by any person aggrieved by an inquisition to prevent it being filed.

See, now, Coroners Act, 1887 (c. 71), s. 5 (3), & Prosecution of Offences Act, 1879 (c. 22), s. 5.

265. Filing refused.]—*BARCLEES CASE*, No. 9, *ante*.

266. Filing stayed.] — (1) In an indictment against a coroner for practice to find a *felo de se non compos* & issue joined upon the fact, & the inquisition being brought into the King's Bench:—*Held*: the ct. would stay the filing thereof till the issue upon the indictment was tried.

(2) There cannot be a *melius inquirendum* where the inquisition was *virtute officii* (*per cur.*).—*R. v. ATKINSON* (1701), 12 Mod. Rep. 496; 88 E. R. 1472.

267. —.]—*R. v. BOND*, No. 158, *ante*.

268. —.]—*R. v. WAKEFIELD*, No. 96, *ante*.

SUB-SECT. 3.—TRAVERSE OF INQUISITION.

269. General rule — Traversable.] — *R. v. PARKER*, No. 160, *ante*.

270. —.] — *GARNETT v. FERRAND*, No. 1, *ante*.

See Nos. 307, 349, *post*.

271. Exception to general rule—No traverse to make finding *felo de se*—Where not so found.]—Upon a motion to set aside an inquisition taken before the coroner, *super visum corporis*, certified into the ct. of K. B., that J. S. killed himself, & was *non compos mentis*:—*Held*: an inquisition before the coroner, taken *super visum corporis*, which finds that the person was *felo de se & non compos mentis*, may be traversed; but the *fugam fecit* in an inquisition before the coroner cannot be traversed.

No traverse can be taken to make a man *felo de se* (*HALE*, C. J.).—*ANON.* (1676), 1 Vent. 239, 278; 86 E. R. 160, 186.

272. Finding of non compos mentis — Traversable.]—*ANON.*, No. 271, *ante*.

273. Finding of *felo de se*—Not traversable.]—*BARCLEES CASE*, No. 9, *ante*.

274. — Traversable.]—*ANON.*, No. 271, *ante*.

275. —.] — Where an inquisition was found of a *felo de se*:—*Held*: it was traversable & was removed into ct. by *certiorari*.—*IRETON'S CASE* (1676), 1 Freem. K. B. 443; 89 E. R. 331.

276. —.] — *R. v. ALDENHAM* (*ALDERMAN OF ROWEL*), No. 161, *ante*.

277. —.]—No *melius inquirendum* will

be granted after an inquisition by the coroner that one was *felo de se*, for the inquisition is traversable, & should be removed into the King's Bench by *certiorari* to bring the matter & truth of the inquisition in judgment.—*RIPLEY'S CASE* (1682), T. Jo. 198; 84 E. R. 1215; *sub nom. R. v. RIPLEY*, 2 Show. 199; Skin. 45.

Annotations.—*Consd. Ex p. Duplessis* (1754), 2 Ves. Sen. 538. *Reid. Ex p. Roberts* (1743), 3 Atk. 5.

278. —.]—*R. v. CLERK*, No. 163, *ante*.

279. Finding of homicide — Traversable.] — If the coroner's inquest finds a man guilty of homicide, & that he fled for it; though he may traverse the crime, & be acquitted of the felony, yet he cannot traverse the flight. The reason given in some of the books why this inquest on flight is not traversable is because of the notoriety of the coroner's inquest *super visum corporis*, at which the inhabitants of all the neighbouring villas are bound to attend (*BLACKSTONE*, J.).—*SCOTT v. SHEARMAN* (1775), 2 Wm. Bl. 977; 96 E. R. 575.

Annotations.—*Mentd. Henshaw v. Pleasance* (1778), 2 Wm. Bl. 1174; *Wood v. Chessal* (1779), 2 Wm. Bl. 1254; *De Mora v. Concha* (1885), 29 Ch. D. 268.

280. How inquisition traversed — Reference to assize or justices.]—*R. v. PARKER*, No. 160, *ante*.

281. —.] — *R. v. ALDENHAM* (*ALDERMAN OF ROWEL*), No. 161, *ante*.

282. —.]—*R. v. CLERK*, No. 163, *ante*.

283. — Removed into court—By *certiorari*.]—*IRETON'S CASE*, No. 275, *ante*.

284. —.] — *RIPLEY'S CASE*, No. 277, *ante*.

SUB-SECT. 4.—AMENDMENT.

See Coroners Act, 1887 (c. 71), s. 20.

285. Jurisdiction to amend — Under Coroners Act, 1887 (c. 71), s. 20—Limited to court having cognizance of case—Jurisdiction of High Court to quash not affected.]—*R. v. GREAT WESTERN RY. CO. (DIRECTORS)*, No. 298, *post*.

286. In what respects inquisition may be amended—In all respects except verdict.]—*R. v. HARRISON* (1664), 1 Sid. 225; 82 E. R. 1072.

Annotation.—*Reid. R. v. Atkinson* (1784), 1 Wms. Saund. 249, n.

287. — Only in matters of form.] — On a motion for a coroner to come into ct. to amend an inquisition:—*Held*: all matters of form in a coroner's inquisition could be amended in the office by the coroner but not matters of substance.—*R. v. GLOVER* (1665), 1 Sid. 259; 82 E. R. 1092.

Annotation.—*Reid. R. v. Atkinson* (1784), 1 Wms. Saund. 249, n.

288. —.]—Defect of form in coroner's inquisition is amendable. The ct. will grant a *melius inquirendum* for misbehaviour in the jury or coroner. Year of the King must be in coroner's inquisition.—*R. v. HETHERSAL* (1685), 3 Mod. Rep. 80; 87 E. R. 52.

Annotation.—*Reid. Re Six-Mile Bridge Inquisition* (1852), 6 Cox, C. C. 122.

289. —.]—*R. v. SALOWAY*, No. 166, *ante*.

290. —.]—A coroner's inquisition can only be amended in matter of form.—*R. v. SHEPHERD* (1710), 11 Mod. Rep. 271; 88 E. R. 1034.

291. — Not in matters of substance—Omission of juror's names—& place where body found.]—*R. v. EVERT*, No. 206, *ante*.

292. — Verdict unintelligible.] — (1) A coroner's inquisition stated, that "a certain locomotive engine, etc. with a certain tender attached thereto, etc. & with three carriages, etc. & which carriages, respectively, were then & there attached & fastened together to the tender, & were then & there propelled by the locomotive engine, & which engine & tender & carriages, were

Sect. 5.—The inquisition: Sub-sects. 4 & 5, A. (a) & (b) i., ii., iii., iv., v., vi. & vii.]

then & there moving & travelling along the railway, towards the town of N." It then proceeded to state in a fresh sentence, that whilst the engine, tender, & carriages, were so moving along the railway, another locomotive engine, tender, & carriages, were travelling in an opposite direction along the same line, that a collision took place which caused the death, & that all the engines, tenders, & carriages were deodand:—*Held*: the inquisition would be quashed on the ground that the paragraph was insensible as it stood, & there were no words the rejection of which would clearly make it intelligible.

(2) It is an example of a case in which there are introduced mere words without anything at all being said by them. It is clearly not a matter for amendment, & we are obliged to say the inquisition should be quashed (*LORD DENMAN, C.J.*).—*R. v. MIDLAND RY. CO.* (1846), 8 Q. B. 587; 6 L. T. O. S. 479; 10 J. P. 200; 2 Cox, C. C. 1; 115 E. R. 997.

293. — Insufficient designation of persons charged—Inquisition *prima facie* defective.]—*R. v. GREAT WESTERN RY. CO. (DIRECTORS)*, No. 298, *post*.

294. — Misdescription of parties.]—Where a record of an inquisition was produced by the officer of the Crown Office, by which it appeared that the death was occasioned by a fall from a cart, which was originally found to be the property of W. & Co., of S., in the county of E., calico printers, it was ordered, on hearing the clerks in ct. on both sides, that this should be altered to S. W., & C. B., of the P., London, linen drapers. A *venire* then issued to bring in defts. to answer for the deodand, & the proceedings were afterwards stayed upon payment of the deodand & costs.—*R. v. WILLIAMS & BELLAMY* (1772), 6 B. & C. 250, n.; 108 E. R. 445.

Annotation:—*Reid. R. v. Evett* (1827), 6 B. & C. 247.

295. —]—*R. v. EVETT*, No. 206, *ante*.

296. How amendment effected—Coroner summoned into court.]—*R. v. GLOVER*, No. 287, *ante*.

297. — By order of court.]—*R. v. WILLIAMS & BELLAMY*, No. 294, *ante*.

See, also, No. 206, *ante*.

See, generally, Coroners Act, 1887 (c. 71), ss. 20, 35.

SUB-SECT. 5.—QUASHING AND NEW INQUEST.

A. Quashing.

(a) In General.

See Coroners Act, 1887 (c. 71), ss. 6, 20, 35.

298. Jurisdiction of High Court to quash—Not affected by Coroners Act, 1887 (c. 71), s. 20.]—On a rule for a *certiorari* to bring up & quash an inquisition charging that the directors of the Great Western Ry. Co. did feloniously kill & slay G., without further designating the directors by name or otherwise or the offence charged:—

Held: the Q. B. Div. had no power to amend the inquisition by sufficiently designating the directors by name because the power to amend was limited by s. 20 of the above Act to the ct. before whom the persons charged should be brought for trial, but the jurisdiction of the Q. B. Div. to quash the inquisition for the irregularity on the face of it was left untouched by that sect.—*R. v. GREAT WESTERN RY. CO. (DIRECTORS)* (1888), 20 Q. B. D. 410; 58 L. T. 765; 52 J. P. 772; 36 W. R. 506; 16 Cox, C. C. 410; *sub nom. R. v. GREAT WESTERN RY. CO. (DIRECTORS)*, *Re GEORGE*, 57 L. J. M. C. 31. *Annotation*:—*Consd. R. v. Oxford Circuit (Clerk of Assize)*, [1897] 1 Q. B. 370.

299. Not on finding of fact.]—The ct. ought not to quash the inquisition of a coroner's jury on their finding as to a matter of fact.—*R. v. GREW* (1755), Say. 249; 96 E. R. 869.

300. In part for uncertainty & residue good.]—*Re BRUNSWICK THEATRE, Ex p. CARRUTHERS*, No. 259, *ante*.

301. When inquest a nullity—*Certiorari* refused.]—A coroner's clerk held an inquisition in Apr. in the name of the coroner, which was in many respects invalid:—*Held*: the ct. would refuse to grant a *certiorari* in Nov., to quash it for irregularity, & a *melius inquirendum* was unnecessary as the proceeding was altogether a nullity.—*Re DAWES* (1838), 8 Ad. & El. 936; 112 E. R. 1095; *sub nom. Ex p. DAWES*, 1 Per. & Dav. 146; 1 Will. Woll. & H. 684.

(b) Grounds for.

i. Defects *prima facie* Apparent.

302. General rule.]—*Re CULLEY*, No. 321, *post*.

303. —.]—*R. v. MCINTOSH*, No. 313, *post*.

304. —.]—*R. v. GREAT WESTERN RY. CO. (DIRECTORS)*, No. 298, *ante*.

ii. Defective Caption.

Jurisdiction of coroner not shown.]—*See* Nos. 207, 208, *ante*.

Omission to state where death occurred or body found.]—*See* No. 206, *ante*.

Jury wrongly selected.]—*See* No. 142, *ante*.

Names of jurors not inserted.]—*See* Nos. 206, 216, *ante*.

Date.]—*See* Nos. 210, 288, *ante*.

iii. Defective Verdict.

305. Verdict inconsistent.]—*Certiorari* granted to remove the inquisition of a coroner's jury for inconsistency, the jury having found thereby that deceased was accidentally killed, & at the same time having declared the engines, the alleged cause of death, to be a deodand.—*Ex p. GRAND JUNCTION RY. CO.* (1838), 2 J. P. 471; *subsequent proceedings*, 3 J. P. 34.

306. Verdict unintelligible—Matter for quashing not amendment.]—*R. v. MIDLAND RY. CO.*, No. 292, *ante*.

Verdict insufficient or uncertain—Finding that death due to neglect of duty—Facts imposing duty or duration of neglect not stated.]—*See* Nos. 226, 227, 228, 229, *ante*.

m. Defective wording.]—An inquisition was on the finding of thirteen jurors "upon their oath":—*Held*: thirteen men could not have been sworn by one oath, but by thirteen oaths, & the inquisition was quashed.—*R. v. SCOREY* (1828), 2 Ir. L. Rec. 1st ser. 99.—*IR.*

PART VII. SECT. 5, SUB-SECT. 5.—A. (b) iii.

306i. Verdict unintelligible—Matter for quashing.]—*R. v. BREDDEN* (1858), 16 U. C. R. 487. *CAN.*

PART VII. SECT. 5, SUB-SECT. 4.

294i. In what respects inquisition may be amended—Misdescription of parties.]—A coroner's inquisition found that the upsetting of a mail-coach belonging to P. " & Co." occasioned a person's death. The ct. refused to allow the inquisition to be amended by substituting for the words " & Co." the names of the other proprietors.—*R. v. PURCELL* (1834), Cooke & Al. 104.—*IR.*

PART VII. SECT. 5, SUB-SECT. 5.—A. (a).

301i. When inquest a nullity—*Certiorari* refused.]—*Re COOPER* (1870), 5 P. R. 256.—*CAN.*

PART VII. SECT. 5, SUB-SECT. 5.—A. (b) i.

302i. General rule.]—A coroner's jury's finding can only be quashed for defects apparent on the face of the inquisition.—*Re CASEY* (1852), 3 L. C. L. R. 22.—*IR.*

As to cause of death.]—See Nos. 160, 163, 166, 233, *ante*.

As to persons causing death.]—See Nos. 232, 298, *ante*.

Irrelevant additions to verdict—*Certiorari* to quash refused.]—See Nos. 199, 200, *ante*.

No finding as to how deceased came by injury—Duty of coroner to inquire into.]—See No. 132, *ante*.

Omission of essential words from verdict.]—See Nos. 207, 222, 262, *ante*.

Clerical error as to date of offence.]—See Nos. 235, 236, *ante*.

Omission to state time of death.]—See No. 323, *post*.

Evidence insufficient to support findings.]—See Sect. 5, sub-sect. 5, A. (b) viii., *post*.

Verdict in law repugnant to facts.]—See No. 321, *post*.

iv. Defective Attestation.

Marks of jurors not attested.]—See Nos. 216, 233, *ante*; No. 322, *post*.

Abbreviations of christian names—Immaterial if set out at length in body of inquest.]—See No. 257, *ante*; No. 323, *post*.

v. Wrongful Practice of Coroner.

307. General rule.]—(1) On sworn proof made of corrupt practice in a coroner on an inquisition *super visum corporis*, the ct. will quash the writ, & grant a *melius inquirendum*.

(2) Let the coroner attend; he must take the evidence in writing, & he should bring his examination into ct. (HOLT, C.J.).—R. v. STANLAKE (1672), 1 Mod. Rep. 82; 2 Keb. 859; 86 E. R. 749; *sub nom.* STANLACK'S CASE, 1 Vent. 181.

Annotation:—Generally, *Mentd.* R. v. Polwart (1841), 10 L. J. M. C. 118.

See No. 334, *post*.

308. Inquest held outside limits of jurisdiction.]—Motion for a *certiorari* to bring into the Bail Ct. an inquisition taken by the coroner of the county of G. in order that it might be quashed. B. was driving a horse & cart along a road in the county of G., when, in consequence of a quantity of building stone being in the road, the cart was upset & the driver killed. The stones had been placed there during some repairs which were being done to a wall belonging to F. The coroner caused a jury to be summoned, & they met at an inn, situate in the county of M., & at that inn the inquest was held. The body at this time was lying in the county of G., where the jury, without the coroner, proceeded to view it. The jury returned to the inn, at which place the witnesses were sworn & examined, & where a verdict of manslaughter was returned against F., whereupon the coroner issued his warrant of apprehension. It was now contended that the inquisition was bad, (a) because the coroner did not accompany the jury to view the body & in fact never saw it, (b) because the inquisition was taken out of the county, & in a locality, therefore, in which the coroner had no jurisdiction:—*Held*: rule would be made absolute upon an affidavit of service which stated that a copy of the rule had been formally served upon the coroner & the party

bound over to prosecute, & that diligent inquiries had been made to find the next of kin of deceased but none could be found.—R. v. FOXHALL (1852), 20 L. T. O. S. 104; 16 J. P. 793; *subsequent proceedings* (1853), 17 J. P. Jo. 67.

Postponement without formal adjournment.]—See Nos. 191, 245, *ante*.

Inducing wrong verdict—By exclusion of some of jurors sworn.]—See No. 336, *post*.

Wilful misdirection of jury.]—See Sub-sect. 5, A. (b) vii., *post*.

Coroner not accompanying jury to view body.]—See Nos. 143, 308, *ante*.

vi. Jurors or Witnesses not duly Sworn.

309. Reception of unsworn testimony.]—R. v. INGHAM, No. 237, *ante*.

310. — Verdict not affected.]—The ct. refused to quash a coroner's inquisition on the ground that evidence was received not upon oath, there being no *mala praxis*, & no mischief having resulted, & the jury having found their verdict upon the other evidence only.—R. v. STAFFORDSHIRE CORONER (1864), 10 L. T. 650.

311. Jurors & witnesses not resworn—Coroner continuing inquest commenced by clerk—Proceedings illegal.]—R. v. FERRAND, No. 147, *ante*.

312. Juror sworn after part of evidence given—Not hearing whole of evidence.]—R. v. YORK COUNTY CORONER, No. 151, *ante*.

Swearing of jury.]—See Nos. 147, 151, 237, *ante*.

Duties of coroner as to admission & rejection of evidence.]—See Sect. 4, sub-sect. 5, B., *ante*.

vii. Misdirection of Jury.

313. General rule.]—The ct. will not quash an inquisition of a coroner on the ground that there is no evidence in the depositions to support the verdict, or on the ground of misconduct in the coroner in persisting in an alleged misdirection to the jury, as where, in the absence of evidence, he told the jury it was the rule that engine drivers were bound to slacken their speed to four miles an hour on coming to a road on a level with the railway.

If the inquisition is bad on the face of it or there has been fraud we might interfere, but we cannot do so on the ground of the coroner's alleged misdirection, which does not appear on the record (LORD CAMPBELL, C.J.).—R. v. MCINTOSH (1858), 32 L. T. O. S. 146; 7 W. R. 52; *sub nom.* *Re R. v. M'INTOSH*, *Ex p. M'INTOSH*, 22 J. P. Jo. 754.

314. —.]—R. v. INGHAM, No. 237, *ante*.

315. Person non compos mentis—Found *felo de se*.]—A motion was made to quash an inquisition taken before the coroners *super visum corporis* of one that killed himself, which found that he was *felo de se*. The ct. were informed that the party was non compos mentis & that there had been an undue practice by the coroner, of both which great proof was made:—*Held*: the inquisition would be quashed.

If the body could not be dug up there might be an indictment exhibited to the grand jury, who might inquire thereupon (*per* CUR.).—ANON. (1680), 1 Vent. 352; 86 E. R. 227.

See, also, No. 266, *ante*.

PART VII. SECT. 5, SUB-SECT. 5.— A. (b) v.

n. Coroner present during jury's deliberations.]—During the holding of a coroner's inquest, during the time when the jury were in deliberation, the coroner & his clerk remained present:

—*Held*: the inquest should be quashed.—R. (MANSFIELD) v. O'BRIEN (1882), 17 I. L. T. 34.—IR.

o. Taking jury's verdict before they returned into open court.]—After the jury retired, the coroner, upon being informed that they had agreed,

but before their verdict was declared, entered the room where they were in consultation, & took their verdict in the room before returning into open ct.:—*Held*: misconduct of the coroner & the inquisition was quashed.—*Re MITCHELSTOWN INQUISITION* (1888), 22 L. R. Ir. 279.—IR.

Sect. 5.—The inquisition: Sub-sect. 5, A. (b) viii., ix.

viii. Evidence Insufficient to support Findings.

316. Mere insufficiency—No ground for interference.]—R. v. MCINTOSH, No. 313, ante.

317. ———.]—R. v. INGHAM, No. 237, ante.

Defects in verdict—Ground for quashing.]—See Sect. 5, sub-sect. 5, A. (b) iii., ante.

ix. Exclusion of Material Evidence.

318. Inconclusive verdict—Further evidence available.]—R. v. CARTER, No. 332, post.

Duties of coroner as to admission & rejection of evidence.]—See Sect. 4, sub-sect. 5, B., ante.

x. Fresh Evidence.

319. Post-mortem examination not made originally—Jury dissatisfied with verdict—By reason of further evidence.]—R. v. WOOD, *Ex p.* ATCHERLEY, No. 182, ante.

320. ——— Subsequent post-mortem revealing further medical results—Verdict of first inquest quashed.]—*Ex p.* A.-G. (1913), 29 T. L. R. 199; *sub nom.* R. v. LEWES CORONER, *Ex p.* A.-G., 48 L. Jo. 25, D. C.

Medical witnesses & post-mortem examinations generally, see Sect. 4, sub-sect. 8, ante.

See, also, No. 332, post.

(c) Practice.

See, generally, CROWN PRACTICE.

321. Removal into court—By certiorari.]—A coroner's inquisition, clearly bad in point of law, was removed into the King's Bench by *certiorari*, & a motion made on behalf of the Crown that it should be quashed, no other party appearing to be interested:—*Held*: it would be quashed at once. *Semble*: the ct. would do so in any case where the conclusion of the jury, in point of law, appeared directly repugnant to the conclusion warranted by the facts stated upon the face of the inquisition.—*Re CULLEY* (1833), 5 B. & Ad. 230; 2 Nev. & M. K. B. 61; 1 Nev. & M. M. C. 134; 110 E. R. 777; *sub nom.* R. v. MIDDLESEX CORONER, 2 L. J. M. C. 102.

322. ——— Affidavit in support of application—Applicant refused copy or inspection of inquisition.]—It is by no means a matter of course to remove a coroner's inquisition into the Bail Ct.; & the affidavits upon which the application is made must in general state specifically the grounds of objection, but where it was sworn that the party applying to remove a coroner's inquisition had been refused a copy, or even an inspection of the inquisition, the ct. dispensed with the strictness of this rule, & granted a *certiorari* upon a general statement of the objections.

When a coroner's inquisition stated the instru-

ment by which the death was caused to be the property of the S. & D. Ry. Co., or their assigns, & omitted a direct allegation of felony against the party charged with manslaughter, & appeared to have been taken before some jurors, who were marksmen, & whose marks had not been attested, the ct. granted a rule *nisi* for a *certiorari* for quashing the inquisition, & expressed at the same time a strong opinion that the inquisition was bad.—*Re APPLETON* (1839), 3 J. P. 738.

323. ——— Upon demurrer—By party contesting validity of inquisition.]—A coroner's inquisition on a dead body found that, on a day & at a place named, the deceased being on board a steam-boat, a boiler burst, instantly killing him, & that the boiler & steam-engine were the cause of death:—*Held*: inquest would be quashed, because no time was sufficiently laid for the time of the explosion, or for that of the death.

***Qu.*: whether, if jurors' names be inserted at full length in the body of an inquisition, it is any objection, that some have signed the inquisition without giving their christian names at full length, but only the initials.**

Though the ct. will sometimes quash an inquisition on motion, for palpable defects, the most convenient course is to put the party contesting it to demur.—R. v. BROWNLOW (1839), 11 Ad. & El. 119; 8 Dowl. 157; 3 Per. & Dav. 52; 19 L. J. M. C. 15; 3 J. P. 722; 4 Jur. 103; 113 E. R. 358.

***Annotations*:—*Reid*. Oldershaw v. King (1857), 3 Jur. N. S. 1152. *Mentd.* *Re Appleton* (1839), 3 J. P. 738; *Grace v. Clinch* (1843), 4 Q. B. 606.**

324. On motion—Where palpable defects.]—*Re CULLEY*, No. 321, ante.

325. ———.]—R. v. BROWNLOW, No. 323, ante.

326. ——— Judgment nisi in default of appearance—Affidavit of service.]—R. v. SPILLER (1845), 9 J. P. Jo. 53.

327. Not on motion—Procedure.]—R. v. NEWCASTLE-UPON-TYNE RY. CO. (1846), 10 J. P. Jo. 280.

328. Service of rule—Sufficiency of—Inquisition affecting one of two persons charged—Service on party not affected not necessary.]—R. v. MALLETT & CHILCOTE, No. 330, post.

329. ——— Service on coroner & party bound over to prosecute—Whereabouts of next of kin of deceased unknown.]—On a motion to make absolute a rule for a *certiorari* to bring up a coroner's inquisition for manslaughter with a view to quash it, it was shown that the rule had been served on the coroner & the party bound over to prosecute, & that diligent inquiries had been made to find the next of kin to deceased, but none could be found:—*Held*: this was a sufficient service of the rule.—R. v. FOXHALL (1852), 20 L. T. O. S. 104; 16 J. P. 793; *subsequent proceedings* (1853), 17 J. P. Jo. 67.

(1852), 3 I. C. L. R. 22.—IR.

***q.* ———.]—Where on a motion to quash the inquisition of a coroner's jury finding certain persons therein named guilty of wilful murder, the ct. has, for the purpose of hearing counsel on behalf of the next-of-kin of deceased, granted a conditional order, the party showing cause is not entitled to begin, but counsel for the Crown will move to make absolute the order as if moving an original motion on notice.—*Re SIX-MILE-BRIDGE INQUISITION* (1852), 6 Cox, C. C. 122.—IR.**

***r.* Appeal from discharge of rule to quash.]—There is no appeal from the decision of the Supreme Ct. discharging a rule to quash a coroner's inquisition.—R. v. HOCKEN (1876), 1 J. R. N. S. 86; 3 C. A. 376, n.—N.Z.**

PART VII. SECT. 5, SUB-SECT. 5.—A. (b) viii.

316 i. Mere insufficiency—No ground for interference.]—Though the ct. may quash an inquisition where a verdict is found against a person confessedly innocent, it will not interfere when there has been any evidence, even though insufficient, to warrant the jury's finding.—*Re SIX-MILE-BRIDGE INQUISITION* (1852), 6 Cox, C. C. 122.—IR.

316 ii. ———.]—An allegation of the insufficiency of the evidence returned by the coroner to support the finding will not support an application to set aside the inquisition.—*Re CASEY* (1852), 3 I. C. L. R. 22.—IR.

316 iii. ———.]—On *certiorari* to quash a coroner's inquisition, the ct.

will not examine the depositions returned by the coroner for the purpose of inquiring whether the evidence was sufficient to support the verdict.—*Re MITCHELSTOWN INQUISITION* (1888), 22 L. R. Ir. 279.—IR.

PART VII. SECT. 5, SUB-SECT. 5.—A. (c).

p.* Who may appear—Counsel for next of kin of deceased—Right to begin.]—It is *ex gratia* allowing counsel to appear on a motion to quash the finding of a coroner's jury on behalf of the relatives of deceased. Even were it not so, the right of the Crown to begin cannot be affected by the form of the proceedings; the case is to be argued as if it were set down on *concilium*; the right to begin, therefore, is undoubtedly in the Crown.—*Re CASEY

330. Writ of *melius inquirendum*—Need not be inserted in rule for quashing.]—It is the duty of the coroner to draw up the inquisition for the signature of the jurors immediately after their verdict is returned, & under ordinary circumstances, he ought not to adjourn to a subsequent day. Where the coroner did so adjourn, & upon the jury refusing to sign what he alleged to be in substance their verdict, threatened to commit them, upon which they signed the inquisition:—*Held*: the inquisition would be set aside.

A rule *nisi* to quash a coroner's inquisition, upon an objection relating only to the finding as to one person named therein, need not be served upon the other persons named.

It is not necessary to insert a clause for a writ of *melius inquirendum* in a rule to quash a coroner's inquisition.—*R. v. MALLETT & CHILCOTE* (1846), 6 L. T. O. S. 369; 1 Cox, C. C. 336.

B. New Inquest.

See Coroners Act, 1887 (c. 71), s. 6 (1).

331. Coroner cannot hold second inquest *mero motu*—After inquest duly held—Unless first inquest quashed—Or writ of *melius inquirendum* awarded.]—A coroner has no power, after holding an inquest *super visum corporis* & recording the verdict, to hold a second like inquest, *mero motu*, on the same body, the first not having been quashed, & no writ of *melius inquirendum* having been awarded.—*R. v. WHITE* (1860), 3 E. & E. 137; 29 L. J. Q. B. 257; 2 L. T. 463; 24 J. P. 820; 6 Jur. N. S. 868; 8 W. R. 580; 121 E. R. 394.

Annotation:—*Consd. R. v. Carter* (1876), 34 L. T. 849.

332. Jurisdiction of High Court to direct—When exercised—Exclusion of material evidence—Open verdict.]—Where a coroner rejects evidence which he ought to have admitted, & the jury return an open verdict, the Q. B. Div. of the High Ct. has jurisdiction to order the coroner to re-open the inquiry before a new jury, & such fresh inquiry must be held *super visum corporis*; but this jurisdiction will not be exercised unless the ct. can see that to do so will further the ends of justice.

An inquest was held on the body of B., & nine witnesses were examined. One of these, C., deposed that B. had told her he had taken poison. The coroner rejected evidence of a doctor who stated that he had attended deceased throughout his illness, & had material evidence to give. The jury returned a verdict that deceased died of poison, but that there was no evidence to show how such poison came into his body. C. afterwards stated that B. had before his death stated the reason for which he had taken poison. The doctor whose evidence had been rejected stated that B. had denied suicide. The solr. to the Treasury, having taken the statements of C., of the doctor, & of about thirty other persons, some of whom had, & some of whom had not, given evidence at the inquest, deposed that such persons could give further material evidence, & that further material evidence would be forthcoming from other persons upon a new inquiry:—*Held*: the inquisition ought to be quashed, & a *melius inquirendum* awarded before the same coroner & another jury.—*R. v. CARTER* (1876), 45 L. J. Q. B. 711; 34 L. T. 849; 40 J. P. 775; 24 W. R. 882; 13 Cox, C. C. 220.

333. Whether court will direct—First indictment insufficient.]—A murderer was indicted before a coroner *super visum corporis*, but the indictment was insufficient. The body after being buried 14 days was dug up & a second indictment was brought against the murderer & certain

accessories before the fact. The first indictment was void in law & it omitted the accessories before the fact:—*Held*: the exhumation & second indictment were good in law.—*ANON.* (1484), Jenk. 162; 145 E. R. 104.

334. — Misbehaviour of coroner.]—Upon an inquisition *super visum corporis* before the coroner, it was found that S. died of a megrim at G. On motion for a *melius inquirendum*, affidavits were produced that S. was riding in the highway, & a coach with six horses rushing by him, cast him from his horse & killed him; & that divers offered to prove this before the coroner, & he would not hear them:—*Held*: if the misdemeanour of the coroner were somewhat more clearly made out, the ct. would set the inquisition aside & cause a new one to be made.

If a coroner omits to inquire, this ct., as supreme coroner throughout England, may inquire; or may make comrs. to inquire; or comrs. of oyer & terminer may inquire; but then it is not *super visum corporis*, & therefore may be traversed (*per CUR.*).

Where a coroner hath inquired, no *melius inquirendum* can go, as upon an office found after the death of the King's tenant. For unless they could take some exception to the inquisition to quash it, the coroner could not inquire again (*HALE, C.J.*).—*R. v. STANLAKE* (1672), 1 Mod. Rep. 82; 2 Keb. 859; 86 E. R. 749; *sub nom.* STANLACK'S CASE, 1 Vent. 181.

Annotation:—*Mentd. R. v. Polwart* (1841), 10 L. J. M. C. 118.

See No. 307, *ante*.

335. — — Or jury.]—*R. v. HETHERSAL*, No. 288, *ante*.

336. — — Exclusion of jurors to influence verdict.]—If a coroner in taking an inquisition *super visum corporis*, exclude some of the jurors sworn in order to find deceased *non compos* the ct. will grant an information against him, & order a new inquiry.—*R. v. STUKELY* (1701), 12 Mod. Rep. 493; Holt, K. B. 167; 88 E. R. 1469.

337. — Finding of *felo de se*—Inquisition traversable.]—*RIPLEY'S CASE*, No. 277, *ante*.

See, also, Nos. 182, 334, *ante*.

338. — When inquest held *virtute officii*.]—*R. v. ATKINSON*, No. 266, *ante*.

339. — When former proceedings altogether void.]—*Re DAWES*, No. 301, *ante*.

— On quashing of inquisition—Misbehaviour of coroner.]—See Sect. 5, sub-sect. 5, A. (b) v., *ante*.

Rejection of material evidence.]—See Sect. 5, sub-sect. 5, A. (b) ix., *ante*.

— Failure of coroner to inquire into how deceased met with injury.]—See No. 132, *ante*.

— Fresh evidence when no post-mortem made originally.]—See Sect. 5, sub-sect. 5, A. (b) x., *ante*.

Disinterment with leave of court.]—See Nos. 164, 165, *ante*.

340. How court directs—Writ of *melius inquirendum*.]—*R. v. CARTER*, No. 332, *ante*.

See, generally, CROWN PRACTICE.

341. Before whom held—Sheriff or commissioners—First inquisition quashed on misbehaviour of coroner.]—If a coroner's inquest be quashed the coroner must take a new inquest *super visum corporis*; but if a *melius inquirendum* be granted on a *male se gessit* of the coroner the new inquiry must be before the sheriff or comrs. not *super visum corporis*, but upon affidavits, for none but the coroner can inquire *super visum corporis*, & he is not to be trusted again.—*R. v. BUNNEY*

Sect. 5.—The inquisition: Sub-sect. 5, B.; sub-sect. 6, A. & B. (a) i. & ii.]

(1689), 1 Salk. 190; 3 Mod. Rep. 238; 91 E. R. 172; *sub nom.* R. v. BONNY, Carth. 72.

Annotation:—Reid. R. v. Carter (1876), 34 L. T. 849.

342. — Same coroner & different jury—First inquisition quashed on exclusion of material evidence.]—R. v. CARTER, No. 332, *ante*.

343. Whether held super visum corporis — New inquiry by coroner.]—R. v. BUNNEY, No. 341, *ante*.

**344. — New inquiry by sheriff or commis-
ante.**

View of body by coroner & jurors.]—See Sect. 4, sub-sect. 4, *ante*.

SUB-SECT. 6.—PROCEEDINGS UPON INQUISITION CHARGING MURDER OR MANSLAUGHTER.

A. Duty of Coroner.

See Coroners Act, 1887 (c. 71), ss. 5, 9.

345. To bind over witnesses — Who prove material facts against accused.]—In a case of manslaughter it is the duty of the coroner to bind over all those witnesses who prove any material fact against the party accused, & not those who are called for the purpose of exculpating him.—R. v. TAYLOR & WEST (1840), 9 C. & P. 672, N. P.

As to depositions.]—See Sect. 4, sub-sect. 5, C., *ante*.

B. Depositions taken before Coroner.

(a) Whether Admissible as Evidence at Trial.

i. Depositions of Witnesses.

See Coroners Act, 1887 (c. 71), ss. 4 (2), 5 (3).

See, generally, CRIMINAL LAW & PROCEDURE; EVIDENCE.

346. Application of Indictable Offences Act, 1848 (c. 42).]—A deposition before the coroner by a deceased witness is of doubtful admissibility under 2 & 3, Phil. & Mar. c. 10.

Semble: a deposition before a coroner by a deceased witness is not admissible under the above Act.—R. v. CLEARY (1862), 2 F. & F. 850.

Annotation:—Reid. R. v. Morgan (1875), 14 Cox, C. C. 337.

347. —.]—Coroner's depositions stand on the same footing as depositions taken before magistrates, & the provisions of the above Act apply.

A police sergeant proved that a witness was apparently very close indeed to her confinement:—

Held: this was not sufficient evidence of her inability to attend the ct. so as to allow her depositions taken before the coroner to be read.—R. v. BUTCHER (1900), 64 J. P. 808.

348. In absence of witness—General rule.]—All the judges of England met to consider such things as might in point of law fall out in the trial of the Lord Morly, & resolved: (1) in case any witnesses which were examined before the coroner were dead or unable to travel, & oath made thereof, that then the examinations of such witnesses so dead or unable to travel might be read, the coroner first making oath that such examinations were the same which he took upon oath without any addition or alteration whatsoever; (2) in case oath should be made that any witness who had been examined by the coroner & was then absent was detained by the means or procurement of the prisoner, & the opinion of the judges was asked whether such

examination might be read, if their Lordships were satisfied by the evidence they had heard that the witness was detained by means or procurement of the prisoner then the examination might be read, but whether he was detained by the means or procurement of the prisoner was matter of fact, of which their lordships were judges; (3) if a witness who was examined by the coroner was absent, & oath was made that they had used all their endeavours to find him & could not find him, that was not sufficient to authorise the reading of such examination.—MORLY'S (LORD) CASE (1666),

Annotations:—As to (2) Reid. R. v. Scaife & Rooke (1851), 2 Den. 281. *Generally, Mentd. R. v. Mawgridge* (1706), Kel. 119; R. v. Oneby (1726), 17 State Tr. 29.

349. — Witness beyond the seas.]—In a trial for murder one of the witnesses, who was examined before the coroner, did not appear, & it was proved that he had gone beyond the seas, apparently by the procurement of the offenders. It was desired to read his deposition:—*Held:* it might be read, for his being beyond the seas was all one as if he had been dead & the authority of a coroner *super visum corporis* was very great & in some cases was a record that could not be traversed.—THATCHER v. WALLER (1676), T. Jo. 53; 84 E. R. 1143.

350. — Witness enticed away by prisoner's friends.]—At a trial for murder it appeared that one of the witnesses for the prosecution, who had been examined before the coroner at the inquest could not be found:—*Held:* on proof being given that he had been enticed away by friends of the prisoner, the affidavit of his examination before the coroner might be read in evidence.—R. v. HARRISON (1692), 12 State Tr. 833.

Annotations:—Reid. R. v. Scaife & Rooke (1851), 2 Den. 281. *Mentd. R. v. Ball & Ball* (1910), 5 Cr. App. Rep. 238.

351. — Witness dead.]—Depositions taken before the coroner on an inquisition of murder cannot be read in evidence on the trial of the indictment, though the deponents are dead, if they are not signed by the coroner, or if signed his handwriting cannot be proved.—R. v. ENGLAND (1796), 2 Leach, 767.

352. —.]—R. v. CLEARY, No. 346, *ante*.

353. — Opportunity for cross-examination at inquest—Death previous to magisterial proceedings.]—A coroner's jury returned a verdict of wilful murder against prisoner, & a witness called before the coroner committed suicide immediately after the inquest, & before the preliminary inquiry before the magistrates, when accused was committed for trial on the charge of wilful murder. Prisoner had been present at the coroner's inquest, & had been represented there by a solicitor, who had cross-examined the witness in question. The deposition of this witness as taken by the coroner contained statements made in the prisoner's absence to the witness:—*Held:* on proof of the death of the witness & that the deposition had been duly signed both by the coroner & the witness, & that prisoner was present & had full opportunity of cross-examining the witness by her solicitor, the deposition was admissible at the subsequent trial of the prisoner at assizes, but such portions as were obviously hearsay or on other grounds inadmissible as legal evidence should not be read to the jury.—R. v. COWLE (1907), 71 J. P. 152.

Annotation:—Reid. R. v. Black (1909), 74 J. P. 71.

354. — Death before evidence

PART VII. SECT. 5, SUB-SECT. 6.—A.

s. To prove depositions.]—At a trial for murder the prisoner's counsel proposed to prove by witness his own

deposition at the inquest, & to show by other witnesses that it contained a true statement of his evidence, although the witness alleged it to be

incorrect:—*Held:* the coroner must be called to prove the depositions.—R. v. HAMILTON (1866), 16 C. P. 340.—CAN.

completed at magisterial inquiry.]—A coroner's jury returned a verdict of manslaughter against prisoner. A witness called before the coroner was subsequently called at the preliminary inquiry before the magistrate, but died before his evidence there was completed. Prisoner had been present at the coroner's inquest, but had not been legally represented & had not cross-examined the witness in question, although invited to do so by the coroner:—*Held*: on proof of the death of the witness, & that the deposition had been duly signed both by the coroner & by the witness, & that prisoner was present & had full opportunity of cross-examining the witness, the deposition was admissible at the subsequent trial of prisoner at the Central Criminal Ct., but such portions thereof as were hearsay or otherwise inadmissible as legal evidence should not be read to the jury.—*R. v. BLACK* (1909), 74 J. P. 71.

355. — Too ill to attend.]—A deposition taken before the coroner at the inquest is admissible in evidence where the witness is so ill as to be unable to attend at the trial in the same manner as a deposition taken before the magistrate.—*R. v. HAZELL* (1861), 8 Cox, C. C. 443.

356. — —.]—Depositions taken before the coroner of a witness too ill to attend may be sent before the grand jury.—*R. v. MOONEY* (1863), 9 Cox, C. C. 411.

357. — Attendance involving danger to life—Advanced age.]—A medical man testified that the attendance of a witness aged 87, who had given evidence before a coroner, would be dangerous to her life, & that he would not answer for the consequences if she was required to appear in ct., but that she was suffering from no illness beyond great nervousness which might bring on a fit of apoplexy if she had publicly to give her evidence:—*Held*: her deposition taken before the coroner was not admissible.—*R. v. THOMPSON* (1876), 13 Cox, C. C. 181.

358. — Witness unable to travel—Pregnancy.]—*R. v. BUTCHER*, No. 347, *ante*.

359. Deposition not taken in presence of prisoner.]—A deposition of a witness was taken before a coroner but not in the presence of prisoner. It was proposed to put the deposition in evidence at assizes:—*Held*: it was not admissible.—*R. v. RIGG* (1866), 4 F. & F. 1085.

360. Must be signed—By coroner.]—*R. v. ENGLAND*, No. 351, *ante*.

361. — & witnesses.]—*R. v. COWLE*, No. 353, *ante*.

ii. Depositions of Party Charged.

See Coroners Act, 1887 (c. 71), ss. 4 (2), 5 (3).

See, generally, CRIMINAL LAW & PROCEDURE ; EVIDENCE.

362. Statement purporting to be on oath—

PART VII. SECT. 5, SUB-SECT. 6.— B. (a) ii.

t. General rule.]—At the trial of the prisoner for the murder of M., his sworn statement made at the coroner's inquest on M.'s body was received in evidence against him. He was in custody at the time of such inquest, on suspicion of the murder; &, being in such custody, he voluntarily gave evidence. Before he was sworn, the coroner told him that if he wished to make any statement, in order to clear himself with the public, he might do so, but that he was not bound to make any, & that he would not be examined unless he himself desired it, &, moreover, that any such evidence would or might be for or against him. After this he was sworn, & made the statements in question—in other words,

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was examined on oath, some of his evidence being in answer to questions put to him by the jury:—*Held*: the whole of the examination was rightly received.—*R. v. MEECHAN* (1869), 8 N. S. W. S. C. R. 289.—AUS.

a. —.]—The prisoner was arrested the day before the inquest on a charge of murder. At the inquest, after being duly cautioned he gave his evidence voluntarily & without objection. His deposition simply amounted to a statement that he had never seen the deceased before he saw him dead. At the trial of the prisoner for murder, his deposition was put in evidence against him:—*Held*: the deposition was rightly received in evidence.—*R. v. MCCOY* (1884), 5 N. S. W. L. R. 429.—AUS.

b. —.]—The prisoner was in-

Parol evidence to prove oath not administered.]—A., who was charged with murder, made a statement before the coroner at the inquest which was taken down, & which purported on the face of it to have been made on oath:—*Held*: this statement was not receivable on the trial of A. for murder, & parol evidence was not admissible to show that no oath had in fact been administered to prisoner.—*R. v. WHEELEY* (1838), 8 C. & P. 250.

Annotation:—*Reid. R. v. Gillis* (1866), 14 W. R. 845.

363. Statement on oath—Admitted if essential.]—On a trial for murder the deposition on oath of the prisoner taken before the coroner on the inquest held on the body of deceased is not receivable in evidence.

If the evidence be necessary & it is doubtful whether it be receivable in a criminal case the judge will receive the evidence, because that is the only way to have the point considered by the judges.—*R. v. OWEN, ELLIS & THOMAS* (1840), 9 C. & P. 238.

Annotations:—*Reid. R. v. Gillis* (1866), 14 W. R. 845; *R. v. Adams* (1886), 50 J. P. 136.

364. — At inquest on different person.]—Prisoner was tried for the murder of her child, who died on Sept. 15. On Oct. 14 following another child of prisoner died under suspicious circumstances, & prisoner was examined on oath at the coroner's inquest held on the second child & signed her deposition, in which she made a statement as to the death of the first child. *Semble*: this deposition was receivable in evidence on the trial of prisoner for the murder of the first child.—*R. v. SANDYS* (1841), Car. & M. 345; 2 Mood. C. C. 227, C. C. R.

365. —.]—*R. v. CHESHAM* (1861), Russell's Crimes & Misdemeanours, 7th ed., Vol. II. 2196.

Annotation:—*Consd. R. v. Coote* (1873), L. R. 4 P. C. 599.

366. —.]—Upon a trial for manslaughter prisoner's deposition on oath, taken by the coroner upon the inquest, is admissible in evidence against him.—*R. v. BATEMAN* (1866), 4 F. & F. 1068.

Annotation:—*Reid. R. v. Marriott* (1911), 75 J. P. 288.

367. Taken after caution by coroner.]—The depositions of prisoner at the coroner's inquest, after a caution from the coroner, may be read.—*R. v. COLMER* (1864), 9 Cox, C. C. 506.

Annotation:—*Reid. R. v. Marriott* (1911), 75 J. P. 288.

368. Mode of proof—Coroner's handwriting—Signature of prisoner.]—At an inquest held upon the body of E. prisoner M. gave evidence upon oath. At the trial of prisoner for the manslaughter of E., the prosecution tendered the deposition of prisoner taken before the coroner as evidence against him:—*Held*: the deposition of prisoner was admissible in evidence against him under Coroners Act, 1887 (c. 71), & could be proved by a person who was present at the inquest when

dicted for murder. His depositions taken at the coroner's inquiry were admitted in evidence:—*Held*: rightly admitted.—*R. v. PRIDMORE* (1899), 2 W. A. L. R. 4.—AUS.

c. —.]—The depositions of a witness before a coroner's ct. cannot be received in evidence against him if subsequently tried for murder, notwithstanding his not claiming privilege at the inquest.—*R. v. HENDERSHOTT* (1895), 20 O. R. 678; *Overd. R. v. WILLIAMS, infra*.—CAN.

d. —.]—The depositions of a witness taken at a coroner's inquest without objection by him that his answers may tend to criminate him, & who is subsequently charged with an offence, are receivable in evidence against him at the trial.—*R. v. WILLIAMS* (1897), 28 O. R. 583.—CAN.

Sect. 5.—The inquisition: Sub-sect. 6, B. (a) ii., (b), C., D., E. & F.; sub-sect. 7.]

prisoner gave evidence on oath & could swear that the deposition was in the coroner's handwriting & was read over to prisoner & thereupon signed by him.—*R. v. MARRIOTT* (1911), 75 J. P. 288; 22 Cox, C. C. 211.

Statements by party charged.]—See Sect. 5, sub-sect. 6, C., post.

(b) Copies of Depositions.

See, now, Coroners Act, 1887 (c. 71), s. 18 (5).

369. For use of prisoner—Jurisdiction of court to order copies.]—A coroner's jury on the investigation of a case of homicide returned a verdict of wilful murder against some person or persons unknown. The coroner returned the depositions he had taken to the Central Criminal Ct. Counsel for a prisoner indicted for the murder of the same person applied for a copy of such depositions:—*Held*: although the coroner could not in such a case have been compelled to return them under Criminal Law Act, 1826 (c. 64), s. 4, yet, he having done so, the judges had power by their general authority as a ct. of justice to order a copy to be given if they thought it material to the interests of justice.—*Ex p. GREENACRE* (1837), 8 C. & P. 32.

370. Charges for—Trials for Felony Act, 1836 (c. 114), s. 3.]—Depositions taken before a coroner are within s. 3 of the above Act, which requires copies of depositions to be furnished, on application, to prisoners at the rate of charge therein provided.

Prisoner was charged with manslaughter on a coroner's inquisition & an application had been made under the above Act for copies of the depositions, which the coroner refused to furnish on the terms stated in the Act, demanding a much larger sum.

It is a pity that the sum demanded was not paid under protest, & the coroner indicted for extortion in his office, or an action brought against him (*PLATT, B.*).—*R. v. WHITE* (1852), 5 Cox, C. C. 562.

C. Statements at Inquest by Party Charged.

See, generally, CRIMINAL LAW & PROCEDURE; EVIDENCE.

371. Whether admissible in evidence at trial—Statement admitting portion of evidence of witness—Admissible with deposition of witness.]—B., a witness on a coroner's inquest, made a deposition, in which she stated a conversation with prisoner on their seeing a placard relating to the murder of deceased, & also stated that she called prisoner a murderer, & that she slept with prisoner, & that he beat her & gave her two black eyes. Prisoner made a statement before the coroner, which was taken down in the following form: "Prisoner admits sleeping with witness, blacking her eyes, seeing the placard, & his beating her, & her calling him murderer":—*Semhle*: the statement of prisoner, & also the deposition of B., were receivable in evidence against the prisoner on his trial for the murder.—*R. v. ROCHE & BLACKNEY* (1841), Car. & M. 341.

372. Coroner giving evidence as to—May refer to notes made during inquest—In presence of party charged.]—Written notes made by the coroner of a statement made in his presence during an inquest by prisoner may be used by him at the trial in order to refresh his memory as to what that state-

ment was.—*R. v. WIGGINS* (1867), 31 J. P. 728; 10 Cox, C. C. 562.

D. Bail.

See Coroners Act, 1887 (c. 71), s. 5 (2).

See, generally, CROWN PRACTICE.

373. Manslaughter—Granted by court.]—*R. v. DALTON* (1732), 2 Stra. 911; 93 E. R. 936.

Annotation:—Reid. R. v. Magrath (1745), 2 Stra. 1242.

374. ———.]—*R. v. MAGRATH* (1745), 2 Stra. 1242; 93 E. R. 1157.

375. ———.]—*R. v. JONES* (1817), 1 B. & Ald. 209; 106 E. R. 77.

376. ———.]—*R. v. ROBERTS* (1846), 10 J. P. Jo. 294.

377. ———.]—*R. v. MOTTRAM* (1846), 10 J. P. Jo. 787.

378. ———.]—*R. v. BESWICK* (1846), 10 J. P. Jo. 358.

379. ———.]—*R. v. M'CANNAN* (1847), 11 J. P. Jo. 439.

380. ———.]—*R. v. CORNER* (1847), 11 J. P. Jo. 440.

381. ———.]—*R. v. CARTER* (1733), Kel. W. 159; 25 E. R. 545; *sub nom. ANON.*, 2 Barn. K. B. 340.

382. ———.]—*Re STOKES* (1854), 24 L. T. O. S. 60; *sub nom. Ex p. STOKES*, 18 J. P. Jo. 709.

383. Murder—Refused by court.]—*Ex p. BARONNET* (1852), 22 L. J. M. C. 25; *sub nom. Re BARONNET & ALLAIN, Re BARTHELEMY & MORNEY*, 17 Jur. 184; 1 W. R. 6; *sub nom. R. v. BARRONET*, 20 L. T. O. S. 50.

384. ——— Rule granted.]—*R. v. JONES & HODGES* (1854), 18 J. P. Jo. 311.

385. Procedure by certiorari.]—*Certiorari* lies to remove depositions taken by the coroner in a case of manslaughter, & to admit deft. to bail.—*R. v. DAW* (1851), 15 J. P. 275.

386. ——— Documents required by court—Copies of depositions—Verified by affidavit.]—The ct. will not grant a rule *nisi* to remove the depositions taken before a coroner, & to bail a party charged upon the coroner's inquest with manslaughter without an affidavit of what took place before the coroner.—*R. v. MILLS* (1834), 4 Nev. & M. K. B. 6; 2 Nev. & M. M. C. 416.

387. ———.]—In moving for a *certiorari* to bring up depositions taken before a coroner or magistrates with a view to admitting a party committed upon them for trial on a charge of murder or manslaughter to bail, it is the proper course to produce copies of such depositions verified by affidavit, & on them to ground the application.

The parties are in the situation of persons against whom a grand jury have found a verdict of wilful murder (*LORD CAMPBELL, C.J.*).—*R. v. BARTHELEMY & MORNEY* (1852), Dears. C. C. 60; 20 L. T. O. S. 125; *sub nom. Re BARTHELEMY & MORNEY*, 1 W. R. 53; *sub nom. Ex p. BARONNET*, 22 L. J. M. C. 25, 28; *sub nom. Re BARONNET & ALLAIN, Re BARTHELEMY & MORNEY*, 17 Jur. 184, 185.

388. ——— Not inquisition.]—*Re WEBBE & KEMP* (1846), 10 J. P. Jo. 724.

389. ——— Service of rule nisi—On coroner—& next of kin.]—Service of a rule *nisi* for bailing deft. on a charge of manslaughter may be effected on the coroner only when no next of kin to deceased, a married woman or husband, can be discovered.—*R. v. WILLIAMS* (1840), 8 Dowl. 301; 4 Jur. 654.

PART VII. SECT. 5, SUB-SECT. 6.—D.

a. Whether coroner may bail.]—After a coroner has drawn up an

inquisition against a person & committed him to prison, the High Ct. alone is empowered to release such

person on bail.—*EMPEROR v. JOGESHWAR PASSI* (1904) I. L. R. 31 Cal. 1.—*IND.*

390. ——— On prisoner—& next of kin.]—Motion for a writ of *certiorari* to bring up a coroner's inquisition & also for a rule *nisi* to admit prisoner to bail. There was strong ground to believe that deceased had fallen down & died from intoxication, & not from the effect of any violence received from the prisoner:—*Held*: a rule absolute for a *certiorari* & rule *nisi* to admit prisoner to bail would be granted, which would have to be served on the next of kin of deceased & on prisoner.—*Ex p.* ROBINS (1846), 10 J. P. Jo. 280.

E. Trial on Indictment and Inquisition.

See Coroners Act, 1887 (c. 71), s. 5 (1).

391. Inquisition equivalent to verdict of grand jury.]—*R. v.* BARTHELEMY & MORNEY, No. 387, *ante*.

392. Inquisition equivalent to indictment.]—*R. v.* INGHAM, No. 237, *ante*.

393. Prisoner liable to be tried on indictment or inquisition—Acquittal upon one—Plea of *autrefois acquit*.]—If there be two indictments against H. for the same thing, as if one be found by a coroner's inquest, & another by the grand jury, & H. is acquitted upon one, yet he must still be tried upon the other, to which he may plead the former acquittal (*per CUR.*).—*R. v.* CULLIFORD (1704), 1 Salk. 382; 91 E. R. 332; *sub nom.* CULLIFORD'S CASE, 6 Mod. Rep. 219; 3 Salk. 39.

Annotations:—*Reid*. Campbell v. R. (1846), 11 Q. B. 799; *R. v.* Toole (1867), 16 W. R. 439.

394. ———.]—Applt. & another person were charged upon a coroner's inquisition with the murder of a child, & applt. was also charged alone upon an indictment with the manslaughter of the child, to both of which they pleaded respectively not guilty. The prosecution offered no evidence upon the coroner's inquisition for murder, & the jury, by direction of the judge, found a verdict of not guilty upon the inquisition. Before the jury were sworn to try the indictment applt. handed in an additional plea of *autrefois acquit*, & the jury having been sworn, applt. was first tried upon that plea. By direction of the judge the jury found against applt. on that plea, & he was then tried upon his plea of not guilty & was convicted. Upon appeal against the conviction on the ground that the judge ought to have held, the plea of *autrefois acquit* good:—*Held*: applt. after having pleaded not guilty to the indictment was not entitled to plead *autrefois acquit* in addition thereto so long as the plea of not guilty stood upon the record, & therefore he could not rely upon that plea as a ground for quashing the conviction.—*R. v.* BANKS, [1911] 2 K. B. 1095; 81 L. J. K. B. 120; 106 L. T. 48; 75 J. P. 567; 27 T. L. R. 575; 55 Sol. Jo. 727; 22 Cox, C. C. 653; 6 Cr. App. Rep. 276, C. C. A.

395. ——— Bill thrown out by grand jury.]—Prisoner was indicted for murder but the bill was thrown out by the grand jury. Prisoner was then arraigned upon the coroner's inquest:—*Held*: a coroner's inquisition is a charge & therefore the prisoner was charged with murder.—*R. v.* MAYNARD (1812), Russ. & Ry. 240.

396. ———.]—Prisoner stood charged on the coroner's inquisition with the murder of her child, & a bill against her for the same offence had been thrown out by the grand jury. There was no evidence to convict her of murder:—*Held*:

she could be found guilty of concealment of birth under 43 Geo. 3, c. 58, s. 4, whether charged with the murder by the coroner's inquisition or a bill of indictment returned by the grand jury.—*R. v.* COLE (1813), 3 Camp. 371; 2 Leach, 4th ed. 1095.

397. ——— Verdict of jury necessary on coroner's inquisition.]—*R. v.* COLEMAN, No. 253, *ante*.

See, further, CRIMINAL LAW & PROCEDURE.

F. Other Cases.

398. Whether witness may be examined as to evidence given at inquest—Depositions to refresh witness's memory.]—There is no distinction between depositions before a coroner & before a magistrate with reference to the modes of cross-examination upon them, & a witness cannot, therefore, be asked on cross-examination as to what he said before the coroner, but the deposition may be put into the witness's hands to read over to himself & refresh his memory.—*R. v.* BARNET (1850), 4 Cox, C. C. 269.

399. ——— Without putting in depositions.]—A witness may be asked by prisoner's counsel as to what he said before the coroner without putting in the depositions.—*R. v.* MALONEY (1861), 9 Cox, C. C. 26.

See No. 371, *ante*.

400. Inquisition removed to High Court by *certiorari*—Fair trial not obtainable in county.]—The Ct. of Queen's Bench will remove a coroner's inquisition or an indictment to be found at the ensuing assizes for murder from a county at large to the Queen's Bench by *certiorari*, if it appears that a fair trial cannot be had in the county.—*R. v.* PALMER (1856), 5 E. & B. 1024; 26 L. T. O. S. 239; 27 L. T. O. S. 56; 2 Jur. N. S. 235; 20 J. P. Jo. 70, 243; 119 E. R. 762.

Annotation:—*Consd.* *R. v.* Barrett (1870), 18 W. R. 671.

See, generally, CROWN PRACTICE.

401. Right of prisoner to postponement of trial—For attendance of material witness called at inquest—Though prosecution consent to reading of depositions.]—(1) When an application is made on behalf of a prisoner charged with murder to put off the trial, in consequence of the absence of a material witness for the prosecution, whose depositions have been taken before the coroner, & who is expected to give evidence favourable to the prisoner, it is not necessary to swear that the witness has been subpoenaed by the prisoner.

(2) The prisoner has a right to have the trial postponed, although the counsel for the prosecution consent that the witness's depositions may be read, & although the prisoner was in point of fact present when the deposition was taken before the coroner.—*R. v.* TAYLOR (1840), 4 J. P. 509.

Annotation:—*Generally*, *Reid*. *R. v.* Bridgeman (1840), J. P. 557.

See, further, CRIMINAL LAW & PROCEDURE.

SUB-SECT. 7.—DEPOSITIONS AND VERDICT AS EVIDENCE IN CIVIL PROCEEDINGS.

402. General rule.]—The primary object of an inquiry before a coroner is not to fix responsibility on any one; the parties to an action at law are not necessarily represented at the inquest, & attention is not directed by examination & cross examination to many points which may be o

PART VII. SECT. 5, SUB-SECT. 6.—F.

400 i. Inquisition removed to High Court by *certiorari*—Fair trial not obtainable in county.]—Where it *prima*

facte appears that a fair & impartial trial cannot be had in a particular place, & such is not displaced by a strong case in answer thereto, the ct. will grant a *certiorari* to remove the

proceedings into Q. B. to enable an application to be made to have such case tried in some other jurisdiction.—*R. v.* BELL (1859), 8 Cox, C. C. 287.—*IR.*

Sect. 5.—The inquisition: Sub-sect. 7. Sects. 6 & 7. Parts VIII. & —

importance in the action. The expression of opinion of the coroner's jury, even if it touches the question of responsibility, cannot be made evidence in the action by any admission.—*CALMENSEN v. MERCHANTS' WAREHOUSING CO.* (1921), 90 L. J. P. C. 134; 125 L. T. 129; 65 Sol. Jo. 341, H. L.

Annotation :—*Consd. Barnett v. Cohen*, [1921] 2 K. B. 461.

403. Verdict—Whether admissible—In action to overthrow will—As proof of insanity.—Upon the trial of an issue where the question was *devisavit vel non deft.* insisted, to overthrow the will, that testator was *non compos* at the time of making it. Two days after the date of the will testator shot himself, & deft. offered to read the coroner's inquest finding him a lunatic. *Qu.*: whether the coroner's inquest may be given in evidence in an action.—*JONES v. WHITE* (1717), 1 Stra. 68; 93 E. R. 389.

Annotation :—*Consd. In the Estate of Crippen*, [1911] P. 108.

404. — & observations of jury—Not admissible in Court of Admiralty.—Part of one of the interrogatories administered in an Admlty. action had reference to remarks made by a coroner's jury & to the verdict of the jury:—*Held*: this should be struck out.—*THE MANGERTON* (1856), Sw. 120; 27 L. T. O. S. 207.

405. — Challenged in civil action—Burden of proof—Action on life assurance policy.—A policy was effected on the life of P., who died under suspicious circumstances. R. claimed the amount of the policy under an assignment. An inquest was held on the body of P. & the jury found R. guilty of murder, but he was never tried, having been hanged for another murder. A suit was instituted by the insurance co. to have it declared that the policy had been fraudulently obtained & was void, as R. had no insurable interest in the life of P. & had murdered P.:—*Held*: the burden of proof would lie on R., or his exor., to show that the jury did not come to a correct conclusion in their verdict.—*PRINCE OF WALES, ETC. ASSOCN. CO. v. PALMER* (1858), 25 Beav. 605; 53 E. R. 768.

Annotations :—*Expld. Bird v. Keep*, [1918] 2 K. B. 692. *Reid. British Equitable Assce. Co. v. G. W. Ry.* (1868), 19 L. T. 476.

406. Depositions—May be admitted when witness beyond the seas—In action for damages.—The deposition of a witness taken before the coroner on an inquiry touching the death of a person killed by a collision, is receivable in evidence in an action for damages if the witness be shown to be beyond the sea.—*SILLS v. BROWN* (1840), 9 C. & P. 601.

Annotation :—*Mentd. The Margaret* (1881), 29 W. R. 533.

407. — Need not be put in—On examination of witness as to evidence before coroner.—*WOOD v. HUTTON*, No. 172, *ante*.

408. — Of doctor in attendance at inquest—Not admissible as evidence of cause of death—In action for compensation—Under Workmen's Compensation Act, 1906 (c. 58).—A workman was killed as the result of a bomb dropped by enemy aircraft on an oil & colour warehouse to which he was sent by his employer in the ordinary course of his employment. His widow applied for compensation. The facts proved before the county ct. judge were that in the case of a fire breaking out upon the premises in which deceased workman met his death, dense & suffocating smoke would be produced from the materials stored there; that while he was upon the premises they were wrecked & set on fire by a bomb or bombs from hostile

aircraft; & that deceased workman was found in the basement of the premises buried under the wreckage, but without any apparent external marks of injury upon him. Appct. sought to put in evidence, as showing the cause of death, the record of the coroner's inquisition & evidence of a doctor given at the inquest, who had died before the arbitration. The county ct. judge refused to admit them as evidence:—*Held*: neither the record of the coroner's inquisition nor the evidence of the doctor at the inquest was admissible as evidence of the cause of death, & the county ct. judge was right in refusing to admit them.—*BIRD v. KEEP*, [1918] 2 K. B. 692; 87 L. J. K. B. 1199; 118 L. T. 633; 34 T. L. R. 513; 62 Sol. Jo. 666; 11 B. W. C. C. 133, C. A.

Annotations :—*Consd. Barnett v. Cohen*, [1921] 2 K. B. 461. *Mentd. Munro Brice v. Marten, Munro Brice v. R.*, [1920] 3 K. B. 94; *Smith v. G. W. Ry.*, [1921] 2 K. B. 237.

409. — Not admissible as evidence of negligence—In action under Fatal Accidents Act, 1846 (c. 93).—

The depositions of the evidence given in a coroner's inquisition together with the verdict & rider of the jury are not admissible in evidence in an action under the above Act as proof of deft.'s negligence.—*BARNETT v. COHEN*, [1921] 2 K. B. 461; 90 L. J. K. B. 1307; 125 L. T. 733; 37 T. L. R. 629; 19 L. G. R. 623.

410. Record of inquisition—Not admissible as evidence of cause of death—In action for compensation—Under Workmen's Compensation Act, 1906 (c. 58).—*BIRD v. KEEP*, No. 408, *ante*.

See, also, No. 408, *ante*.

SECT. 6.—EXPENSES AND RETURNS OF INQUEST.

See, generally, Coroners Act, 1887 (c. 71), ss. 25, 26, 27, 33, 40 (2), 41 (b); Municipal Corporations Act, 1882 (c. 50); Local Government Act, 1888 (c. 41).

Remuneration of coroners.—*See* Part IV., Sect. 1, *ante*.

Fees of medical witnesses.—*See* Nos. 184, 185, *ante*.

411. Jurisdiction of quarter sessions—To make order for fees—Whether empowered to compel personal attendance of coroner with inquisition.—The Ct. of Quarter Sessions are not justified in refusing to give a coroner an order for his fees because he has disobeyed a rule of the Sessions directing personal attendance.

Semble: a Ct. of Quarter Sessions have no power to compel the personal attendance of the coroner with his inquisitions.—*R. v. CUMBERLAND JJ.* (1831), 9 L. J. O. S. M. C. 102.

412. — As to disbursements after inquest.—*R. v. CARMARTHENSHIRE JJ.*, No. 40, *ante*.

413. Disbursements by coroner to constables & jurors—Several inquests "held concurrently"—Payment on basis of separate inquests—No right to reimbursement.—An explosion having occurred in a coal mine whereby many deaths were caused, the coroner caused a jury to be summoned, & an inquest was opened. On the first day the inquest was held on 51 bodies, the jury having been sworn, the bodies viewed, & evidence of identification taken in each case, & on four subsequent days inquests were held on other bodies, & the same procedure was followed in all the cases, the same jury having been sworn 166 times. The inquests were then adjourned, & on five subsequent days evidence was taken before the same jury relative to all the deaths in common. The question arose as to what payments should be allowed by the

county council to the coroner in respect of the fees to the jury & constables, the council contending that the inquests were "concurrent" inquests throughout within the meaning of the schedule of fees, allowances, & disbursements made by them under Coroners Act, 1887 (c. 71), s. 25, & that according to the scale the jury were only entitled to one fee of 1s. per day. The coroner contended that the inquests were separate inquests for the first five days on which the jury were separately sworn in each case, & concurrent inquests on the last five days. More than four months after the inquests the coroner paid the jury & constables on the basis that the inquests were all separate inquests on the first five days & concurrent inquests on the last five days, but the county council refused to reimburse him for the whole of the amounts so paid. Upon the application by the coroner for a *mandamus* to compel the council to reimburse him the amounts so expended:—*Held*: (1) the inquests were inquests "held concurrently" throughout, & the coroner was only entitled to be reimbursed the fees paid to the jurymen on that basis; (2) as to the fees paid to the constables, by reason of Police Act, 1890 (c. 45), s. 23, which prohibits a constable from taking any fee for any service performed by him except such fees as are mentioned in the table of fees payable to constables, submitted to & approved by a Secretary of State, the coroner was not entitled to be reimbursed in

respect of any of the fees paid to constables according to the sched. made under Coroners Act, 1887 (c. 71), s. 25.—*R. v. DURHAM COUNTY COUNCIL, Ex p. GRAHAM* (1912), 106 L. T. 949; 76 J. P. 219; 28 T. L. R. 360; 10 L. G. R. 384.

SECT. 7.—PREVENTION OF INQUESTS.

414. Indictable misdemeanour — Burial before inquest.]—*R. v. CLERK*, No. 163, *ante*.

415. — — —.]—On an application for a rule for defts. to show cause why an information should not go against them for burying a dead body found in a river without sending for the coroner:—*Held*: this was too heavy a punishment for such mistake, but the prosecutor might proceed by way of indictment.—*R. v. PROBY & TAYLOR* (1756), 1 Keny. 250; 96 E. R. 983.

416. — — — Body wilfully disposed of to prevent inquest.]—If an inquest ought to be held upon a dead body it is a misdemeanour so to dispose of the body as to prevent the coroner from holding an inquest.—*R. v. PRICE* (1884), 12 Q. B. D. 247; 53 L. J. M. C. 51; 33 W. R. 45, n.; 15 Cox, C. C. 389. *Annotations*:—*Reid. Re Dixon*, [1892] P. 386; *Re Kerr*, [1894] P. 284; *R. v. Byers* (1907), 71 J. P. 205.

417. — — — After notice of inquest given by coroner.]—*R. v. STEPHENSON*, No. 115, *ante*.

See, generally, BURIAL & CREMATION, Vol. VII., p. 563, Nos. 380, 381.

Part VIII.—Inquests on Fires.

418. No jurisdiction to inquire into origin of fire—When no death occasioned.]—(1) The jurisdiction of a coroner to hold inquests is, with reference to felonies, limited to the case of "on view of the body."

(2) A coroner cannot hold an inquest to inquire

into the origin of a fire by which no death has been occasioned.—*R. v. HERFORD* (1860), 3 E. & E. 115; 29 L. J. Q. B. 249; 2 L. T. 459; 24 J. P. 628; 6 Jur. N. S. 750; 8 W. R. 579; 121 E. R. 387.

As to fires in the City of London.]—See City of London Fire Inquests Act, 1888 (c. xxxviii.).

Part IX.—King's Coroner and Attorney.

See Coroners Act, 1887 (c. 71), s. 29.

419. Appointment—By letters patent.]—On the death of C., who held the offices of coroner & attorney, one V. showed letters patent to the C. & V. of the offices & prayed admittance. The judges refused to appoint V. as being totally unfit & the letters patent void in law. Afterwards they made representation to the King, who interrogated them as to who was a fit & proper person to exercise the offices, & they replied W. was. Afterwards the King commanded by his letters patent the justices to admit W.—*VYNTER'S CASE* (1558), 2 Dyer, 150 b; 2 And. 118; 73 E. R. 328.

Annotation:—*Reid. Campbell v. Hewlitt* (1851) 16 Q. B. 258.

PART VIII.

i. Whether jurisdiction to inquire into origin of fire—Inquests on Fires Act, 1863.]—*R. v. SMITH* (1908), S. R. Q. 83.—*AUS.*

g. — — — 20 Vict. c. 36.]—Under above Act the coroner is made the judge of the necessity for investigating into the cause of a fire.—*Re FERGUS* (1859), 18 U. C. R. 341.—*CAN.*

h. Power to quash inquisition — *Mellus inquirendum*.]—An inquest was held into the origin of a fire & the

coroner returned an open verdict. Afterwards fresh evidence was discovered which led to a suspicion of incendiarism, although not strong enough to justify a prosecution:—*Held*: the

inquiry.—*Ex p. A.-G.* (1915), 15 N. S. W. S. C. R. 355.—*AUS.*

k. — — — Interest of coroner.]—A coroner's inquest on a building de-

stroyed by W., with intent to a certain insurance co. The coroner was a shareholder in the co.:—*Held*: as the verdict of the coroner's jury amounts to an accusation only, & does not decide upon the guilt of a person or

interest of the co., there was no ground for impeaching the inquisition.—*R. v. HOCKEN* (1876), 1 J. R. N. S. 121.—*N.Z.*

CORPORAL OATH.

See CRIMINAL LAW AND PROCEDURE ; EVIDENCE.

CORPORAL PUNISHMENT.

See CRIMINAL LAW AND PROCEDURE ; EDUCATION ; INFANTS AND CHILDREN ; ROYAL FORCES ;
TRESPASS.

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<i>Companies generally</i>	„ COMPANIES.	<i>Insurance Companies</i>
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<i>Public Health Authorities</i>	<i>See</i> LOCAL GOVERNMENT ; PUBLIC HEALTH AND LOCAL AD- MINISTRATION.	<i>Trade Unions</i>	<i>See</i> TRADE AND TRADE UNIONS.
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NOTE.—This Title deals with the general principles of law applicable to all corporations. For the law applicable to a particular class of corporations reference must be made to the Title dealing with such class. A list of such Titles will be found at the end of this Table of Contents. Cases to which Corporations were parties, but in which the principles specially affecting corporations were not involved, are as a general rule excluded.

Part I.—Nature and Attributes.

SECT. 1.—IN GENERAL.

1. **Indivisible body.**—The mayor & commonalty of S. have an assignment from the Crown of a sum of money payable yearly out of the customs of the town; the mayor alone makes an acquittance on receiving it; this does not strictly bind the corpn. but was allowed in this case on account of precedent. The mayor & corpn. are one indivisible body. The mayor as mayor can do nothing regularly for he is the head of a corpn. aggregate, & is only a part of it, but usage & precedent are not to be neglected in things indifferent or not *mala in se*.—ANON. (1484), Jenk. 162; 145 E. R. 105.

2. **Capacity of corporations—Distinction between corporation aggregate & corporation sole.**—FULMERSTON v. STEWARD (1554), 1 Plowd. 101; 75 E. R. 160.

Annotations:—*Reid*. Sutton's Hospital Case (1612), 10 Co. Rep. 1 a. *Mentl. Ive's Case* (1597), 5 Co. Rep. 11 a; *Syme's Case* (1608), 8 Co. Rep. 51 a; *Bonham's Case* (1610), 8 Co. Rep. 113 b; *Salisbury v. Ashley* (1612), Palm. 194; *Oxford's Case* (1615), 1 Rep. Ch. 1; *Pells v. Brown* (1620), Cro. Jac. 590; *Gee v. Freedland* (1626), Cro. Car. 47; *Davies v. Kempe* (1664), Cart. 2; *Gardner v. Sheldon* (1669), Vaugh. 259; *Dodd v. Acklom* (1843), 7 Scott, N. R. 415; *Doe d. Biddulph v. Poole* (1848), 11 Q. B. 713.

3. **Essence of—Need not have head.**—James I., by his letters patent dated June 22, 1611, reciting an Act, 9 Jac. 1, entitled, "An Act to confirm & enable the erection & establishment of an hospital & free grammar school, done & intended to be done by T. S., etc." granted to T. S. licence to found an hospital for the relief of poor, aged, maimed, needy, or impotent people, & a free school for the maintenance & education of poor

children or scholars; "and also that T. S., during his life, & after his death, the governors thereafter named & their successors & the survivors & survivor of them, & his & their successors for ever, & the governors thereof for the time being, & their successors, should have full power, licence & lawful authority, at his & their wills & pleasures respectively, from time to time & at all times thereafter, to place therein such master or head of the hospital, as to him T. S., during his life, & after his death to the governors & their successors, & to the survivors & survivor of them, & to his & their successors, & to the governors thereof for the time being & their successors, would seem convenient;" &, in a subsequent part of the same letters patent, appointed fifteen persons by name, "& the master of the hospital, & such person & persons as should from time to time be master or masters of the hospital during the time & they should be master or masters thereof to be the first & present governors of the lands, possessions, revenues & goods of the hospital of James I., founded in the Charter-House, within the county of M., at the humble petition & only costs & charges of T. S., & they & the survivors of them, & such as the survivors & survivor of them should from time to time elect to make up the number sixteen, when & as often as any of them, or any of their successors, should happen to die, or be removed from being governors or governor thereof, should be incorporated, & have perpetual succession, & be one body corporate & politic." T. S. on Oct. 30, 1611, by a writing sealed with his seal, & bearing date the same day & year appointed J. H. to be the

PART I. SECT. 1.

a. *In general.*—The incidents essential to a corpn. are a corporate name by which it can sue & be sued, power to hold property, a common seal, powers to make bye-laws for its own govt. & perpetual succession.—BURRITT v. HATFIELD (1857), 2 Thom.

161.—CAN.

b. —.—The Convention of the Royal Burghs of Scotland was a body, authorised & regulated by an Act passed in 1487, it consisted of delegates from the Royal burghs & regulated matters of trade. It met once a year & its meetings never continued above three days. At each meeting the Con-

vention was dissolved:—*Held*: a body of men so chosen & of a kind so peculiar could not be a corporation in that sense which was necessary to enable them to bind by contract those who might in a subsequent year be appointed for similar purposes.—CONVENTION OF BURGH v. CUNNINGHAM (1842), 9 Cl. & Fin. 144; 8 E. R. 370.—SCOT.

first master of the hospital, to have & to hold the office at the will of T. S. :—

Held: (1) no hospital, etc., was founded by the Act itself; (2) the incorporation ought to precede the founding the hospital; (3) the King by his charter of incorporation may, at the petition of the founder, make the house & inheritance of petitioner to be an hospital, & may give it a name; (4) the words in the charter, "that the house & other the premises shall from henceforth for ever hereafter be, remain, etc., & shall for ever hereafter be named & called the Hospital of King James, founded in the Charter-house," is a sufficient naming of the place of the corp. A known name is sufficient to found a hospital, & it need not be described by metes & bounds; (5) an objection was made to the validity of the incorporation, that the King by his letters patent intended to make a present corp., which his words expressly imported, but that no incorporation could be until T. S. had named a master, & that nomination being subsequent to the letters patent, the latter were repugnant to themselves & void; & was overruled; (6) the incorporation may exist before the hospital is actually founded; (7) the word "foundation" is taken in two different senses "*fundatio incipiens*" & "*fundatio perficiens*;" as to the politic capacity, the act of incorporation is metaphorically called the foundation, but as to the dotation, the first gift of the revenues is called the foundation, & he who gives it is the founder in law; if the King had incorporated the poor of the hospital, T. S. need not have made any instrument comprehending any foundation, erection, etc., but his gift of the land being the first gift, had made him founder, & the very first donation is all the foundation which is requisite in law; & to the erection of a hospital, nothing is required by the law but incorporation & donation; (8) the nomination of the master is good; when the master is nominated, he is master by force of the letters patent, as if he had been named in & by the letters patent themselves; (9) (a) money given by the governors as private persons, is a good consideration to grant land to them in their politic capacity. (b) If the grant to them is by bargain & sale, a trust declared in the *habendum* does not make the conveyance void; (10) the governors should plead that they were seised in their demesne as of fee, *jure incorporationis sue*.

(11) Inhabitants of a town, or other single persons, who have not capacity to take in succession but only to their singular heirs, have capacity to take an incorporation.

(12) Every corp. or incorporation, or body politic & incorporate, either stands upon one sole person, as the King, bishop, parson, etc., or aggregate of many, as mayor, commonalty, dean & chapter, etc.

(13) A corp. may be aggregate of many without a head.

(14) The essence of a corp. consists in, (a) lawful authority of incorporation, which may be by the common law, as the King himself, etc., by authority of Parliament; by the King's Charter; by prescription; (b) the persons to be incorporated, either as persons natural, or bodies incorporate & political; (c) a name, which may be fictitious, by which the persons are incorporated, as governors of the lands, etc.; (d) a place, for without a place no incorporation can be made; (e) words sufficient in law, but not restrained to any certain, legal, & prescript form of words.

(15) Corp. is sufficient without the words to

implead, & to be impleaded, etc., & therefore divers clauses subsequent in the charters are not of necessity, but only declaratory, & might well have been left out, as to have a seal, (16) to make ordinances, but not to the essence of the incorporation, or to make leases & grants.

(17) Many corps. may be created one out of another, as dean & chapter are a joint corp., the dean by himself is a corp., & each of the prebends is a corp. by himself.

(18) They cannot commit treason, nor be outlawed, nor excommunicate, for they have no souls, neither can they appear in person but by attorney.—*SUTTON'S HOSPITAL CASE* (1612), 10 Co. Rep. 1 a; Jenk. 270; 77 E. R. 937, Ex. Ch.

Annotations:—As to (1) *Consd. Birmingham School Case* (1726), Gilb. Ch. 178. As to (3) *Refd. Hayward v. Fulcher* (1628), Palm. 491; *Thomas v. Sorrel* (1673), 3 Keb. 223; *Owen v. Saunders* (1696), 1 Ld. Raym. 158; *Rutter v. Chapman* (1841), H. & N. 93; *R. v. Dulwich College* (1851), 17 Q. B. 600. As to (4) *Refd. Hayward v. Fulcher* (1628), Palm. 491. As to (5) *Distd. Birmingham School Case* (1726), Gilb. Ch. 178. *Consd. A.-G. v. Middleton* (1751), 2 Ves. Sen. 327. *Refd. Thomas v. Sorrel* (1673), 3 Keb. 223; *Boulton v. Bull* (1795), 2 Hy. Bl. 463; *R. v. Dulwich College* (1851), 16 Jur. 654. As to (7) *Refd. A.-G. v. Bowyer* (1800), 5 Ves 300; *R. v. Dulwich College* (1851), 16 Jur. 654; *Colchester v. Kewney* (1866), L. R. 1 Exch. 368. As to (8) *Refd. Thomas v. Sorrel* (1673), 3 Keb. 223; *Birmingham School Case* (1726), Gilb. Ch. 178. As to (9) *Refd. Anon.* (1670), 2 Vent. 35; *Barker v. Keete* (1678), Freem. K. B. 249. As to (11) *Refd. Merchants Adventurers v. Rebow* (1686), Comb. 53; *Winton Corp. v. Wilkes* (1705), 2 Ld. Raym. 1129. As to (14) *Refd. Hayward v. Fulcher* (1628), Palm. 491; *Boulton v. Bull* (1795), 2 Hy. Bl. 463. As to (15) *Consd. River Tone Conservators v. Ash* (1829), 10 B. & C. 349; *Riche v. Ashbury Railway Carriage Co.* (1874), L. R. 9 Exch. 224; *Wenlock v. River Dee Co.* (1883), 36 Ch. D. 675, n.; *British South Africa Co. v. De Beers Consolidated Mines*, [1910] 1 Ch. 354. *Refd. Phillips v. Bury* (1694), 1 Ld. Raym. 5; *College of Physicians v. Salmon* (1695), 1 Ld. Raym. 680; *R. v. Westwood* (1830), 7 Bing. 1; *Bostock v. North Staffordshire Ry.* (1855), 24 L. J. Q. B. 225; *A.-G. v. L. C. C.* [1901] 1 Ch. 781; *Bonanza Creek Gold Mining Co. v. R.*, [1916] 1 A. C. 566. As to (16) *Refd. R. v. Westwood* (1830), 7 Bing. 1. As to (17) *Refd. Lyn v. Wyn* (1665), O. Bridg. 122; *Ford v. Harington* (1869), 1 Hop. & Colt. 331. *Generally Mentd. Kinnell v. Harding Wace*, [1918] 1 K. B. 405.

4. **Body aggregate**—Without soul or conscience.]—As touching corps. they are invisible, immortal, & have no soul; & therefore no *sub-pœna* lies against them, because they have no conscience nor soul. A corp. is a body aggregate. None creates souls but God, but the King creates them & therefore they have no souls; they cannot appear in person, but by attorney (COKE, C.J.).—*TIPLING v. PEXALL* (1614), 2 Bulst. 233; 80 E. R. 1085.

5. **Body politic**—With trust annexed—Franchises, etc. not essential to corporation.]—(1) A corp. is a body politic, to which a trust is annexed, & any maladministration of it is a cause of forfeiture & it may therefore be dissolved.

(2) Franchises, etc. are not essential to a corp., but a privilege pertaining to it.

(3) The essence of a corp. is to make by-laws, & govern their members, etc., which they may do, though their franchise are seized.—*R. v. LONDON CITY* (1692), Skin. 310; 90 E. R. 139.

Annotation:—As to (1) *Refd. Eastern Archipelago Co. v. R.* (1853), 2 E. & B. 856.

6. **Common council incident to corporation**—Unless otherwise provided.]—(1) Disfranchisement of a corporator is good if he is heard in his defence though he be not summoned to make it.

(2) A corporator appointed by patent under the common seal cannot be disfranchised except by order under such seal, but a corporator constituted by election may be disfranchised by an order only without an instrument under the common seal.

(3) Misapplication of corp. money is no cause to disfranchise a corporator, nor altering the corp. books in immaterial respects.

Sect. 1.—In general. Sect. 2: Sub-sects. 1 & 2.]

(4) A common council is incident to corpsns. unless otherwise provided by the charter.—*R. v. CHALKE* (1897), 1 Ld. Raym. 225; *Comb. 396; 2 Salk. 428; 91 E. R. 1047; *sub nom.* *R. v. WILTON CORPN.*, 5 Mod. Rep. 254.

Annotations:—*As to* (1) *Reid*. *Osgood v. Nelson* (1869), 10 B. & S. 119. *As to* (3) *Consd.* *R. v. Derby Corpn.* (1784), *Lee temp.* Hard. 153.

7. Distinction between corporation & individuals composing it.]—Four projectors of a public co. obtained a charter by which they & all persons who might become subscribers, were incorporated. The capital was declared to be £20,000, which was to be divided into 400 shares. Before any other subscribers had joined, the four projectors, of common assent, divided the 400 shares amongst themselves, accounting to the corpn. (as was alleged) for £12,000 & not £20,000. They afterwards disposed of the shares. A bill was subsequently filed by the corpn. against the projectors, impeaching the transaction & to compel them to pay the full consideration:—*Held*: (1) though at the time they were the only persons interested in the co., yet it was not competent for them to take the shares without paying the full consideration; (2) the individual shareholders need not be made parties; (3) distinction between a corpn. & the aggregate of the members forming such corpn. discussed.—*SOCIETY OF PRACTICAL KNOWLEDGE v. ABBOTT* (1840), 2 Beav. 559; 9 L. J. Ch. 307; 4 Jur. 453; 48 E. R. 1298.

Annotations:—*As to* (1) *Distd.* *Re British Seamless Paper Box Co.* (1881), 17 Ch. D. 467. *Reid.* *Re Newman*, [1895] 1 Ch. 674; *Re Darby*, *Ex p.* Brougham, [1911] 1 K. B. 95. *As to* (2) *Reid.* *Overend Gurney v. Gurney* (1869), 4 Ch. App. 707, n.; *Phosphate Sewage Co. v. Hartmont* (1877), 5 Ch. D. 394. *As to* (3) *Consd.* *Masons' Hall Tavern Co. v. Nokes* (1870), 22 L. T. 503. *Reid.* *Overend Gurney v. Gurney* (1869), 4 Ch. App. 707, n.; *Riche v. Ashbury Ry. Carriage & Iron Co.* (1874), L. R. 9 Exch. 224; *London Trust Co. v. Mackenzie* (1893), 62 L. J. Ch. 870; *Re Newman*, [1895] 1 Ch. 674; *Jenkin v. Pharmaceutical Soc. of Great Britain*, [1921] 1 Ch. 392.

— **Release of corporation by member.]**—*See* No. 803, *post*.

— **Ownership of property by corporations.]**—*See* Part IX., Sect. 6, *post*.

— **Powers & liabilities of corporations in contract.]**—*See* Part X., *post*.

— **Powers & liabilities of corporations in tort.]**—*See* Part XI., *post*.

— **Criminal liability of corporations.]**—*See* Part XII., *post*.

— **Liability of members of corporations.]**—*See* Part XV., Sect. 6, *post*.

— **Legal proceedings by & against corporations.]**—*See* Part XV., *post*.

— **Company.]**—*See* COMPANIES.

8. Non-existence of corporation—Court cannot take judicial notice of.]—*COOCH v. GOODMAN*, No. 1057, *post*.

As a person.]—*See* Part IX., Sect. 2, *post*.

7 i. Distinction between corporation & individuals composing it.]—In an action by members of a church against the church council for a *pro rata* distribution of the church property among such members:—*Held*: the church was a corpn. or artificial person, & distinct from the individuals forming it, who were not entitled to a division of the property.—*VENTER v. BETHULIE REFORMED CHURCH COUNCIL* (1879), O. F. S. 4.—S. AF.

7 ii. —.]—A corpn. is a body, consisting of a number of individuals, which body has the power to own property apart from the individual capacity of its members.—*WEBB & Co. v. NORTHERN RIFLES* (1908), T. S. 462.—S. AF.

7 iii. —.]—*HOBSON v. NORTHERN RIFLES* (1908), T. S. 462.—S. AF.

7 iv. —.]—*CASSIM v. MOLIFE* (1908), T. S. 748.—S. AF.

PART I. SECT. 2, SUB-SECT. 2.

c. Churchwardens—For certain purposes only—No power to bind themselves & successors—Under Church Temporalities Act, 1840.]—*ANDERSON v. WORTERS* (1882), 32 C. P. 659.—CAN.

d. Governors of University of Toronto.]—The Governors of the University of Toronto are a body corporate, liable to be sued as such & are in no sense Crown officers, even though

SECT. 2.—CLASSIFICATION OF CORPORATIONS.**SUB-SECT. 1.—IN GENERAL.**

9. Sole & aggregate.]—*SUTTON'S HOSPITAL CASE*, No. 8, *ante*.

— **Examples of corporations sole.]**—*See* Sub-sect. 3, *post*.

— **Examples of corporations aggregate.]**—*See* Sub-sect. 2, *post*.

Ecclesiastical & lay—Examples of ecclesiastical corporations.]—*See* Nos. 12–18, 20–22, 48, 51–54, 62, 265, 1037, *post*, & generally, ECCLESIASTICAL LAW.

Trading & non-trading—Examples of trading corporations.]—*See* Nos. 10, 11, 29, *post*, & generally, COMPANIES.

— **Examples of non-trading corporations.]**—*See* Nos. 23, 35, 41, 42, 1037, *post*, & Part II., Sect. 3, sub-sect. 4, A., *post*.

SUB-SECT. 2.—CORPORATIONS AGGREGATE.

10. Banking co-partnership.]—*Semble*: since Joint Stock Banks Act, 1838 (c. 96), a banking co-partnership is in the nature of a corpn.—*STEWART v. DUNN* (1844), 12 M. & W. 655; 1 Dow. & L. 642; 13 L. J. Ex. 324; 8 Jur. 218; 152 E. R. 1361.

Annotations:—*Reid.* *Powles v. Page* (1846), 3 C. B. 16. *Mentd.* *Harvey v. Scott* (1847), 11 Q. B. 92; *Re Fenwick*, *Ex p.* Brown (1849), 13 L. T. O. S. 468.

11. —.]—Since Joint Stock Banks Act, 1838 (c. 96), a banking co-partnership is in the nature of a corpn.—*POWLES v. PAGE* (1846), 3 C. B. 16; 15 L. J. C. P. 217; 7 L. T. O. S. 257; 10 Jur. 526; 136 E. R. 7.

Annotations:—*Reid.* *Swift v. Winterbotham* (1873), L. R. 8 Q. B. 244. *Mentd.* *Re Fenwick*, *Ex p.* Brown (1849), 13 L. T. O. S. 468; *Re Carew's Estate Act* (1862), 31 Beav. 39.

Bencher of Inns of Court.]—*See* BARRISTERS, Vol. III., p. 315, Nos. 1–4.

12. Chapter without dean—For taking by purchase or by gift—For receiving payment of rent.]—A chapter is not a corpn. capable of taking by purchase or by gift without the dean who is the head of their body. But the chapter alone may receive payment of a rent, for they are known persons, but not to their own use or in their own right.—*EIRE'S CASE* (1563), Moore, K. B. 51; 72 E. R. 434.

Dean & chapter.]—*See* Nos. 53, 1037, *post*.

13. Churchwardens—For certain purposes only—For benefit of parish.]—Churchwardens are a corpn. for the benefit of the parish.—*STARKEY v. BERTON* (1610), Cro. Jac. 234; 79 E. R. 202.

Annotations:—*Reid.* *Fry & Greata v. Treasure* (1865), 2 Moo. P. C. C. N. S. 539. *Mentd.* *Cooper v. Law* (1859), 6 C. B. N. S. 502.

14. — Whether for taking & holding land.]—A lease of land for 40 years was made to A., who made his testament, & by which after giving certain life interests in the term, he devised

appointed by the Lieutenant-Governor in Council: the maxim that "the King can do no wrong" has no application to them.—*SCOTT v. TORONTO UNIVERSITY* (1913), 24 O. W. R. 325; 4 O. W. N. 994; 10 D. L. R. 154.—CAN.

e. Overseers—For limited & special objects defined by statute.]—*BURRITT v. HATFIELD* (1857), 2 Thom. 161.—CAN.

f. —.]—Overseers of the poor are bodies corporate, without, however, powers being given to them as a corporate body other than such as would enable them to sue & be sued in the corporate name on contracts made by them in their public

the remainder of the years to the churchwardens of I.:—*Held*: the remainder was not good.—**FAWKNER'S CASE** (1627), *Het.* 74; 124 E. R. 354.

15. ———.—]—Churchwardens are not a corp'n. in the full sense of the word, they are not a corporate entity, & cannot sue or be sued by any corporate name, but they are a *quasi* corp'n. for the purpose of holding land & the devolution of property.—**FELL v. CHARITY LANDS OFFICIAL TRUSTEE**, [1898] 2 Ch. 44; 67 L. J. Ch. 385; 78 L. T. 474; 62 J. P. 804; 14 T. L. R. 376; 42 Sol. Jo. 488.

For taking personal property of church.]—(1) The parson of a church is a corp'n. for the taking of land for the use of the church.

(2) The churchwardens are a corp'n. to take money or goods or other personal things for the use of the church.—**A.-G. v. RUPER** (1722), 2 P. Wms. 125; 24 E. R. 667.

Annotations:—*As to* (2) *Refd.* **De Windt v. De Windt** (1854), 2 Eq. Rep. 1107; **Cooper v. Law** (1859), 5 Jur. N. S. 1263.

17. ———.—]—**Church ornaments.**]

(1) Churchwardens are a corp'n. for the purpose of being possessed of the ornaments of the church.

(2) Where a monition was directed to A. & B., the churchwardens of the church of St. B.:—*Held*: it might be amended on an *ex parte* motion, by striking out the names A. & B.—**LIDDELL v. BEAL** (1860), 14 Moo. P. C. C. 1; 3 L. T. 218; 24 J. P. 788; 8 W. R. 569; 15 E. R. 206, P. C.

Annotations:—*Generally*, *Mentd.* **Martin v. Mackenochie**, **Flamank v. Simpson** (1868), L. R. 2 A. & E. 116; **Ritchings v. Cordingley** (1868), L. R. 3 A. & E. 113; **Elphinstone v. Purchase** (1870), L. R. 3 P. C. 245; **Boyd v. Phillpotts** (1874), L. R. 4 A. & E. 297; **Lee v. Fagg** (1874), L. R. 6 P. C. 38; **Durst v. Masters** (1876), 1 P. D. 373; **St. Gille's, Cripplegate** (1901), 17 T. L. R. 672; **Wimbledon v. Eden**, *Re St. Mark's, Wimbledon*, [1908] P. 167; **St. Andrew's, Haverstock Hill** (1909), 25 T. L. R. 408.

18. ———.—]—**Whether for legal proceedings.**]

—All the parishioners are the body, & the churchwardens are only a name to sue by in personal actions; but the property is in the parishioners; & in all actions brought by churchwardens it must be laid *ad damnum parochianorum*.—**WHITMORE v. BRIDGES** (1723), 2 Eq. Cas. Abr. 204; 22 E. R. 174.

19. ———.—]—**FELL v. CHARITY LANDS OFFICIAL TRUSTEE**, No. 15, *ante*.

20. ———.—]—**No power to bind themselves & successors.**]

(1) Churchwardens & overseers, having no common seal, cannot bind themselves as a corporate body.

(2) Where A., B., C., & three others, churchwardens & overseers of the parish of St. B. covenanted with pltf. for themselves & their successors, churchwardens & overseers, & the deed contained a proviso that they should not be affected by the deed in their private capacity:—*Held*: the proviso was repugnant to the covenant & there must be judgment for pltf.—**FURNIVALL v. COOMBS** (1843), 5 Man. & G. 736; 6 Scott, N. R. 522; 12 L. J. C. P. 265; 1 L. T. O. S. 80; 7 J. P. 322; 7 Jur. 399; 134 E. R. 756.

Annotations:—*As to* (2) *Consd.* **Kelner v. Baxter** (1866), 2 C. P. 174. *Distd.* **Veley v. Pertwee** (1870), L. R. 5 Q. B. 573. *Expld.* **Williams v. Hathaway** (1877), 6 Ch. D. 544. *Apld.* **Watling v. Lewis**, [1911] 1 Ch. 414. *v. Dowdall* (1852), 18 Q. R. 2. *Scott v. Avery* (1856), 5 H. L. Cas. 811; **De Vries v. Corner** 13 L. T. 636; **Forbes v. Git**, [1922] 1 A. C. 256.

21. ———.—]—**Under Poor Relief Act, 1819 (c. 12)—Whether corporation within Charitable Trusts Act, 1853 (c. 137).**]

—Where lands were given for the benefit of the poor of the parish generally or

to trustees to permit the churchwardens to distribute the rents among the poor of the parish generally as directed by two or more of the inhabitants of the parish:—*Held*: the lands were vested in the churchwardens & overseers as a corp'n. under the above Act of 1819.—*Re HACKNEY CHARITIES* (1864), 4 New Rep. 530; 34 L. J. Ch. 169; 11 L. T. 35; 28 J. P. 692; 10 Jur. N. S. 941; 12 W. R. 1129; *reversd.* on other grounds (1865), 4 De G. J. & Sm. 588, L. JJ.

Annotation:—*Mentd.* *Re Burnham National Schools* (1873), L. R. 17 Eq. 241.

22. ———.—]—**Corporation for care & management of parochial property.**]

Poor Relief Act, 1819 (c. 12), s. 17, makes churchwardens & overseers a corp'n. of a peculiar kind, differing from ordinary corpns., the object of it being the care & proper management of the parochial property.—**GOULDSWORTH v. KNIGHTS** (1843), 11 M. & W. 337; 12 L. J. Ex. 282; 152 E. R. 833.

Annotations:—*Refd.* **Doe d. Edney v. Benham**, **Doe d. Edney v. Billett** (1845), 7 Q. B. 976; **Ritchings v. Cordingley** (1868), L. R. 3 A. & E. 113; **R. v. White** (1883), 11 Q. B. D. 309. *Mentd.* **Webb v. Austin** (1844), 7 Man. & G. 701; **Pargeter v. Harris** (1845), 7 Q. B. 708; **A.-G. v. Stephens** (1855), 1 K. & J. 724; **Weld v. Baxter** (1856), 11 Exch. 816; **Hickman v. Machin** (1859), 4 H. & N. 716; **Cuthbertson v. Irving** (1860), 6 H. & N. 135.

Compare No. 36, *post*.

City Livery Company.]

—*See* Nos. 1605–1607, *post*.

23. **College.**]

(1) There is no manner of difference between a college & a hospital, except only in degree; a hospital is for those that are poor & mean, & low, & sickly; a college is for another sort of indigent persons; but it has another intent, to study in, & breed up persons in the world, who have not otherwise to live; but still it is as much within the reason of hospitals, & if in a hospital the master & poor are incorporated, it is a college having a common seal to act by, although it has not the name of a college, which always supposes a corp'n.

(2) The head of a college cannot maintain an assize for his headship, for he has no sole seisin; the whole body of the college have an interest in the estate; he has not a title to a penny of the revenues in his own right till by consent they be privately divided & distributed.

(3) There are in law two sorts of corpns. aggregate: such as are for public govt., & such as are for private charity. Those that are for the public govt. of a town, city, mystery or the like, being for public advantage, are to be governed according to the laws of the land; if they make any particular private laws & constitutions, the validity & justice of them is examinable in the King's cts. (**HOLT, C.J.**).—**PHILIPS v. BURY** (1694), 2 Term Rep. 346; *Comb.* 265; **Holt, K. B.** 715; 1 *Ld. Raym.* 5; 4 *Mod. Rep.* 106; *Show. Parl. Cas.* 35; 1 *Show.* 360; *Skin.* 447; 100 E. R. 186; *subsequent proceedings*, *Carth.* 319.

Annotations:—*As to* (2) *Refd.* **Young v. Lynch** (1753), *Say.* 84. *Generally*, *Mentd.* **Hartop v. Holt** (1695), 1 *Salk.* 263; **Ratcliffe's Case** (1719), 1 *Stra.* 267; **Birmingham School Case** (1725), *Gillb. Ch.* 178; **Snape v. Lincoln** (1728), 1 *Barn. K. B.* 122; **Selwood v. Methlyn** (1729), 1 *Barn. K. B.* 254; **Bentley v. Ely** (1732), *Fitz-G.* 305; **Kent v. Kent** (1734), 2 *Barn. K. B.* 441; **Broadbent v. Wilks** (1742), *Willes*, 360; **R. v. Chester** (1747), 1 *Wills.* 206; **Green v. Rutherford** (1750), 1 *Ves. Sen.* 462; **R. Ely** (1757), 1 *Wm. Bl.* 71; **St. John's College, Cambridge v. Toddington & Ely** (1757), 1 *Keny.* 441; **R. v. Ely** (1794), 5 *Term Rep.* 475; **A.-G. v. York** (1831), 2 *Russ. & M.* 461; *Re York* (1841), 2 *Q. B.* 1; **Whiston v. Rochester** (1849), 7 *Hare*, 532; **R. v. Chester** (1850), 15 *Q. B.* 513; *Ex p.* **Buller** (1855), 25 *L. T. O. S.* 102; **Phillpotts v. Boyd** (1875), L. R. 6 P. C. 435; **Combe v. De La Bere** (1881), 6 *P. D.* 157.

capacity.—**IRVINE v. STANLEY OVERSEERS** (1906), 2 E. L. R. 5.—**CAN.**

Town Commissioners.]

—**McSHERRY v. COBOURG TOWN TRUST COMRS.** (1880),

45 U. C. R. 240.—**CAN.**

h. ——— & Harbour Commissioners.]

—**BOWER v. GRIFFITH** (1868), 16 *W. R.* 540.—**IR.**

k. Trustees of religious congregations.]

—**BEATY v. GREGORY** (1890), 28 O. R. 80; 24 A. R. 325.—**CAN.**

Sect. 2.—Classification of corporations: Sub-sects. 2 & 3.]

24. Colonial Government.]—A Colonial Govt. is not a corpn.—*SLOMAN v. NEW ZEALAND GOVERNMENT* (1876), 1 C. P. D. 563; 46 L. J. Q. B. 185; 35 L. T. 454; 25 W. R. 86; 2 Char. Pr. Cas. 202, C. A.

Annotations:—*Mentd.* *Hillyard v. Smyth* (1887), 36 W. R. 7; *Fry v. Moore* (1889), 61 L. T. 545.

25. Dean & chapter.]—*FULWOOD'S CASE*, No. 1037, *post*.

26. —.]—*FORD v. HARRINGTON*, No. 53, *post*.

Chapter without dean.]—*See* No. 12, *ante*.

Foreign corporation.]—*See* Sect. 7, sub-sect. 2.

27. Freemasons' lodge.]—Where a bill was filed by some members of a lodge of freemasons against others to have the dresses & decorations, & other effects, of the society delivered up, an injunction was allowed on demurrer on the ground that they affected to sue in a corporate character.—*LLOYD v. LOARING* (1802), 6 Ves. 773; 31 E. R. 1302, L. C.

Annotations:—*Refd.* *Meux v. Maltby* (1818), 2 Swan. 277; *Clough v. Ratcliffe* (1847), 1 De G. & S. M. 164. *Mentd.* *Re Lead Co.'s Workmen's Fund*, *Lowes v. Smelting Down Lead with Pit & Sea Coal*, [1904] 2 Ch. 196.

28. Guardians of the poor.]—*SMART v. WEST HAM UNION GUARDIANS*, No. 1111, *post*.

Inhabitants.]—*See* Part II., Sect. 2, *post*.

29. Joint stock company.]—Joint stock cos. completely registered under 7 & 8 Vict. c. 110, are bound by contracts made by a competent board of directors, though not under seal, or made in compliance with the requisites of sect. 44 of that Act. *Semble*: they cannot enforce such contracts.—*RIDLEY v. PLYMOUTH GRINDING & BAKING CO., KINGSBRIDGE FLOUR MILL CO. v. PLYMOUTH BAKING CO.* (1848), 2 Exch. 711; 17 L. J. Ex. 252; 12 Jur. 542; 154 E. R. 676.

Annotations:—*Distd.* *Smith v. Hull Glass Co.* (1849), 8 C. B. 668. *Consd.* *Re Sea, Fire & Life Assce. Co., Greenwood's Case* (1854), 3 De G. M. & G. 459; *Ernest v. Nicholls* (1857), 6 H. L. Cas. 401. *Distd.* *Metropolitan Saloon Omnibus Co. v. Hawkins* (1859), 4 H. & N. 87. *Refd.* *East Anglian Rys. v. Eastern Counties Ry.* (1851), 11 C. B. 775; *Hallett v. Dowdall* (1852), 18 Q. B. 2; *Royal British Bank v. Turquand* (1850), 6 E. & B. 327; *Charles v. National Guardian Assce. Soc.* (1857), 29 L. T. O. S. 246; *Prince of Wales Assce. Co. v. Harding* (1858), E. B. & E. 183; *Balfour v. Ernest* (1859), 5 C. B. N. S. 601.

30. Promoters of joint stock company.]—Promoters of a joint stock co. provisionally registered under 7 & 8 Vict. c. 110, have no right to assume the style of corpn., nor to call on the registrar of joint stock cos. to register a return of such a name.—*R. v. WHITMARSH* (1850), 14 Q. B. 803; 19 L. J. Q. B. 185; 14 L. T. O. S. 486; 117 E. R. 309; *sub nom.* *R. v. JOINT-STOCK CO.'S REGISTRAR, Re SEA, FIRE, LIFE ASSURANCE CO.*, 14 Jur. 348.

Annotation:—*Mentd.* *R. v. Whitmarsh, Re National Land Co.* (1850), 19 L. J. Q. B. 469.

See, generally, COMPANIES.

31. Local board of health.]—Upon a petition presented by a local board of health:—*Held*: the local board was not a body corporate under 11 & 12 Vict. c. 63, & must sue in the name of their clerk as directed by sect. 128.—*Ex p. LLANELLY LOCAL BOARD OF HEALTH* (1853), 22 L. J. Ch. 419; 20 L. T. O. S. 320; 17 Jur. 107; 1 W. R. 159.

32. —.]—*MANCHESTER, SHEFFIELD, ETC., RY. CO. v. WORKSOP BOARD OF HEALTH* (1857), 23 Beav. 198; 26 L. J. Ch. 345; 29 L. T. O. S. 6; 21 J. P. 227; 3 Jur. N. S. 304; 5 W. R. 279; 53 E. R. 78.

Annotation:—*Mentd.* *A.-G. v. Birmingham B. C.* (1858), 4 K. & J. 528.

33. Mayor & commonalty.]—*FULWOOD'S CASE*, No. 1037, *post*.

34. —.]—Land given to a mayor common-

alty is fee-simple, & the reason is because they are perpetual, & if the estate be not limited, they shall take according to their continuance.—*MARSH v. NEWMAN* (1624), Poph. 163; 79 E. R. 1261.

35. Mayor & aldermen.]—On an action on the case for a false return to a mandamus directed to the Lord Mayor of London & aldermen, etc., a return was made that *pltf. nunquam fuit electus* to the office of chamberlain of L. Deft. pleaded that the Mayor & Aldermen of L. are a corpn. & that they jointly made the return:—*Held*: the mayor & aldermen are not a corpn.—*RICH v. PILKINGTON* (1691), Carth. 171; 90 E. R. 704.

Annotations:—*Consd.* *Harman v. Tappenden* (1801), 1 East, 555; *Ferguson v. Kinnoull* (1842), 9 Cl. & Fin. 251. *Refd.* *Mitchell v. Tarbutt* (1794), 5 Term Rep. 649; *Mill v. Hawker* (1874), L. R. 9 Exch. 309.

36. Overseers—For demising land.]—Where a pauper had been put in possession of a cottage 40 years before, by the then existing overseers of the poor, & had continued in the parish pay, & the cottage had been from time to time repaired by different overseers till two years before, when the pauper disposed of it to deft., & went away:—*Held*: the existing overseers could not maintain ejectment for it, having no derivative title as a corpn. from their predecessors.—*DOE d. GRUNDY v. CLARKE* (1811), 14 East, 488; 104 E. R. 688.

Compare Nos. 13-18, 20-22, *ante*.

37. Parishioners—For disposal of personal property of church.]—The churchwardens by the consent & agreement of the parishioners, took a ruinous bell & delivered it to a bell-founder. On a writ of account brought against them by their successors:—*Held*: the agreement excused the churchwardens for the parishioners are a corpn. for the disposal of such personal things as belong to their church.—*METHOLD v. WINN* (1595), 4 Vin. Abr. 526.

38. —.]—A parish is a fluctuating body, not at all similar to a corpn. (*PLUMER, M.R.*).—*Re SUDBURY'S (LORD) CHARITY, Ex p. FOWLSEY* (1819), 1 Jac. & W. 70; 37 E. R. 302.

39. — For purchasing property.]—A parish as such, cannot buy property because it has no corporate existence (*JESSEL, M.R.*).—*Re ST. BRIDE'S, FLEET ST., CHURCH OR PARISH ESTATE* (1877), 35 Ch. D. 147, n.; 56 L. J. Ch. 692, n.; 35 W. R. 689, n.; *affd.*, [1877] W. N. 149, C. A.

Annotation:—*Refd.* *Re St. Botolph Without Bishopsgate Parish Estates* (1887), 35 Ch. D. 142.

40. Parson, churchwardens & parishioners.]—Petition was presented by the parson, churchwardens, & parishioners of a parish under City of London Parochial Charities Act, 1883, c. 36, for a declaration that certain lands or property were not charity property within the meaning of the Act, or, that the petitioners had a vested interest in such land. Part of the property consisted of three houses built on the site of the north aisle of the church. The church was, in 1536, by Act of Henry VIII., vested in the parson, churchwardens, & parishioners, & their successors in free alms for ever. The remainder of the property was held by the parson, churchwardens, & parishioners under a lease granted in 1587 for the relief & maintenance of the poor, the parish, & the necessary reparations of the parish church of St. A.:—*Held*: the parson, churchwardens, & parishioners did not constitute a corpn., except for the purpose of taking the church granted by the Act of Henry VIII.—*Re ST. ALPHAGE, LONDON WALL* (1888), 59 L. T. 614; 4 T. L. R. 756.

41. Trinity House.]—By Merchant Shipping Repeal Act, 1854 (c. 120), the superintendence & management of all lighthouses & beacons in England & the adjacent seas are vested in the

Trinity House, subject to the existing jurisdiction of local lighthouses authorities; the Trinity House shall continue to hold & maintain all property vested in them in the same manner & for the same purposes as they have hitherto held & maintained the same, & extensive powers are given to them, to be exercised with the consent of the Board of Trade, in respect of the management & control of lighthouses & beacons which are subject to the jurisdiction of local authorities, & in other respects. The Act further provides that the light dues levied by the Trinity House shall be carried to the account of the Mercantile Marine Fund; that the expenses incurred in respect of the service of lighthouses & beacons shall be paid out of that fund; that the Trinity House shall account to the Board of Trade for their receipts & expenditure, & that their accounts shall be audited by the Comrs. of Audit:—*Held*: the corpn. of Trinity House were not by virtue of the above Act constituted servants of the Crown so as to exempt them from liability to an action for negligence in the performance of their duties.—*GILBERT v. TRINITY HOUSE CORPN.* (1886), 17 Q. B. D. 795; 56 L. J. Q. B. 85; 35 W. R. 30; 2 T. L. R. 708, D. C.

Annotations:—*Reid. Boynton v. Ancholme Drainage & Navigation Comrs.*, [1921] 2 K. B. 213. *Mentd. McClelland v. Manchester Corpn.*, [1912] 1 K. B. 118.

Trustees appointed under statutes for performance of public duties.—*See* Part II., Sect. 3, sub-sect. 4, A., *ante*.

42. Universities.—(1) There is a vast deal of difference between a new charter granted to a new corpn., who must take it as it is given, & a new charter given to a corpn. already in being, & acting either under a former charter or under prescriptive usage. The latter, a corpn. already existing, are not obliged to accept the new charter *in toto*, & to receive either all or none of it: they may act partly under it, & partly under their old charter or prescription.

(2) Whatever might be the notion in former times, it is most certain now, that the corps. of the universities are lay-corps.: & that the Crown cannot take away from them any rights that have been formerly subsisting in them under old charters or prescriptive usage. The validity of these new charters must turn upon the acceptance of the university (*LORD MANSFIELD*).—*R. v. CAMBRIDGE (VICE-CHANCELLOR)* (1765), 3 Burr. 1647; 1 Wm. Bl. 547; 97 E. R. 1027.

Annotations:—*As to* (1) *Consd. R. v. Westwood* (1825), 4 B. & C. 781. *Generally, Mentd. R. v. Windham* (1776), 1 Cowp. 377.

43. Voluntary society—Society for relief in sickness, etc.—In a suit for an account brought against the trustees by some members of a society for relief in sickness by means of a fund raised by members' subscriptions:—*Held*: the society had no corporate character, & all the other members must be made parties.—*BEAUMONT v. MEREDITH* (1814), 3 Ves. & B. 180; 35 E. R. 447, L. C.

Annotations:—*Reid. Clough v. Ratcliffe* (1847), 1 De G. & Sm. 164; *Re Lead Co.'s Workmen's Fund, Lowes v. Smelting Down Lead with Pit & Sea Coal*, [1904] 2 Ch. 196.

44. — Society of inspectors of poor for Scotland.—*RATHVEN PARISH v. ELGIN PARISH* (1875), L. R. 2 Sc. & Div. 535, H. L.

Annotation:—*Mentd. Tancored Arrol v. Steel Co. of Scotland* (1890), 15 App. Cas. 125.

45. ——*BROWN v. DALE* (1878), 9 Ch. D. 78; 27 W. R. 149.

421. Universities.
1908), T. S. 748.—S. AF.

PART I. SECT. 2, SUB-SECT. 3.

491. Bishop.]—*RUTZ v. SANDWICH*

Club.]—See CLUBS & OTHER VOLUNTARY ASSOCIATIONS, Vol. VIII., p. 505.

SUB-SECT. 3.—CORPORATIONS SOLE.

46. The Crown.]—SUTTON'S HOSPITAL CASE, No. 3, *ante*.

47. —.]—TONE RIVER CONSERVATORS v. ASH, No. 265, *post*.

48. Archdeacon.]—Henry VIII., by letters patent, refounded the cathedral church of R., & appointed a chapter, consisting of a dean & prebendaries, reserving to the king, his heirs & successors, the right of nominating the dean & prebendaries, & their successors, as vacancies occurred. Charles I., by letters patent, granted to A., archdeacon of R. & his successors, the first canonry or prebend which after the date of the letters patent should become vacant, & that the said prebend or canonry should be united & annexed to the archdeacon & his successors:—*Held*: Charles I. might lawfully annex the prebend to the archdeaconry, the archdeacon being a corpn. sole.—*KING v. BAYLAY* (1831), 1 B. & Ad. 761; 9 L. J. O. S. K. B. 131; 109 E. R. 969.

Annotations:—*Consd. & Apprd. R. v. Rochester* (1832), 3 B. & Ad. 95. *Reid. A.-G. v. Durham* (1882), 46 L. T. 16.

49. Bishop.]—FULWOOD'S CASE, No. 1037, *post*.

50. —.]—TONE RIVER CONSERVATORS v. ASH, No. 265, *post*.

51. —.]—Deft. was rector of the parish of A. in the archdeaconry of D., which was formerly in the diocese of B. but was dissevered from that diocese & annexed to & included in the diocese of S. The registrar of such portion of the diocese of B. as lay within the archdeaconry had an office, at which, after the annexation, he continued to transact the business of sequestrations as he had done before. A writ of *sequestrari facias* was issued by pltf., directed to the Bishop of S. & delivered to the registrar & accepted by him, & sequestrators were appointed under the seal of the Bishop of S., & the writ remained in the said registrar's hands at his office:—*Held*: (1) the writ of sequestration was a continuing execution & continued in force until the debt & costs should be realised, without reference to the time at which the writ was nominally returned, or until the Bishop was ruled to return it; (2) a bishop is a corpn. sole; (3) the writ was rightly directed to the Bishop of S., & he must make a return to it.—*PHELPS v. ST. JOHN* (1855), 10 Exch. 895; 24 L. J. Ex. 171; 24 L. T. O. S. 311; 3 C. L. R. 478.

52. — Roman Catholic bishop.]—An owner of land in Ireland agreed with a Roman Catholic bishop to let land to him & his successors, in order to provide a suitable residence & holding for a Roman Catholic officiating clergyman upon the estate, to be held so long as there should be & remain stationed upon the premises such an officiating clergyman, appointed by the bishop & his successors:—*Held*: inasmuch as the bishop was not a corpn. sole his rights under the agreement did not vest in his successor on his death.—*KEHOE v. LANSLOWNE (MARQUESS)*, [1893] A. C. 451; 62 L. J. P. C. 97; 57 J. P. 708; 9 T. L. R. 628; 1 R. 294, H. L.

53. Canon or prebendary.]—An an appeal from the revising barrister for the city of E. it

DIocese, ROMAN CATHOLIC EPISCOPAL CORPN. (1870), 30 U. C. R. 289.—CAN.

4911. —.]—*PARIS v. NEW WESTMINSTER (BP.)* (1897), 5 B. C. R. 450.—CAN.

Sect. 2.—Classification of corporations: Sub-sect. 3.
Sect. 3.]

appeared that the dean & chapter of E. are a corpn. aggregate. There are five canons in the chapter who are appointed for life, & five houses which the canons are entitled to occupy in right of their prebends for life, & with their enjoyment of which the chapter cannot interfere. At the election of a canon he produces the key of the house occupied by his predecessor, & prays to be admitted. As one of the canons he is elected & decreed to be installed, & thereupon takes possession of his house. Each canon repairs his house at his own expense:—*Held*: the proper inference was that each canon held his house in severalty as a corpn. sole & not as a member of the chapter, though each canon was a member of the corpn. aggregate of the chapter, & he was entitled to a vote for the city in respect of it.—*FORD v. HARRINGTON* (1869), L. R. 5 C. P. 282; 1 Hop. & Colt. 331; 39 L. J. C. P. 107; 21 L. T. 609; 34 J. P. 120; 18 W. R. 289.

Annotation:—*Consd.* *Harris v. Phillips*, [1891] 1 Q. B. 267.

54. —.]—A prebendary is a sole corpn. existing by charter of foundation or prescription (*BOSANQUET, J.*).—*MIREHOUSE v. RENNEL* (1833), 1 Cl. & Fin. 527; 8 Bing. 490; 7 Bli. N. S. 241; 1 Moo. & S. 683; 5 E. R. 759, H. L.

Annotations:—*Consd.* *Ford v. Harrington* (1869), L. R. 5 C. P. 282. *Reid.* *Howley v. Knight* (1849), 19 L. J. Q. B. 3. *Mentd.* *Alston v. Atlay* (1837), 7 Ad. & El. 289; *Edwards v. Exeter* (1839), 7 Scott, 652; *Bradburne v. Botfield* (1845), 14 M. & W. 559; *Walsh v. Lincoln* (1875), L. R. 10 C. P. 518.

55. **Chamberlain of London.**—*FULWOOD'S CASE*, No. 1037, *post*.

56. —.]—The chamberlain of L. is a special corpn. & securities given to him shall go to his successor who may sue upon them.—*BYRD v. WILFORD* (1596), Cro. Eliz. 464; 78 E. R. 717, Ex. Ch.

Annotations:—*Consd.* *Graves v. Colby* (1838), 9 Ad. & El. 356. *Reid.* *Rennell v. Lincoln* (1827), 7 B. & C. 113.

57. **Master of hospital.**—*FULWOOD'S CASE*, No. 1037, *post*.

58. **Parson.**—*FULWOOD'S CASE*, No. 1037, *post*.

59. —.]—*A.-G. v. RUPER*, No. 16, *ante*.

60. —.]—*TONE RIVER CONSERVATORS v. ASH*, No. 265, *post*.

Prebendary.—*See* Nos. 53, 54, *ante*.

61. **Vicar.**—*FULWOOD'S CASE*, No. 1037, *post*.

62. **Vicar choral.**—A vicar choral of the cathedral church of W., in the county of S., is a corporation sole, & his personal representative is liable to an action at the suit of his successor in the vicarage, for dilapidations of the house held by him as such vicar choral.—*GLEAVES v. PARETT* (1860), 7 C. B. N. S. 838; 29 L. J. C. P. 216; 6 Jur. N. S. 805; 141 E. R. 1045.

Annotations:—*Reid.* *Bridgewater v. Durant* (1861), 11 C. B. N. S. 7; *Ford v. Harrington* (1869), L. R. 5 C. P. 282.

SECT. 3.—CONTINUITY AND SUCCESSION.

63. **General rule.**—If a man be bound to the dean of P., & to his successors, & the dean die, the successor shall not have an action but the dean's exors.; for he had no succession, by such a name; but if a man be bound to the dean & chapter of P., & to their successors, the successors will have the action & not the exors., because by

that name they have a succession; but even in that case, if the chapter had not been founded, then the exors. would have the action, & not the successors; & the law is the same respecting a bishop (*LITTLETON, J.*).

I understand there is a distinction where the succession is in one person; or in several; or in one person, in right of several. If a man be bound to a dean & chapter this will enure to the successors, but if the bond be made to the dean & to his successors, the word "successors" is void; it is otherwise if the bond be made to an abbot or prior, & to their successors, omitting the convent; this will be good, & enure to the successors; for in this last case no one can accept the obligation, but only the abbot; for none of the others is a person capable of accepting. As to the case of the priest of a chantry, if the foundation be such that he can take the bond by such name to himself & his successors, & it is given to him & his successors; the gift is good, & will enure to his successors, as well as to him; & not to his heirs; notwithstanding that a bond made to him & his successors will enure to his exors., & not to his successors (*CHOKE, J.*).—*ROBINSON v. LEWIS* (1480), Y. B. 20 Edw. 4, fo. 2, pl. 7.

Annotations:—*Reid.* *Fulwood's Case* (1591), 4 Co. Rep. 64 b. *Mentd.* *Bird v. Orms* (1611), Cro. Jac. 289.

64. —.]—*TONE RIVER CONSERVATORS v. ASH*, No. 265, *post*.

65. —.]—*COOCH v. GOODMAN*, No. 1057, *post*.

66. **Whether succession to rights in property—Corporation sole—Member of corporation aggregate.**—*ANON.* (1440), Y. B. 19 Hen. 6, fo. 44, pl. 94.

Annotations:—*Mentd.* *Waterer v. Freeman* (1619), Hob. 266; *Dodd v. Beckman & Carman* (1699), 1 Ld. Raym. 445; *Ashby v. White* (1703), 2 Ld. Raym. 938.

67. — — — — **Succession in severalty** — *FORD v. HARRINGTON*, No. 53, *ante*.

68. — — — —.]—*FULWOOD'S CASE*, No. 1037, *post*.

69. — — — —.]—A succession in one person for chattels will not be presumed without special allegation except in case of an abbot or prior, or the like corpn. known in law to rest in one person as well for chattels as inheritances.—*ARUNDEL'S CASE* (1615), Hob. 64; 80 E. R. 212.

Annotations:—*Reid.* *Rennell v. Lincoln* (1827), 7 B. & C. 113. *Mentd.* *Wray v. Thorn* (1744), Willes, 438.

70. — — — —.]—*BYRD v. WILFORD*, No. 56, *ante*.

—.]—An administration bond taken under Stat. of Distributions to the ordinary & his exors., administrators or assigns, passes on the death of the ordinary to his exor., & not to his successor.—*HOWLEY v. KNIGHT* (1849), 14 Q. B. 240; 19 L. J. Q. B. 3; 14 L. T. O. S. 173; 14 Jur. 665; 117 E. R. 95.

Annotations:—*Reid.* *Wilkinson v. Verity* (1871), L. R. 6 C. P. 206; *Power v. Banks*, [1901] 2 Ch. 487.

72. — **Corporation aggregate.**—*FULWOOD'S CASE*, No. 1037, *post*.

73. — **Underwriting association—Statutory incorporation—Right of action on guarantee.**—A. desiring to become an underwriting member of Lloyd's, B. gave a guarantee to the committee of that body on behalf of A. in which he held himself responsible for all his engagements in that capacity.

When the guarantee was given, Lloyd's was a voluntary assocn., managed by a committee, to whom the guarantee was given. A few years after the members of this assocn. were incorporated by a special Act of Parliament under the

PART I. SECT. 3.

721. **Whether succession to rights in property—Corporation aggregate.**—A corporation aggregate possesses the

right of perpetual succession to property rights.—*WEBB & Co. v. NORTHERN RIFLES* (1908), T. S. 462.—S. AF.

1. **Liabilities of successor—Corporation sole.**—The Roman Catholic Bishop of S. incorporated as The Roman Catholic Episcopal Corpn. of

name of Lloyd's, & the rights of the committee were vested in the corpn.:—*Held*: the committee, & the corpn. as their successors, were in the position of trustees for all persons with whom A. had entered into engagements as an underwriter, & were therefore entitled to maintain the action.—*LLOYD'S v. HARPER* (1880), 16 Ch. D. 290; 50 L. J. Ch. 140; 43 L. T. 481; 29 W. R. 452, C. A.

Annotations:—*Mentd.* *Re Flavell, Murray v. Flavell* (1883), 25 Ch. D. 89; *Re Crace, Balfour v. Crace*, [1902] 1 Ch. 733; *Shepherd v. Bray*, [1906] 2 Ch. 235; *Re Cavendish Browne's Settltmt. Trusts, Horner v. Rawle* (1916), 61 Sol. Jo. 27; *Barker v. Stickney*, [1918] 2 K. B. 356.

Legal proceedings by corporations generally, see Part XV., *post*.

74. — Incorporation of local board district —Public Health Act, 1875 (c. 55), s. 310.]—The words "council of such borough" in sect. 310 of the above Act mean the mayor, aldermen, & burgesses acting by the council; the effect of the sect., therefore, is that when the district of a local board is incorporated as a borough all the property of the board, including property acquired by them by purchase after the passing of the Act, vests at once in the corpn., without the necessity of any conveyance or transfer. In such a case, the Bank of England are bound on the request of the corpn. to register in their corporate name govt. stock previously standing in the books of the bank in the name of the local board without requiring any transfer to be executed.—*HYDE CORPN. v. BANK OF ENGLAND* (1882), 21 Ch. D. 176; 51 L. J. Ch. 747; 46 L. T. 910; 30 W. R. 790.

Annotation:—*Consd.* *Re Leeds Institute of Science, Art & Literature, & Leeds City Council*, [1909] 1 Ch. 500.

75. — Transfer of school board to borough council.]—This was an action brought by the corpn. of O. against the Bank of E. to obtain possession of certain 2½ per cent. annuities. Pltfs. were, under Education Act, 1902 (c. 42), the local education authority for the district of the borough of O. The Act came into operation in that district on Jan. 1, 1904, which was the "appointed day," & at that time the annuities stood in the books of the Bank of E. in the name of the O. school board. Pltfs. claimed that on the appointed day the school board had ceased to exist, that the annuities had then become vested in them by virtue of the Act, & that no further transfer was necessary:—*Held*: by s. 5 of the above Act the school board had for all purposes ceased to exist on the appointed day; the annuities had on that day vested in pltfs. by virtue of the above Act; & no further transfer was necessary.—*OLDHAM CORPN. v. BANK OF ENGLAND*, [1904] 2 Ch. 716; 73 L. J. Ch. 785; 91 L. T. 582; 68 J. P. 584; 53 W. R. 243; 20 T. L. R. 787; 48 Sol. Jo. 724; 2 L. G. R. 1324, C. A.

Annotations:—*Distd.* *Re Wallsend B. C. & Northumberland County Council*, [1906] 2 Ch. 506. *Consd.* *Re Leeds Institute of Science, Art & Literature, & Leeds City Council*, [1909] 1 Ch. 500.

76. — Grant of charter to members constituting voluntary association.]—A bond was given to A., B., & C., payable to them & their successors, as the governors of the Society of Musicians, to secure H.'s faithfully accounting with them & their successors, governors, etc., as their collector; afterwards the society was incorporated by letters patent, at which time H.

had accounted for all monies collected by him, but after the incorpn. received money for which he did not account:—*Held*: the obligor of the bond was not liable for such default of H. in an action on the bond.—*DANCE v. GIRDLER* (1804), 1 Bos. & P. N. R. 34; 127 E. R. 370.

Annotations:—*Expld.* *Edwards v. Grand Junction Ry.* (1836), 1 My. & Cr. 650. *Reid.* *Backhouse v. Hall* (1865), 34 L. J. Q. B. 141. *Mentd.* *Re Carlisle Election Petn.* (1852), 20 L. T. O. S. 156.

Succession to benefit of personal contract.]—See No. 71, *ante*.

77. Liabilities of successor—Guardians of poor.]—By local Act 42 Geo. 3, c. 56, certain persons & their successors were nominated guardians of the poor, & trustees for putting the Act into execution: by the Act, they were to sue & be sued in the name of their treasurer for the time being, & he was to be reimbursed out of the monies received by the guardians under the Act, for all costs, damages, & charges, that he should be put to as pltf. or deft. in any such action. Pltf., in 1805 & 1820, was elected treasurer. As treasurer he obtained a decree from the Ct. of Ch. in favour of the parish of C., & certain sum was paid to him as treasurer, on that account. This sum pltf., by order of the then guardians, paid to them. On the petition of the inhabitants of a district, within the parish of C., pltf., after he ceased to be treasurer, was ordered by the Ct. of Ch. to pay the sum, which he had received as treasurer to the guardians, into ct., that the proceeds might be applied to the exclusive benefit of C.; which was done:—*Held*: (1) the guardians were a body having perpetual succession, & for the purposes of suing & being sued, a corpn.; (2) pltf. was entitled to recover from the now guardians the sum so paid by him, as money paid to their use; (3) the sum to be recovered against deft. (the now treasurer) in the present action, was costs, damages, & charges, within the meaning of the Act.—*JEFFERYS v. GURR* (1831), 2 B. & Ad. 833; 1 L. J. K. B. 23; 109 E. R. 1352.

Annotations:—*As to* (1) *Consd.* *Salford Corpn. v. Lancashire County Council* (1890), 25 Q. B. D. 384. *As to* (2) & (3) *Dttd.* *Moffatt v. Dickson* (1853), 1 C. L. R. 294.

78. — Churchwardens & overseers.]—*FURNIVALL v. COOMBES*, No. 20, *ante*.

79. — County council—Successors of county justices.]—The justices of a county, as the local authority for the county, neglected to recoup to pltfs., as the local authority for a borough within the county, the proportionate amount contributed by the borough to the expenses incurred by the local authority of the county, in carrying out the provisions of Contagious Diseases (Animals) Act, 1869 (c. 70), which they were bound to repay under s. 97 of that Act. After the passing of the Local Government Act, 1888 (c. 41), pltfs. sued defts., as successors of the local authority for the county, to recover the sums which should have been recouped:—*Held*: the only remedy against the justices would have been by mandamus to them to pay the amounts claimed out of moneys in their hands, or to levy a rate for the purpose; & that, as Local Government Act, 1888, vests in the county council the property of the justices for the county subject to the same conditions & restrictions as if the Act had not been passed, defts. were not liable in the action.—*SALFORD CORPN. v. LANCASHIRE COUNTY COUNCIL* (1890), 25 Q. B. D. 384; 59 L. J. Q. B. 576; 63 L. T. 409;

the Diocese of S. had no power to borrow so as to bind his successor, & money lent to the Bishop could not be recovered against the corpn.—*RUITZ v. SANDWICH DIOCESE, ROMAN*

CATHOLIC EPISCOPAL CORPN. (1870), 30 U. C. R. 269.—*CAN.*

m. — — — — —.]—A covenant by a bishop, described in his corporate

capacity, expressed to be on behalf of himself, his heirs, exors. & administrators, will not bind his successors in office.—*PARIS v. NEW WESTMINSTER (BP.)* (1897), 5 B. C. R. 450.—*CAN.*

Sect. 3.—Continuity and succession. Sect. 4: Sub-sects. 1 & 2.]

55 J. P. 85; 38 W. R. 661; 6 T. L. R. 362, C. A.

Annotation:—Reid. Bootle-cum-Linacre Corpn. v. Lancashire County Council (1890), 60 L. J. Q. B. 323.

Legal proceedings against corporations generally, see Part XV., *post*.

80. — Corporation sole—Writ of sequestration issued to—Liability of successor to make return to writ.]—PHELPS v. ST. JOHN, No. 51, ante.

Whether acts are binding on successor—Appointment of officer.]—See Part IV., Sect. 1, sub-sect. 8, *post*.

81. Whether continuity affected—Surrender & regrant of possessions—Under new name.]—Henry VIII. translated the abbot & prior of N. by his letters patent, & created them by the name of dean & chapter, who surrendered their possessions to Edward VI. who reincorporated them by the name of "The Dean & Chapter of the Cathedral Church of the Holy & undivided Trinity of N., of the foundation of Edward VI.," & regranted their possessions to them, omitting the words "of the foundation of Edward VI.":—*Held*: (1) the translation, if there were any defect in it, was made good by 35 Eliz. c. 3; (2) the misnomer in the regrant by Edward VI., if material, was cured by 1 Edw. 6, c. 8; (3) the old corp'n. remained, notwithstanding the surrender.—*NORWICH'S (DEAN & CHAPTER) CASE (1598), 3 Co. Rep. 73 a; 2 And. 120, 165; 76 E. R. 793.*

Annotations:—As to (1) & (2) Reid. R. v. — (1610), Cro. Jac. 247; Lynne Regis Corp'n. Case (1612), 10 Co. Rep. 120 a. As to (3) Reid. Sutton's Hospital Case (1612), 10 Co. Rep. 1 a; R. v. London Corp'n. (1692), 12 Mod. Rep. 17; Trinity Chapel, Dublin v. Dublin (1723), 8 Mod. Rep. 183. Generally, Reid. Ford v. Harington (1869), L. R. 5 C. P. 282. Mentd. Thompson v. Leach (1690), 2 Vent. 198; Rennell v. Lincoln (1825), 3 Bing. 223.

82. — Assets of insolvent corporation taken over by new corporation.]—Where a new co. had taken over all the assets of an old co. which was insolvent & a creditor of the old co. brought only the new co. to a hearing, on an objection for want of parties:—*Held*: the creditor was entitled to go on with the case.—*CURSON v. AFRICAN CO. (1682), 1 Vern. 121; 23 E. R. 358.*

Annotation:—Mentd. Freeman v. Lomas (1851), 9 Hare, 109.

See, generally, COMPANIES.

83. — Constitution changed by statute.]—A trading corp'n. made a bargain for the use of one of H.M. ships of war to protect its monopoly, & agreed to pay the expenses of H.M.S., & £700 to the captain for certain services. The owner of a ship captured brought a suit 20 years after for the value of the ship & cargo:—*Held*: he should stand in the place of the captain's executrix & recover the amount from the corp'n., which was liable, although its constitution had been changed since by Act of Parliament.—*ROYAL AFRICAN CO. OF ENGLAND v. DOCKWRA (1703), Colles, 327; 1 E. R. 309, H. L.*

84. — Modifications under Municipal Corporations Act, 1835 (c. 76).]—A sale, alleged to be fraudulent, of corporate lands, was agreed to be made in 1817, & was completed in 1818. No proceeding was taken by any member of the corporate body, or other person interested, to invalidate the sale till the year 1838:—*Held*: though under the above Act the corporate body had undergone various modifications, it was still one & the same continuing body as in 1818, & was concluded by its own laches for so long a period from disputing the purchaser's title.—*MALDON CORPN. v. BLACKBORNE (1839), 3 J. P. 439.*

85. — —.]—In an action of debt against

a corp'n. regulated by Municipal Corpns. Act, 1835 (c. 76), on a bond given by them to pltf. it appeared on special verdict, that, before the passing of the Act, pltf. being an alderman of the borough, *quo warranto* informations were filed against him & several of his friends to try their right to be members of the corp'n., & they were ultimately ousted; that pltf., without authority from the now defts., caused the information to be defended; & that before the passing of the Act certain members of the corp'n., then being the governing body, & having the custody of the common seal, & lawful power to affix it to instruments, on pltf.'s application, affixed the seal to the bond & delivered it to him by way of reimbursement of the costs of such defences, & for no other consideration; that divers of the then burgesses of the corp'n. had no notice of the bond being given for that cause; that the sealing & delivery thereof was without fraud, unless the sealing & delivery for the cause was a fraud in law upon defts., or the inhabitants, or the members of the corp'n. who did not concur:—*Held*: (1) on the facts found, the corp'n. were liable on the bond before the above Act; (2) the corp'n., as subsisting under the statute, were still liable.—*HOLDSWORTH v. DARTMOUTH CORPN. (1840), 11 Ad. & El. 490; 3 Per. & Dav. 308; 9 L. J. Q. B. 121; 4 J. P. 138; 4 Jur. 605; 113 E. R. 501; subsequent proceedings, sub nom. CLIFTON DARTMOUTH HARDNESS CORPN. v. HOLDSWORTH (1844), 13 L. J. Ch. 178, L. C.*

Annotation:—Generally, Mentd. Arnold v. Gravesend Corp'n. (1856), 2 K. & J. 574.

86. — — Custody of corporation books.]

—*Primâ facie* it must be presumed that the books of a corp'n. which existed before Municipal Corporations Act, 1835 (c. 76), are in the possession of the new corp'n. which succeeded them under that Act, but if it be shown that the old corp'n. before their dissolution deposited them with a banker, & that from his hands they passed into the master's office of the Ct. of Ch. this rebuts the presumption.

An old corp'n. before Municipal Corporations Act, 1835 (c. 76), were trustees of a charity & a tenant of the charity had paid rent to the secretary to the old corp'n. up to Lady Day, 1836:—*Held*: this was a good payment & might be taken advantage of in an action brought by the new corp'n. for the rent.

This was a lease granted by the old corp'n. It was a grant of charity land. As the legislature continued the old corp'n. as charity trustees during the time that they were so continued trustees they had a right to receive the rents of the charity estates (*GURNEY, B.*).—*LUDLOW CORPN. v. CHARLTON (1840), 9 C. & P. 242, N. P.; subsequent proceedings, 6 M. & W. 815.*

87. — Charter under Municipal Corporations Act, 1837 (c. 78).]—If a charter be granted under the above Act to a district which is already a corporate borough, no new corp'n. is created, but the former corp'n. becomes subject to all the provisions of the new charter, & of Municipal Corporations Act, 1835 (c. 76), & consequently, all the property of the former corp'n. vests in the corp'n. as constituted under the new charter.—*A.-G. v. AVON CORPN. (1863), 33 Beav. 67; 2 New Rep. 146; 33 L. J. Ch. 172; 8 L. T. 594; 27 J. P. 757; 9 Jur. N. S. 1117; 11 W. R. 709; 55 E. R. 291; affd. on other grounds, sub nom. A.-G. v. AVON (OTHERWISE ABERAVON) CORPN., 3 De G. J. & Sm. 637, L. JJ.*

Annotation:—Mentd. Evans v. Bagshaw (1870), 39 L. J. Ch. 145.

See, further, LOCAL GOVERNMENT.

88. — Dissolution of school district for which corporation was school board.]—A school district & a board for such district were constituted under Poor Law Amendment Act, 1844 (c. 101). The district was dissolved. At the date of the dissolution there was standing in the books of the Bank of E. a sum of Consols, which represented surplus assets of the board of management :—*Held*: (1) the corporate body remained in existence either by implication from 33 & 34 Vict. c. 2, s. 1, or according to the common law rule so long as any one of the corporators remained alive. (2) Pltfs., the last acting managers, were not entitled to claim that the property was vested in them automatically under the last mentioned Act, & it would be necessary that the transfer of the Consols be executed under the corporate seal of the board.—*MORTON v. BANK OF ENGLAND*, [1904] 1 Ch. 664; 73 L. J. Ch. 503; 90 L. T. 375; 68 J. P. 268; 52 W. R. 393; 20 T. L. R. 230; 2 L. G. R. 734.

89. — Amalgamation of corporations & change of name.]—S. Water Co. incorporated in 1838 by Act of Parliament, covenanted for themselves their successors & assigns to supply water during the existence of the co. to the houses on an estate at a special rate. By an Act of 1845 the shareholders in V. Waterworks Co. were united & incorporated with S. Water Co. & the name changed to the S. & V. Water Co. Later both Acts were repealed, but it was enacted that notwithstanding such repeal, the co. should, as from 1838, & according to the incorporation continued by the Act of 1845, remain incorporated by the name of S. & V. Water Co., & all contracts made under either Act were saved. By Metropolis Water Act, 1902 (c. 41), the co.'s undertaking & liabilities were transferred to the Water Board as from June 24, 1904, & pursuant to that Act the co. was dissolved on June 5, 1906. In an action for a declaration that the Water Board were liable to supply water at the contract rate during its existence as a corpn. :—*Held*: notwithstanding the incorporation of V. Waterworks Co. & the statutory change of name, the co. remained the same body with perpetual succession, but that under the above Act of 1902, s. 45 (b), the contract was only enforceable against the Board according to its terms, & as it was only expressed to endure during the existence of the co., it came to an end when the latter was dissolved in 1906.—*EDGE v. METROPOLITAN WATER BOARD* (1907), 97 L. T. 279; 71 J. P. 436; 23 T. L. R. 398; 5 L. G. R. 1183.

SECT. 4.—THE NAME.

SUB-SECT. 1.—NECESSITY FOR.

90. Name essential.]—A corpn. is a body politic, consisting of material bodies, which, joined together, must have a name to do things which concern the corpn., or else it is no corpn. (*LITTLEDALE, J.*).—*MARIOT v. MASCAL* (1587), 1 And. 202; 123 E. R. 430.

Annotation:—*Refd.* *Tone River Conservators v. Ash* (1829), 10 B. & C. 349.

91. — But may be fictitious.]—*SUTTON'S HOSPITAL CASE*, No. 3, *ante*.

92. —.]—*FOLEY v. A.-G.* (1722), 7 Bro. Parl. Cas. 249; cited 6 Vin. Abr. 262; 3 E. R. 162, H. L.

Annotations:—*Consd.* *Wilson v. Dennison* (1749), 1 Amb. 82; *A.-G. v. Scott* (1750), 1 Ves. Sen. 413. *Refd.* *Re St. Stephen, Coleman Street, Re St. Mary the Virgin, Alderbury* (1888), 39 Ch. D. 492.

93. —.]—*TONE RIVER CONSERVATORS v. ASH*, No. 265, *post*.

94. Name must be expressed in grant—Or implied in nature of it.]—*ANON.* (1701), 1 Salk. 191; 91 E. R. 173; *sub nom.* *PHYSICIANS (PRESIDENT & COLLEGE OF) v. SALMON*, 1 Ld. Raym. 680. *Annotations*:—*Mentd.* *Underhill v. Ellicombe* (1825), M'Cle. & Yo. 450; *Smith v. Birmingham Gas Co.* (1834), 3 L. J. K. B. 166.

SUB-SECT. 2.—ACQUISITION OF.

95. By reputation—From business—Foreign corporation.]—Where the Dutch West India co. sued for money in England which was borrowed & was to be paid at A. :—*Held*: though no certain name was given them by the States, they might gain one by reputation from their business, by which they might sue.—*DUTCH WEST INDIA CO. v. HENRIQUES VAN MOSES* (1728), 1 Stra. 612; 93 E. R. 733, H. L.; *subsequent proceedings, sub nom.* *HENRIQUES v. GENERAL PRIVILEGED DUTCH CO. TRADING TO WEST INDIES*, 2 Ld. Raym. 1532.

Annotations:—*Refd.* *Alivon v. Furnival* (1834), 1 Cr. M. & R. 277; *Woolf v. City Steamboat Co.* (1849), 13 Jur. 456; *Ingate v. Lloyd Austriaco* (1858), 4 C. B. N. S. 704; *Newby v. Colt's Patent Firearms Co.* (1872), L. R. 7 Q. B. 293.

96. More than one name—General rule.]—*VAUGHAN v. BEDFORD* (1594), Cro. Eliz. 351; 78 E. R. 600.

Annotation:—*Refd.* *Knight v. Wells Corpn.* (1694), 1 Lut. 508.

97. —.]—A corpn. may be known by two different names; as of B., & of B. & B. But if the name of B. & B. be a name which they have received within time of memory; they cannot then prescribe by it, but by their ancient name.—*A.-G. v. FARNHAM* (1669), Hard. 504; 145 E. R. 569.

Annotations:—*Refd.* *Knight v. Wells Corpn.* (1695), 1 Ld. Raym. 80. *Mentd.* *R. v. Mitchel* (1848), 3 Cox, C. C. 93.

98. —.]—*R. v. IPSWICH CORPN.*, No. 809, *post*.

99. — For different purposes.]—Where an exception was taken to a writ, because it was in the name of the President of the College of Physicians & not in that of the College also :—*Held*: the writ was good for although the incorporation was by the name of President & College, yet the right to sue was by the charter given to the President, & a corpn. could have only one name to purchase land & otherwise, yet it could sue by another name.—*PHYSICIANS (COLLEGE OF) v. BUTLER* (1632), 1 W. Jo. 261; *sub nom.* *BUTLER v. PHYSICIANS (PRESIDENT & COLLEGE OF)*, Cro. Car. 256; 82 E. R. 136.

Annotations:—*Consd.* *President & College of Physicians v. Salmon* (1695), 1 Ld. Raym. 680. *Refd.* *Knight v. Wells Corpn.* (1694), 1 Lut. 508.

100. — By grant.]—(1) A corpn. cannot have two names by grant. (2) If a corpn. enters into a bond by their wrong name, the bond is void. (3) A corpn. may by charter or prescription have two names. (4) A corpn. ought to be sued by its proper name.—*KNIGHT v. WELLS CORPN.* (1696), 1 Ld. Raym. 80; 1 Lut. 508 91 E. R. 950.

Annotation:—*As to* (1) *Refd.* *Colchester Corpn. v. Seaber* (1766), 3 Burr. 1866.

101. — By charter.]—*KNIGHT v. WELLS CORPN.*, No. 100, *ante*.

102. — By prescription.]—*KNIGHT v. WELLS CORPN.*, No. 100, *ante*.

103. —.]—Where a corpn. declaring

PART I. SECT. 4, SUB-SECT. 1.

90 i. Name essential.]—*BURRITT v. HATFIELD* (1857), 2 Thom. 161.—CAN.

Sect. 4.—The name: Sub-sects. 2, 3, 4 & 5, A. & B.]

in covenant by their modern name, stated that the citizens, etc. were from time immemorial incorporated by divers names of incorporation, & at the time of making the indenture by A. declared on, were known by a certain other name, by which name A. granted to them a watercourse, & covenanted for quiet enjoyment:—*Held*: the deed granting the watercourse to them by such name was evidence as against defts., who claimed under the grantor, & the corpn. was known by that name at the time, upon an issue taken on that fact.—*CARLISLE CORPN. v. BLAMIRE* (1807), 8 East, 487; 103 E. R. 430.

104. ———.]—By custom, a co. may compel all of their trade to become members.

A co. by prescription may have more than one corporate name.—*SHREWSBURY (WARDEN & COMBRETHREN OF THE CRAFTS OF MERCERS, IRONMONGERS & GOLDSMITHS) v. HART* (1823), 1 C. & P. 113, N. P.

105. ——— Distinction between ancient & modern corporations.]—There is a difference between an ancient corpn. & a new one. An ancient corpn. may have a name by prescription, different from that by which it was incorporated; but that cannot be the case with one of modern date (*DENMAN, C.J.*).—*R. v. HAUGHLEY* (1833), 4 B. & Ad. 650; 1 Nev. & M. K. B. 525; 1 Nev. & M. M. C. 122; 2 L. J. M. C. 56; 110 E. R. 601.

Annotations:—*Reid. R. v. Isle of Wight Union Grdns.* (1864), 4 New Rep. 92.

SUB-SECT. 3.—USE OF.

106. Corporation aggregate—Corporate name—Without showing christian name of head.]—In *ejectione firmæ*, pltf. declared upon a lease made by the Warden & College of All Souls in Oxford, exception was taken because the christian name of the warden was omitted:—*Held*: the inclusion was unnecessary; but where the corpn. consists of one person only, as a bishop, there he should be named; otherwise, if of many, as a dean & chapter mayor & commonalty.—*CARTER v. CRUMWEL* (1590), 1 Dyer, 86, n.; 1 And. 248; 73 E. R. 186.

107. ——— Not name of head alone.]—*PHYSITIAN CORPN. v. TENANT* (1614), 2 Bulst. 185; 80 E. R. 1054.

108. ——— Without showing proper names of members.]—A dean & chapter, or a warden & fellows of a college, may grant or lease by the name of dean & chapter, etc., without showing their proper names; & they may plead or be impleaded, because in their corporate capacity they have no name of baptism, or any other name than that by which they are incorporated; but it is otherwise in the case of a parson & vicar, for they must use their name of baptism.—*NEWTON v. TRAVERS* (1696), 3 Salk. 103; 91 E. R. 718.

109. ———.]—A corpn. must prosecute in their corporate name; & the addition of such name as a description of the persons of which the corpn. is composed, is not sufficient in an indictment.—*R. v. PATRICK & PEPPER* (1783), 1 Leach, 253.

110. ———.]—*KNIGHT v. WELLS CORPN.*, No. 100, *ante*.

111. ——— Notwithstanding express power

to sue by another name.]—A corpn. may sue by their name of creation, notwithstanding an express power given them to sue by another.—*PHYSICIANS (PRESIDENT & COLLEGE OF) v. TALBOIS* (1697), 1 Ld. Raym. 153; 91 E. R. 999.

112. ———.]—A corpn. may sue by its name of incorporation, notwithstanding an express power given it to sue by another.—*PHYSICIANS (PRESIDENT & COLLEGE OF) v. SALMON* (1701), 1 Ld. Raym. 680; 2 Salk. 451; 5 Mod. Rep. 327; 3 Salk. 237; 91 E. R. 1353.

Annotation:—*Mentd. Underhill v. Ellicombe* (1825), M'Cle. & Yo. 450.

113. ——— Foreign corporation.]—A foreign corpn. may sue in this country by their corporate name, but they must prove that they are incorporated in the foreign country, & it will be left to the jury to say, whether the body so incorporated is the same which sues.

Pltfs. sued by the name of The National Bank of St. C. The name given by charter of the King of Spain, was The Bank of St. C.:—*Held*: no variance, the bank being in fact a national one.—*NATIONAL BANK OF ST. CHARLES v. DE BERNALES* (1825), 1 C. & P. 569; Ry. & M. 190, N. P.

Annotations:—*Reid. Alvon v. Furnival* (1834), 1 Cr. M. & R. 277; *Sheehy v. Professional Life-Assoe.* (1853), 13 C. B. 787.

114. Corporation sole — Baptismal name.]—*CARTER v. CRUMWEL*, No. 106, *ante*.

115. ———.]—*NEWTON v. TRAVERS*, No. 108, *ante*.

By companies.]—*See COMPANIES.*

By friendly societies.]—*See FRIENDLY SOCIETIES.*

By industrial & provident societies.]—*See INDUSTRIAL, PROVIDENT, & SIMILAR SOCIETIES.*

By promoters of joint stock company.]—*See No. 30, ante.*

SUB-SECT. 4.—CHANGE OF.

116. How effected—Grant of land to corporation by another name.]—If the King grants lands unto a corpn. by another name than that which they were named before:—*Held*: the land should pass, & the letters patents should be to them as a new incorporation, etc.—*CHRIST CHURCH (DEAN & CHAPTER) & PAROTTS CASE* (1584), 4 Leon. 190; 74 E. R. 813.

117. Effect of—On franchises & land.]—The corpn. of the bailiffs & commonalty of D. has land & franchises; the King changes their name, & they are incorporated by the name of the mayor, bailiffs, & commonalty of D. The land & the franchises which they had, remain with this new corpn., for the new patent of incorporation recites their former name, & changes it as above; & this new corpn. continues composed of the same persons & place which constituted the old one.

If after their new incorporation, a patent had been made to them by the name of their old corpn., such patent had been void. Every one is bound to know his own name, & not the name of another.—*ANON.* (1435), Jenk. 99; 145 E. R. 71.

118. ———.]—*DAVENANT v. HURDIS*, No. 655, *post*.

119. ———.]—If a corpn. has franchises or privileges by grant or prescription, & afterwards they are incorporated by another name, the new body shall enjoy all the privileges, etc., which the old corpn. had either by grant or by prescription.

PART I. SECT. 4, SUB-SECT. 4.

n. How effected — Not without

authority of legislature.]—A corpn. incorporated by statute or charter has no power to change its corporate name

without authority of the legislature.—*LLOYD v. E. & N. A. Ry. Co.* (1878), 2 P. & B. 194.—*CAN.*

—LUTTRELL'S CASE (1601), 4 Co. Rep. 86 a; 76 E. R. 1065, Ex. Ch.

Annotations:—*Consd.* Colchester Corpn. v. Seaber (1766), 3 Burr. 1866. *Mentd.* Brown & Tucker's Case (1610), 4 Leon. 241; Douglas v. Kendall (1610), 1 Bulst. 93; R. v. Sorel (1613), Cro. Jac. 324; Burton v. Browne (1622), Palm. 319; Harrison v. Rooke (1625), Palm. 420; Rowden v. Maltster (1626), Cro. Car. 42; Shury v. Piggot (1626), 3 Bulst. 339; Popham v. Woolcott (1666), 1 Sid. 291; Lane v. Cotton (1701), 1 Ld. Raym. 646; Crompton v. Ward (1721), 1 Stra. 429; Allan v. Gomme (1840), 11 Ad. & El. 759; Renshaw v. Bean (1852), 18 Q. B. 112; Wilson v. Townsend (1860), 1 Drew. & Sm. 324; Hutchinson v. Copestake (1861), 8 Jur. N. S. 54; Hill v. Cook (1872), 26 L. T. 185; Aynsley v. Glover (1874), L. R. 18 Eq. 544; Warren v. Brown, [1900] 2 Q. B. 722; Colls v. Home & Colonial Stores, [1904] A. C. 179; A.-G. v. Reynolds, [1911] 2 K. R. 888; White v. Grand Hotel, Eastbourne, [1913] 1 Ch. 113.

120. ———.]—MELLOR v. SPATEMAN, No. 1035, *post*.

121. ———.]—(1) If a corp'n. that has existed by prescription accepts a new charter, in which there is some alteration of their name, & of the method in the governing part, yet their power to remove & other franchises which they had from time immemorial continue.

(2) If the power to remove is at their will & pleasure this will must be expressed under their common seal, but in a return to a mandamus *debito modo amotus* may suffice.—HADDOCK'S CASE (1681), 1 Vent. 355; T. Raym. 435; 86 E. R. 229.

Annotations:—*As to* (1) *Consd.* Colchester Corpn. v. Seaber (1766) 3 Burr. 1866. *Refd.* R. v. Westwood (1830), 7 Bing. 1. *Generally, Mentd.* R. v. Derby Corpn. (1734), Lee temp. Hard. 153.

122. ——— Coupled with surrender & regrant of possessions.]—NORWICH'S (DEAN & CHAPTER) CASE, No. 81, *ante*.

123. ——— On pleading prescriptive right.]—The custom of foreign bought & foreign sold within a city prescribed for as seizable by the mayor, sheriff, & citizens, at the same time showing that this name was by incorporation of Richard II. where before they were mayor, bailiffs, & citizens, is good.—ANON (1568), Dyer, 279 b; 73 E. R. 627.

Annotations:—*Refd.* City of London's Case (1610), 8 Co. Rep. 121 b; Hutchins v. Player (1663), O. Bridg. 272; R. v. Kilderby (1670), 1 Saund. 311; Mitchel v. Reynolds (1711), 1 P. Wms. 181.

124. ———.]—Deft. in a *quo warranto* information derived title under a custom for the mayor & burgesses of N. in common council assembled, under their various names of incorporation from time immemorial till the granting of letters patent by Elizabeth, & for the mayor, bailiffs, & capital burgesses, in common council assembled since that time, to admit every person of the age of 21 whom they chose. After verdict for deft. establishing this custom:—*Held*: it was well pleaded, the prescriptive right appeared to have been always exercised by the same body, the common council, though constituted of different persons at different times.—R. v. KNIGHT (1791), 4 Term Rep. 419; 100 E. R. 1096.

Annotation:—*Refd.* A.-G. v. Norwich Corpn. (1837), 1 Jur. 398.

125. ——— On right to sue for recovery of debt.]—Debt to an old corp'n. when they are incorporated by a new name, is recovered by their new name.—

a. Effect of—On right to sue.]—A deed to deft. co. described it by its original name of P. & Co., when in fact its name had then been changed:—*Held*: not a sufficient *descriptio personae* to enable corp'n. to sue in.—GRAND JUNCTION RY. CO. v. MIDLAND RY. CO. (1882), 7 A. R. 681.—CAN.

p. Proof of.]—Where, between the time of obtaining an order for service out of the jurisdiction & the

service, the name of a town, before the mayor of which the affidavit of service was directed to be made, had been changed, a certificate of the town clerk sealed with the corporate seal of the town under its new name, was received as proof of the fact of such change having taken place.—ROLPH v. CAHOON (1851), 2 Gr. 623.—CAN.

PART I. SECT. 4, SUB-SECT. 5.—B
126 i. Bond—To corporation—Vari-

SCARBOROUGH CORPN. v. BUTLER (1685), 3 Lev. 237; 83 E. R. 668.

Annotations:—*Consd.* Colchester Corpn. v. Seaber (1766), 3 Burr. 1866. *Mentd.* Callander v. Howard (1850), 10 C. B. 290; *Re* Laycock v. Pickles (1863), 4 B. & S. 497; Brennan v. Crawley, Mexican Ry., Garnishees (1868), 16 W. R. 754.

Grants and effect of new charters generally, see Part II., Sect. 5, *post*.

SUB-SECT. 5.—MISNOMER AND MISDESCRIPTION.

A. In General.

126. Substantial accuracy sufficient.]—The King incorporated a borough by the name of the Mayor & Burgesses of his borough of L. R., commonly called K. L. One became bound to the corp'n. in a bond by the name of the Mayor & Burgesses of L. R.:—*Held*: the bond was good, & the variance immaterial.

The name of a corp'n. in grants or conveyances need not be *idem syllabis seu verbis*; it is sufficient if it be *idem re et sensu*.—LYNNE REGIS CORPN. CASE (1612), 10 Co. Rep. 120 a; 77 E. R. 1111.

Annotations:—*Consd.* Stafford Corpn. v. Bolton (1797), 1 Bos. & P. 40; Croydon Hospital v. Farley (1816), 6 Taunt. 467; A.-G. v. Rye Corpn. (1817), 7 Taunt. 540. *Appld.* R. v. Haughley (1833), 4 B. & Ad. 650. *Refd.* Ayray's Case (1614), 11 Co. Rep. 18 b.

127. Mistakes helped in equity.]—AUDLEY (LORD) v. SIDENHAM (1590), Toth. 131; 21 E. R. 145.

See, generally, EQUITY.

B. In Documents.

128. Bond—To corporation—Variance immaterial.]—The Abbot of Y. was incorporated by this name *Abbas monasterii beatae Mariae Eborum*, & a bond was made to the Abbot by this name, *Abbati monasterii beatae Mariae extra muros civitatis Eborum*; & although the abbey was *extra muros civitatis Eborum*; yet because in truth it was within the city, the bond was good, & therefore the Abbot there brought his action of debt by his true name, & in his declaration he said that the bond was made to pltf. *per nomen*, etc., which implies an averment that the abbey was within Y.:—*Held*: the writ was a good writ.

In pleading, or in a special verdict, in many cases, if by express averment, or by the finding of the jury, it shall be made apparent to the ct., that the true name of the incorporation, & the name in the lease, grant, etc. are all one in effect, it will much enforce the matter, although in words there is some seeming difference.—YORK'S (ABBOT) CASE (1465), Y. B. 5 Edw. 4, fo. 5, pl. 20; cited in 10 Co. Rep. 125 b; 77 E. R. 1115.

Annotations:—*Distd.* Mariot v. Mascal (1587), 1 And. 202. *Refd.* Button v. Wightman (1594), Cro. Eliz. 338.

129. ———.]—LYNNE REGIS CORPN. CASE, No. 126, *ante*.

130. ———.]—Bond to Doctor C., Master, Fellows, etc., of Sussex & Sidney College, *solvendum* to the master, etc., is a bond taken in their corporate capacity.—SUSSEX & SIDNEY COLLEGE

ance immaterial.]—BROCK DISTRICT COUNCIL v. BOWEN, DANIELS & ROWNS (1850), 7 U. C. R.

128 ii. ———.]—A bond sued upon in the name of "The Trent & Frankford Road Co." was in the name of the president & directors of the Trent & Frankford Road Co.:—*Held*: no objection.—TRENT & FRANKFORD ROAD CO. v. MARSHALL (1862), 10 C. P. 329.—CAN.

Sect. 4.—The name: Sub-sect. 5, B. & C.]

(MASTER, ETC.) v. DAVENPORT (1747), 1 Wils. 184; 95 E. R. 563.

131. — By corporation—Void.] — KNIGHT v. WELLS CORPN., No. 100, *ante*.

132. Devise—To corporation — Variance immaterial.] — A devise to a corpn. is good, though it is not by their corporate name.—FOSTER v. WALTER (1588), Cro. Eliz. 106; 78 E. R. 364; *sub nom.* FORSTER & WALKER'S CASE, 2 Leon. 165.

133. — — —.] — The mayor, jurats, & commonalty of the ancient town of R., were held to take lands by a devise to the right worshipful the mayor, jurats, & town council of the ancient town of R.—A.-G. v. RYE CORPN. (1817), 7 Taunt. 546; 1 Moore, C. P. 267; 129 E. R. 218.

134. — — — Valid as appointment of charitable use.] — Devise void by misnomer of corpn., supplied in equity as a good appointment of a charitable use.—ANON. (1675), 1 Cas. in Ch. 267; 22 E. R. 794.

— To charity.] — See CHARITIES, Vol. VIII., pp. 282, 306–308, Nos. 565, 865–894.

135. Grant—To corporation—Void—Use of old instead of new name.] — ANON., No. 117, *ante*.

136. — — —.] — Where the college of E. is incorporated by the name *Praepositi & Collegii Regalis, Collegii Beatae Mariae de Eaton juxta Windsor*, & the provost & college make a lease for a great number of years to A. omitting in the lease the words *Beatae Mariae*, & the repetition of the word college:—*Held*: the lease would be void for the misnomer.

A grant made to a corpn. by any other than their true name, is void: for they know their own name (*per CUR.*).—EATON COLLEGE CASE (1557), 2 Dyer, 150 a; 1 And. 23; Moore, K. B. 13; cited Ben. & D. 45; 73 E. R. 327; *sub nom.* ANON., Jenk. 214.

Annotation:—*Reid*. Lynne Regis Corpn. Case (1612), 10 Co. Rep. 120 a.

137. — By corporation — Variance immaterial.] — A grant by such a college in *Academia Oxon*, shall not be avoided for the misnomer, although the college was not named in *Academia* in the charter of incorporation, but in *Oxon* only.—BUTTON v. WIGHTMAN (1594), Cro. Eliz. 338; Poph. 56; 78 E. R. 587.

Annotation:—*Reid*. A.-G. v. Downing (1767), Wilm. 1.

138. — — —.] — It is against conscience for a corpn. to avoid its grant for a misnomer.—SLOCOMBE v. — (circa 1600), Ch. Cas. in Ch. 108; 21 E. R. 67, L. C.

139. Lease — By corporation — Void.] — EATON COLLEGE CASE, No. 136, *ante*.

140. — — — Long lease without consideration of fine or good rent.] — The dean & chapter of B. made sundry leases, misreciting the name of their corpn., & an intricate case of sundry such leases made of one thing to divers men; wherein the Lord Chancellor said, that it was fit to help such leases in Ch., being for reasonable time, & upon good consideration; *contra*, of long leases, without consideration of fine or good rent.—ANON. (1603), Cary, 31; 21 E. R. 17.

q. — By corporation — Variance immaterial.] — The name of deft. as a sole corpn. was "The Roman Catholic Episcopal Corpn. of the Diocese of S. in Canada." The bonds declared on were in the name of the "Roman Catholic Bishop of S."—*Held*: the variance was immaterial.—RUITZ v. SANDWICH DIOCESE, ROMAN CATHOLIC EPISCOPAL CORPN. (1870), 30 U. C. R. 269.—CAN.

r. Grant—To corporation—In wrong name—Variance immaterial.] — A grant was made to "The Governors, President & Fellows of King's College, at W. in the Province of N. S.": & the real name of the corpn. was "The Governors of King's College, N. S."—*Held*: the grant was *prima facie* made to the corpn.—KING'S COLLEGE (GOVERNORS) v. McDONALD (1842), 2

141. — — — Omission of word immaterial.]

—CLARK'S CASE, No. 183, *post*.

142. — — — Variance immaterial.] — The provost, fellows, & scholars of Queen's College, Oxford, were guardians of the hospital, or *meason de Dieu* in S. They made a lease of the land parcel of the hospital to H. for a term of years by the name *Praepositus Socii & Scholares Collegii reginalis in Oxonia, Gardianus Hospitalis*, etc. In an *ejectione firmae* upon that lease it was found for plffs.; & it was objected in arrest of judgment, that the word *gardianus*, ought to be *gardiani*, for the college consists of many persons, & every person is capable, & it is not like unto an abbot & convent:—*Held*: the exception was not good, but the lease as well as the declaration was good, for the college is one body, as one person; & so *gardianus* is good enough.—QUEEN'S COLLEGE, OXFORD CASE (1588), 1 Leon. 134; 74 E. R. 124.

143. — — —.] — TRINITY COLLEGE, CAMBRIDGE CASE (1609), 2 Brownl. 243; 123 E. R. 921.

144. — — — Helped in equity—Lease for good consideration & for reasonable time.] — ANON., No. 140, *ante*.

145. — — — Apparent variance—No variance in fact.] — In ejectment, the demise was laid to be by the Mayor, Burgesses, etc., of the borough town of M., & on the trial it turned out from the charter that the name of the corpn. was, The Mayor, etc., of M.:—*Held*: this was no variance since it appeared from the charter, which was in evidence, that M. was a borough town.—DOE d. MALDEN CORPN. v. MILLER (1818), 1 B. & Ald. 699; 106 E. R. 257.

146. Presentation—By corporation — Variance immaterial.] — Edward III. granted licence to R. to found a collegiate hall of scholars, etc. *sub nomine Aulae Scholar' Reginae de Oxon'*, quae per unum praepositum de dictis scholaribus gubernabitur, & to give & assign a certain house, etc. *praefatis praepositis et scholaribus aulae illius* for their habitation for ever. James I. had exemplified the charter under the Great Seal in the records of Ch.; & the clause *sub nomine* was, *Aula Reginae de Oxonia*. R., who founded the college, in his charter of foundation, ordered that it should for ever be called *Aula Reginae*; & in several parts of his charter, *scholares* were called *socii*. The provost & scholars of the hall, by deed under their common seal & *per nomina* H., *praepositi collegii in Universitate Oxoniae, et sociorum, et scholarium ejusdem collegii*, presented A. to a church, who was admitted, instituted, & inducted, & who afterwards, being proved of the hall or college, demised the rectory for years. Afterwards the provost of the hall or college, & the scholars of the same, *per nomina* "Praepositi, Sociorum, et Scholarium, Aulae vel Collegii Reginae in Universitate Oxoniae," patrons of all the church, by their deed sealed with their common seal, confirmed the demise; & the Ordinary likewise confirmed it in the lifetime of A.:—*Held*: the true name of the corpn. was, "*Praepositus et Scholares Aulae Reginae de Oxon'*," & the presentation & confirmation were good.—AYRAY'S CASE

Thom. 106.—CAN.

s. — — — Valid — Use of old instead of new name.] — A deed to a corpn. described it by its original name when in fact its name had then been changed:—*Held*: a sufficient description *personae* to enable the corpn. to take.—GRAND JUNCTION RY. CO. v. MIDLAND RY. CO. (1882), 7 A. R. 681.—CAN.

(1614), 11 Co. Rep. 18 b; 77 E. R. 1168; *sub nom.* QUEEN'S COLLEGE, OXFORD CASE, Lane, 15; *sub nom.* AIRIE v. ALCOCK, Lane, 33.

Annotations:—*Consd.* A.-G. v. Rye Corpn. (1817), 7 Taunt. 546; *Re* Meredith's Trust (1864), 10 L. T. 565. *Reid.* Gynes v. Kemsley (1677), Freem. K. B. 293; Ipswich Corpn. v. Johnson (1732), 2 Barn. K. B. 120.

147. Resolution — By corporation — Variance material.—Where by statute, a special authority is delegated to particular persons, affecting the property of individuals, it must be strictly pursued; & appear to be so upon the face of their proceedings. The mayor, aldermen, & commons in common council assembled, are not sufficiently described by the mayor & commonalty & citizens, though in fact the latter include the former.—*R. v. CROKE* (1774), 1 Cowp. 26; 98 E. R. 948.

Annotations:—*Consd.* Taylor v. Clemson (1844), 11 Cl. & Fin. 610. *Mentd.* R. v. Wiltshire JJ. (1841), 5 J. P. 148; *Ex p.* Kinning (1847), 4 C. B. 507.

148. Sale — By corporation — Invalid.—The cooks of London were incorporated by Edward IV. by the name of Two Masters or Governors & Commonalty of the Mystery of Cooks of London, & they bargained & sold land by the name of A., B., C., & D., Masters & Wardens of the Craft or Mystery of the Cooks of London, to R. D.:—*Held*: the corp'n. was misnamed in the indenture, & the bargainee by his entry was a disseisor.—*CROFT v. HOWEL* (1578), 2 Plowd. 530; 75 E. R. 783.

Annotations:—*Reid.* Lynne Regis Corp'n. Case (1612), 10 Co. Rep. 120 a; Magdalen College, Cambridge Case (1615), 11 Co. Rep. 68 b. *Mentd.* Blunden v. Baugh (1633), Cro. Car. 302.

149. — Misdescription immaterial—Omission of founder's name.—A corp'n., entitled The Wardein & Poore of the Hospitall of the Holy Trinitie, in C., of the foundation of J. W., Archbishop of C., by deed, sealed with their common seal, in which they describe themselves as "The Wardein of Poore of the Hospitall of the Holy Trinitie in C," omitting the name of their founder, sell part of their estate for £50, paid in discharge of the costs of the sales made by them for the redemption of their land-tax:—*Held*: the misdescription of the corp'n., in omitting the name of their founder, was immaterial, & if it had been material, it would have been cured by Land Tax Redemption Act, 1814 (c. 173), s. 12.—*CROYDON HOSPITAL v. FARLEY* (1816), 6 Taunt. 467; 2 Marsh. 174; 128 E. R. 1116.

Annotation:—*Apld.* R. v. Haughley (1833), 4 B. & Ad. 650.

C. In Legal Proceedings.

150. Mandamus.—*R. v. RIPPON CORPN.*, No. 536, *post*.

151. ——*R. v. IPSWICH CORPN.*, No. 809, *post*.

152. Quo warranto.—To a rule that had been made against the duke of B. to know by what authority he claimed to be governor of the corp'n. of the conservators of B. L. & which was made upon other defts. to know why they claimed to be bailiffs of that co. exception was taken to the manner in which the rule was drawn up, the name

of the corp'n. being entirely mistaken:—*Held*: (1) rule would be discharged; (2) a new rule against defts. according to the true description of the corp'n. would be refused, for there would have to be several motions against the several defts.—*R. v. BEDFORD (DUKE)* (1729), 1 Barn. K. B. 242; 94 E. R. 165; *subsequent proceedings*, 1 Barn. K. B. 273, 280.

Annotations:—*Reid.* R. v. Attwood (1833), 4 B. & Ad. 481; *Darley v. R.* (1846), 12 Cl. & Fin. 520.

See, further, CROWN PRACTICE.

153. Pleadings—Action by corporation—Apparent variance—No variance in fact.—*NATIONAL BANK OF ST. CHARLES v. DE BERNALES*, No. 113, *ante*.

Amendment.—*See* No. 156, *post*.

154. Estoppel of corporation—From relying on misnomer or misdescription as defence—Return to mandamus to corporation of different name.—May not a corp'n. be estopped by their warrant of attorney? Surely they may, & the judgment shall be against the corp'n. by that name, & also execution shall be executed upon them thereon; & here the question is, whether you are not estopped by your return (*HOLT, C.J.*).

We agreed Gippo & Gippvico cannot be intended to be the same, & that Gippo could not be an abbreviation of Gippvico. If a man is sued on his bond which he gave by a false name, & appears to it, he is estopped, & so is a corp'n.; he has owned the writ to be good by answering over: suppose an action is brought against J. of Styles, & J. of Downs appears of his own head, & pleads to it by the name of J. of Downs, surely this shall not conclude him to be J. of Styles; so here the Corp'n. of Gippvico come by their own name, & answer a writ directed to the Corp'n. of Gippo (*POWELL, J.*).

They come here & say, they were incorporated by the name of Gippvico, & yet they might have the name of Gippo also, & we shall take them both to be the same, & not different; besides, I think this at present, that it is an estoppel (*HOLT, C.J.*).—*R. v. IPSWICH CORPN.* (1706), 2 Ld. Raym. 1232; 2 Salk. 434; 92 E. R. 313; *sub nom.* *R. v. WHITACRE (SERJEANT)*, Holt, K. B. 445; *sub nom.* *WHITACRE'S (SERJEANT) CASE*, 11 Mod. Rep. 67; *subsequent proceedings, sub nom.* *R. v. IPSWICH CORPN.* (1707), 2 Ld. Raym. 1283.

Annotations:—*Reid.* R. v. Joint Stock Co.'s Registrar (1847), 10 Q. B. 839; Southampton & Itchin Bridge Co. v. Southampton L. B. (1858), 8 E. & B. 801. *Mentd.* R. v. Cambridge University, Bentley's Case (1724), Fortes. Rep. 202; *R. v. Ward* (1729), 1 Barn. K. B. 294; *R. v. Halford* (1734), 7 Mod. Rep. 193; *R. v. Wells Corp'n.* (1767), 4 Burr. 1998; *R. v. London Corp'n.* (1785), 4 Doug. K. B. 360; *R. v. Corry* (1804), 5 East, 372; *Blacket v. Blizzard* (1829), 9 B. & C. 851; *R. v. Hayward* (1862), 2 B. & S. 585; *Hayman v. Rugby School* (1874), L. R. 18 Eq. 28; *R. v. Leeds JJ.*, *Ex p.* Binns (1906), 95 L. T. 916; *Cassel v. Inglis*, [1916] 2 Ch. 211.

155. Rectification by amendment—Judgment—Against corporation—Part omission of corporate name.—Judgment against a corp'n., omitting part of the corporate name, may be amended by the docket roll.—*HEALINGS v. LONDON CORPN.* (1640), Cro. Car. 574; 79 E. R. 1093.

the corp'n., under their old name. A. filed his declaration, following the name used in the appearance. On a motion to amend, by substituting the new name of the corp'n.:—*Held*: the ct. possessed a discretionary power to amend the mistake.—*ARCHER v. DUBLIN CORPN.* (1842), 2 Leg. Rep. 356.—*IR.*

d. Caveat — By corporation—Full name without further description.—*R. S. c. 133, s. 143.*—*NORTH OF SCOTLAND CANADIAN MORTGAGE CO. v. THOMPSON* (1900), 13 Man. L. R. 95.—*CAN.*

PART I. SECT. 4, SUB-SECT. 5.—C.

t. Pleading — Action by corporation — Omission to plead non est factum — Estoppel of defendants.—Plt's. declared on a bond to "The Beverley Municipal Council," there being no such corp'n. in existence. Defts. did not deny making the bond, but pleaded over. On demurrer:—*Held*: by not pleading *non est factum*, defts. were debarred from objecting to the form of the bond as pleaded.—*BEVERLEY TOWNSHIP v. BARLOW* (1861), 10 C. P. 178.—*CAN.*

a. — Bill by corporation—Use of

wrong name—Ground for demurrer.—*CORNISH SILVER MINING CO. v. BULL* (1874), 21 Gr. 5

ground for
WESTERN
TELEGRAPH CO. v. McLARKEN (1884), 1 Man. L. R. 358.—*CAN.*

c. Rectification by amendment—Pleading—Action against corporation.—A. sued out a writ against the Corp'n. of D. Subsequently thereto, the name of the corp'n. was altered by statute. The law-agent of the corp'n., notwithstanding the change, entered an appearance, & took other steps on behalf of

Sect. 4.—The name: Sub-sect. 5, C. Sect. 5: Sub-sects. 1 & 2.]

156. — Pleadings—Action by corporation.]—Pltfs. were incorporated by the name of the Mayor & Burgesses of the borough of S. in the county of S., & sued by the name of the Mayor & Burgesses of the borough of S. This is in abatement, & not in bar.—**STAFFORD CORPN. v. BOLTON** (1797), 1 Bos. & P. 40; 126 E. R. 767.

Annotation:—*Reid.* **Jowett v. Charnock** (1817), 6 M. & S. 45.

157. — Mandamus—Against corporation—Extent of amendment required.]—Where an application had been made for the costs of a mandamus upon an affidavit, intituled *The Queen v. The Directors of the G. W. Ry. Co.*, instead of *The Queen v. The G. W. Ry. Co.*, their name of incorporation, the same mistake occurring in the body of the affidavit, & the rule was discharged on that ground, the ct. refused a second application made upon the same affidavit amended in this particular, the amendment being required in the body of the affidavit, & not merely in the title or jurat.—**R. v. GREAT WESTERN RY. CO.** (1844), 5 Q. B. 597; 1 Dow. & L. 874; Dav. & Mer. 471; 3 Ry. & Can. Cas. 700; 13 L. J. Q. B. 129; 2 L. T. O. S. 368; 8 Jur. 107; 8 J. P. Jo. 120; 114 E. R. 1374.

Annotations:—*Reid.* **Tilt v. Dickson** (1847), 4 C. B. 736. **Mentd.** **R. v. Hull & Selby Ry.** (1844), 6 Q. B. 70; **Dodgson v. Scott** (1848), 6 Dow. & L. 27.

See, further, CROWN PRACTICE.

158. — Monition—Against churchwardens.]—**LIDDELL v. BEAL**, No. 17, *ante*.

See, further, ECCLESIASTICAL LAW.

Coroner's inquisition—Against corporation—When quashed.]—*See* **CORONERS**, p. 252, No. 298, *ante*.

SECT. 5.—THE SEAL.

SUB-SECT. 1.—IN GENERAL.

See, generally, DEEDS & OTHER INSTRUMENTS.

159. Inherent right of corporation aggregate to have seal.]—**SUTTON'S HOSPITAL CASE**, No. 3, *ante*.

160. Churchwardens & overseers not entitled to seal at common law.]—*Semble*: churchwardens & overseers, having no corporate seal, have no power to execute a power of attorney authorising a party to continue to receive the dividends of stock notwithstanding fluctuations in the number & identity of the members of the corpn.—**Re STRATFORD BRIDGE IMPROVEMENT ACT, Ex p. ANNESLEY** (1836), 2 Y. & C. Ex. 350; 6 L. J. Ex. Eq. 81; 160 E. R. 431.

Annotation:—*Mentd.* **Re Paddington Charity** (1838), 2 Jur. 344.

161. —.]—**FURNIVALL v. COOMBES**, No. 20, *ante*.

162. Non-existence of seal—Evidence against incorporation.]—**R. v. DACRES (LORD)**, No. 227, *post*.

163. Proof of seal—Necessity for.]—When an instrument having a seal affixed to it purporting to be a corporate seal is produced in evidence

it is necessary to prove that it is the seal of the corpn. if there be any doubt about it; otherwise any instrument with a seal to it might be produced in ct. as an instrument sealed by the corpn. (**LAWRENCE, J.**).—**MOISES v. THORNTON** (1799), 8 Term Rep. 303; 101 E. R. 1402.

Annotations:—*Consd.* **Smith v. Taylor** (1805), 1 Bos. & P. N. R. 196. *Distd.* **Walmsley v. Abbott** (1824), 5 Dow. & Ry. K. B. 62. *Reid.* **Henry v. Adey** (1803), 3 East, 221; **R. v. Bathwick** (1831), 9 L. J. O. S. M. C. 103. *Mentd.* **Cannell v. Curtis** (1835), 2 Bing. N. C. 228.

Forgery of seal.]—*See* **CRIMINAL LAW & PROCEDURE**.

SUB-SECT. 2.—NECESSITY FOR.

164. To express corporate will or do corporate act—Return to mandamus.]—In an action upon the case against a corpn. for a false return upon a mandamus pltf. was nonsuited because it was not proved to be under the common seal. On subsequent proceedings for attachment against the corpn.:—*Held*: (1) the return ought to have been under the common seal; (2) an attachment would not lie against a corpn.—**MORGAN v. CARMARTHEN CORPN.** (1674), 3 Keb. 350; 84 E. R. 760.

165. —.]—**HADDOCK'S CASE**, No. 121, *ante*.

166. —.]—The return of a corpn. to a mandamus need neither be signed nor sealed.—**R. v. EXETER CORPN.** (1697), 1 Ld. Raym. 223; 91 E. R. 1045; *sub nom.* **LYDSTON v. EXETER CORPN.**, 12 Mod. Rep. 126.

167. —.]—A corpn.'s return to a mandamus need not be sealed with the common seal.—**R. v. CHALICE** (1703), 2 Ld. Raym. 848; 92 E. R. 66; *sub nom.* **THETFORD CORPN. CASE**, Holt, K. B. 171; 1 Salk. 192; 3 Salk. 103.

Annotations:—*Consd.* **Arnold v. Poole Corpn.** (1842), 2 Dowl. N. S. 574. *Distd.* **Kidderminster Corpn. v. Hardwick** (1873), L. R. 9 Exch. 13. *Reid.* **Fishmongers' Co. v. Robertson** (1843), 5 Man. & G. 131. *Mentd.* **Melbourne Banking Corpn. v. Brougham** (1879), 48 L. J. P. C. 12.

See, generally, CROWN PRACTICE.

168. — Removal of recorder.]—To a mandamus to restore P. to his place of recorder of the town of C. the return was that they were incorporated by the name of mayor aldermen etc. with a power to choose a recorder *habendum pro termino vitae aut ad voluntatem eligentium*, that P. was chosen recorder *ad voluntatem eligentium*, & that afterwards by the votes of the greater number of the electors he was removed, & A. constituted recorder under their common seal. Upon this return it was moved for P. that although they had alleged a power to choose a recorder at will yet they should have shown cause for his removal, his being a judicial office which the ct. took notice of; & that none had a power to remove judges *ad libitum* but the King, & that a corpn. aggregate could not determine their will but under their common seal, & that was not shown here:—*Held*: (1) where a recorder was at will they might remove him at pleasure; (2) as it did not appear that P. was constituted under the

PART I. SECT. 5, SUB-SECT. 1.

1. Inscription on.]—The common seal of a corpn. need not have the corpn.'s name inscribed upon it.—**PITT & SONS v. SYDNEY MUNICIPAL COUNCIL** (1907), 8 S. R. N. S. W. 1; 24 N. S. W. W. N. 203.—**AUS.**

2. Proof of seal.]—Where a witness stated that he had good oppor-

tunities, which he described, of observing & knowing the seal of a corpn., & that he believed the seal to be their seal, both from the impression itself & from the signature of the party attached to it, with which he was acquainted:—*Held*: sufficient to go to a jury to authenticate the seal, though not conclusive.—**DOE d. KING'S COLLEGE v. KENNEDY** (1849), 5 U. C. R. 577.—**CAN.**

g. —.]—Some of the parties executing a deed were corporate bodies, & the witnessing clause was expressed. "In witness whereof, the parties hereto have hereunto set their hands & seals," etc., & the seals were all simple wafer seals:—*Held*: *prima facie* evidence that these were the proper corporate seals.—**ONTARIO SALT CO. v. MERCHANTS' SALT CO.** (1871), 18 Gr. 551.—**CAN.**

PART I.—NATURE AND ATTRIBUTES.

common seal his removal was good; (3) as A. was constituted under the common seal this act removed P.—**PEPIS'S CASE** (1679), 1 Vent. 342; 86 E. R. 221.

Annotation:—As to (1) **Consd. R. v. Canterbury Corpn.** (1727), 11 Mod. Rep. 403.

169. —.]—A corp'n. created for the purpose of supplying gas may maintain *assumpsit* for breach of a contract by debt. to accept gas from year to year at £12 16s. *per annum*, & such a promise by the co., though not under seal, is valid, being a contract of frequent & daily occurrence.

The general rule of law is that a corp'n. contracts under its common seal, & as a general rule, it is only in that way that a corp'n. can express its will or do any act. That general rule, however, has from the earliest traceable periods been subject to exceptions. A corp'n. may sue or be sued in *assumpsit* upon executed contracts of a certain kind, among which are included such as relate to the purposes for which it was created; the first question will be whether as affecting this point & in respect of such contracts there is any sound distinction between contracts executed or executory. Now the same contract which is executory to-day may become executed to-morrow; if the breach of it in its latter state may be sued for it can only be on the supposition that the party was competent to enter into it in its former. (**LORD DENMAN, C.J.**)—**CHURCH v. IMPERIAL GAS LIGHT & COKE CO.** (1838), 6 Ad. & El. 846; 3 Nev. & P. K. B. 35; 1 Will. Woll. & H. 137; 7 L. J. Q. B. 118; 112 E. R. 324.

Annotations:—**Consd. & Apld.** **Ludlow Corp'n. v. Charlton** (1840), 6 M. & W. 815. **Consd.** **Arnold v. Poole Corp'n.** (1842), 2 Dowl. N. S. 574; **Hall v. Swansea Corp'n.** (1844), 5 Q. B. 526; **Clarke v. Cuckfield Union Grdns.** (1852), 11 L. J. Q. B. 349. **Distd.** **Henderson v. Australian Royal Mail Steam Navigation Co.** (1855), 24 L. J. Q. B. 322; **Frend v. Denuett** (1858), 4 C. B. N. S. 576; **Dyte v. St. Pancras Board of Grdns.** (1872), 27 L. T. 342. **Consd.** **Austin v. Bethnal Green Grdns.** (1874), L. R. 9 C. P. 91; **Wells v. Kingston-upon-Hull** (1875), L. R. 10 C. P. 402; **Young v. Royal Leamington Spa Corp'n.** (1883), 8 App. Cas. 517. **Refd.** **Gibson v. East India Co.** (1839), 1 Arn. 493; **Fishmongers' Co. v. Robertson** (1843), 6 Scott, N. R. 56; **Paine v. Strand Union** (1846), 8 Q. B. 326; **Finlay v. Bristol & Exeter Ry.** (1852), 7 Exch. 409; **Lawford v. Billericay R. C.** (1903), 72 L. J. K. B. 554.

170. —.]—A municipal corp'n. cannot enter into a contract to pay a sum of money out of the corporate funds for making improvements within the borough by removing an obstruction in one of the streets of the borough except under the common seal.

The seal is required as authenticating the concurrence of the whole body corporate. The resolution of a meeting, however numerous attended, is after all not the act of the whole body. Every member knows he is bound by what is done under the corporate seal & by nothing else (**ROLFE, B.**)—**LUDLOW CORPN. v. CHARLTON** (1840), 6 M. & W. 815; 10 L. J. Ex. 75; 4 Jur. 657; 151 E. R. 642.

Annotations:—**Fold.** **Arnold v. Poole Corp'n.** (1842), 2 Dowl. N. S. 574. **Consd.** **Cope v. Thames Haven Dock & Ry.** (1849), 3 Exch. 841; **Lamprell v. Billericay Union** (1849), 3 Exch. 283; **Clarke v. Cuckfield Union Grdns.** (1852), 21 L. J. Q. B. 349. **Distd.** **Lowe v. L. & N. W. Ry.** (1852), 7 Ry. & Can. Cas. 524. **Consd.** **Henderson v. Australian Royal Mail Steam Navigation Co.** (1855), 5 E. & B. 409; **Dyte v. St. Pancras Board of Grdns.** (1872), 27 L. T. 342. **Apld.** **Kidderminster Corp'n. v. Hardwick** (1873), L. R. 9 Exch. 13. **Consd.** **Austin v. Bethnal Green Grdns.** (1874), L. R. 9 C. P. 91; **Wells v. Kingston-upon-Hull** (1875), L. R. 10 C. P. 402. **Distd.** **Hunt v. Wimbledon L. B.** (1878), 3 C. P. D. 208. **Consd.** **Young v. Royal Leamington Spa Corp'n.** (1883), 8 App.

Cas. 517. **Refd.** **London Fishmongers v. Robertson** (1842), 12 L. J. C. P. 185; **Hall v. Swansea Corp'n.** (1844), 5 Q. B. 526; **Paine v. Strand Union** (1846), 8 Q. B. 326; **Doe d. Birmingham Canal Co. v. Bold** (1847), 12 Jur. 350; **Cox v. Midland Counties Ry.** (1849), 3 Exch. 268; **Diggles v. London & Blackwall Ry.** (1850), 15 L. T. O. S. 208; **Homersham v. Wolverhampton Waterworks Co.** (1851), 6 Exch. 137; **Finlay v. Bristol & Exeter Ry.** (1852), 7 Exch. 409; **Smith v. Hull Glass Co.** (1852), 16 Jur. 595; **Lawford v. Billericay R. C.**, [1903] 1 K. B. 772. **Mentd.** **Beeching v. Westbrook** (1841), 8 M. & W. 411.

171. — **Petition for payment of dividends on interim investment—To Chamberlain or Comptroller of City of London.**—A petition had been presented by the corp'n. of London for interim investment in Consols of some moneys arising from sale of lands belonging to the corp'n. as trustees of the Bridge House Estates, & the petition asked for payment of the dividends to the corp'n. or to the Chamberlain of the City or Comptroller of the Bridge House Estates for the time being, but the registrar refused to draw up the order because the petition was not under the seal of the corporation:—**Held**: the order should be drawn up as prayed, for the rule requiring the seal of railway cos. to petitions asking for payment of moneys to their secretary or other officer did not apply to a case like the present, the Chamberlain & Comptroller being well known & recognised persons.—**Ex p. LONDON CORPN.**, [1878] W. N. 238.

Annotation:—**Refd.** **Re Brettingham, Melhado v. Woodcock**, [1904] W. N. 168.

172. Need not be common seal.—In a *quo warranto* brought against bailiffs aldermen etc. they appeared by warrant of attorney, but one of the bailiffs named in the warrant did not appear nor agree to it:—**Held**: (1) although the warrant of attorney was under another seal than their common seal, yet being under seal & recorded, it could not be annulled; (2) the appearance of the major or greater part being recorded, was sufficient.—**YARMOUTH CORPN. & COWPER'S CASE** (1630), Godb. 439; 78 E. R. 258.

173. Foreign corporation.—Articles of assocn. of an English co. provided that the instrument appointing a proxy should be in writing under the hand of the appointor or his attorney duly authorised in that behalf, or, if such appointor was a corp'n., under its common seal. A South African co. having no common seal & not required to have one was a shareholder in the English co., & by writing under the hands of two directors appointed an attorney in England to vote on its behalf, with power of substitution. Acting under this power the attorney appointed himself proxy in the form prescribed by the articles & claimed to vote either under the power of attorney or under the proxy. The chairman rejected this vote:—

Held: the requirement of a common seal in the articles only applied to corp'ns. having a common seal according to English law, & the attorney of the South African co. was entitled to vote at any rate under the proxy if not under the power of attorney itself.—**COLONIAL GOLD REEF, LTD. v. FREE STATE RAND, LTD.**, [1914] 1 Ch. 382; 83 L. J. Ch. 303; 110 L. T. 63; 30 T. L. R. 88; 58 Sol. Jo. 173; 21 Mans. 42.

As regards contracts.—See Part X., Sect. 2, *post*; **LOCAL GOVERNMENT**; **METROPOLIS**.

To delegate authority for particular purpose.—See Part XIII., *post*.

PART I. SECT. 5, SUB-SECT. 2.

169 i. *To express corporate will or do corporate act.*—The objection that a corp'n. cannot be bound unless under the corporate seal, is applicable only

to actions at law.—**BREWSTER v. CANADA CO.** (1854), 4 Gr. 443.—**CAN.**

169 ii. —.]—**UNITED TRUST CO. v. CHILLIWACK CORPN.** (1896), 5 B. C. R.

128.—**CAN.**

169 iii. —.]—**PAISLEY v. CHILLIWACK CORPN.** (1896), 5 B. C. R. 132.—**CAN.**

Sect. 5.—The seal: Sub-sect. 3, A.]**SUB-SECT. 3.—AFFIXING.****A. By Whom.**

174. Presumption that seal duly affixed.]—Directors exercising the powers conferred by the Companies Clauses Consolidation Act, 1845 (c. 16), must act together & as a board. The prescribed quorum of directors in defts.' co. being three the secretary affixed the seal of the co. to a bond after having obtained the written authority of two directors at a private interview & at another private interview the verbal promise of a third to sign the authority. The co. being sued upon this bond:—*Held*: the seal of the co. was affixed without lawful authority & the co. were not liable on the bond.

It is not to be presumed that what has been done is *ultra vires* & therefore when an instrument is produced under the seal of the co. it is *prima facie* to be taken that the seal was properly affixed. But it is here shown affirmatively that the seal was not properly affixed (*BRAMWELL, B.*)—*D'ARCY v. TAMAR, KIT HILL & CALLINGTON RY. CO.* (1866), L. R. 2 Exch. 158; 4 H. & C. 463; 36 L. J. Ex. 37; 14 L. T. 626; 30 J. P. 792; 12 Jur. N. S. 548; 14 W. R. 968.

Annotations:—*Expld. & Distd. Re Bonelli's Telegraph Co., Collier's Claim* (1871), L. R. 12 Eq. 246; *Mahony v. East Holyford Mining Co.* (1875), L. R. 7 H. L. 869. *Distd. Re Great Northern Salt & Chemical Works, Ex p. Kennedy* (1890), 44 Ch. D. 472; *County of Gloucester Bank v. Rudry Merthyr Steam & House Coal Colliery Co.*, [1895] 1 Ch. 629. *Refd. Duck v. Tower Galvanizing Co.*, [1901] 2 K. B. 314; *Ruben v. Great Fingall Consolidated*, [1904] 2 K. B. 712. *Mentd. Cook v. Ward* (1877), 2 C. P. D. 255; *Re Haycraft Gold Reduction & Mining Co.*, [1900] 2 Ch. 230.

175. —.]—The directors of an incorporated manufacturing co. having the legal custody of the corporate seal, are authorised to affix it to an indenture granting an annuity by way of retiring pension to a clerk of the co. in consideration of past services, & subject to a proviso restricting the grantee from manufacturing or assisting in the manufacture of the article.

Where the charter of incorporation requires the assent of the corporate body convened in a particular manner to the affixing of the corporate seal by the directors, it lies upon the corporate body impugning the authority of the directors, repudiating their act in affixing the seal, & disclaiming the contract, to show that no such assent was formally given, & if this is not clearly shown the corpn. are bound by the deed.—*CLARKE v. IMPERIAL GAS LIGHT & COKE CO.* (1892), 4 B. & Ad. 315; 1 Nev. & M. K. B. 206; 2 L. J. K. B. 30; 110 E. R. 473.

Annotations:—*Refd. Hill v. Manchester & Salford Waterworks Co.* (1833), 2 Nev. & M. K. B. 573; *East Anglian Rys. v. Eastern Counties Ry.* (1851), 11 C. B. 775.

176. — Third party taking corporation deed—Right to assume internal regulations complied with.]

—Where articles of assocn. of an incorporated co. empower the directors to make regulations as to the quorum of directors necessary to authorise the affixing of the common seal, an outside person taking a deed under the co.'s seal signed by two directors & the secretary is entitled to assume that the regulations made by the directors have been complied with, & a plea of *non est factum* cannot be sustained by evidence that

regulations have been made requiring a quorum of three directors.—*COUNTY OF GLOUCESTER BANK v. RUDRY MERTHYR STEAM & HOUSE COAL COLLIERY CO.*, [1895] 1 Ch. 629; 64 L. J. Ch. 451; 72 L. T. 375; 43 W. R. 486; 39 Sol. Jo. 331; 2 Mans. 223; 12 R. 183, C. A.

Annotations:—*Consd. Premier Industrial Bank v. Carlton Manufacturing Co.*, [1909] 1 K. B. 106. *Refd. Re Bank of Syria, Owen & Ashworth's Claim* (1900), 83 L. T. 547; *Duck v. Tower Galvanizing Co.*, [1901] 2 K. B. 314; *Ruben v. Great Fingall Consolidated*, [1904] 1 K. B. 650; *Re Fireproof Doors, Umney v. The Co.*, [1916] 2 Ch. 142; *Dey v. Pullinger Engineering Co.*, [1921] 1 K. B. 77. *Mentd. Poole v. Downes* (1897), 76 L. T. 110; *Stamford Spalding & Boston Banking Co. v. Keeble* (1913), 82 L. J. Ch. 388.

177. Person without authority—Whether indictable offence.]—M. was indicted at the Old Bailey for forgery, for that he, being governor of a co., set the seal of the co. to a deed without authority:—*Held*: a *certiorari* would be granted to remove the indictment as it appeared to the ct. that that fact was not indictable.—*MACK-WORTH'S CASE* (undated), cited 4 Vin. Abr. 345, pl. 31.

Annotation:—*Distd. R. v. Pusey* (1724), Sess. Cas. K. B. 91.

178. —.]—A member of a corpn. was indicted for a misdemeanour for putting the common seal of a corpn. to a deed whereby the corpn. surrendered to the King their charter franchises lands & tenements without the consent of the corpn. & for publishing it as the deed of the whole corpn. & causing it to be enrolled in Ch.—*R. v. TYACK* (1676), *Tremaine's Placita Coronae*, 228.

179. — & acting fraudulently—Seal in custody of fraudulent clerk or secretary—Whether corporation bound.]—The trustees of a charitable corpn. having a sum of stock standing in the books of the Bank of Ireland, allowed their common seal to remain in the possession of their secretary, but without authority to use it. The secretary fraudulently affixed this seal to certain powers of attorney, & having procured the signatures thereto of two persons, falsely attesting that the seal had been duly affixed to such powers, obtained transfers of the stock of the trustees thereunder, after which he accounted for the dividends to the trustees, who remained ignorant of the transfers for three years, when they prosecuted & convicted him of forgery, & brought an action against the bank to recover the stock so transferred by them:—*Held*: these facts did not amount to that species of negligence in the trustees which would entitle a jury to find that as between them & the bank the transfers were valid for the negligence requisite to constitute a good defence in such a case must have been such as was immediately connected with the improper transfer.—*BANK OF IRELAND v. EVANS' CHARITIES TRUSTEES* (1855), 5 H. L. Cas. 389; 25 L. T. O. S. 272; 3 W. R. 573; 3 C. L. R. 1066; 10 E. R. 950, H. L.

Annotations:—*Consd. Swan v. North British Australasian Co.* (1862), 7 H. & N. 603. *Expld. & Distd. Mahony v. East Holyford Mining Co.* (1875), L. R. 7 H. L. 869. *Consd. Merchants of Staple of England v. Bank of England* (1887), 57 L. J. Q. B. 418; *Vagliano v. Bank of England* (1888), 22 Q. B. D. 103; *Farquharson v. King*, [1902] A. C. 325; *Ruben v. Great Fingall Consolidated*, [1906] A. C. 439. *Refd. Re North British Australasian Co., Ex p. Swan* (1859), 7 C. B. N. S. 400; *Swan v. North British Australasian Co.*, (1863) 2 H. & C. 175; *D'Arcy v. Tamar Kit-Hill & Callington Ry.* (1866), 14 W. R. 968;

PART I. SECT. 5, SUB-SECT. 3.—A.

174 i. Presumption that seal duly affixed.]—The acknowledgment of a deed was in the following form: "Be it remembered that on, etc., before me, T. G., mayor of the town of S., personally appeared, etc. Given under my hand & seal." The acknowledg-

ment was signed by the mayor, with a seal affixed, having the words S. Villa "inscribed around what appeared to be the city arms:—*Held*: it im-

ported to be the corporate seal of S., not the private seal of the mayor.—*DEVEBER v. BRITAIN* (1859), 4 All. 330.—*CAN.*

174 ii. —.]—*JONES v. GALWAY*

TOWN COMRS. (1847), 11 L. L. R. 435.—*IR.*

h. — May be rebutted.]—The presumption relating to an instrument which has the corporate seal attached & the signatures of the proper officers that there was authority to affix the seal may be rebutted.—*COSSITT v. CUSACK* (1903), 40 N. S. R. 446.—*CAN.*

Arnold v. Cheque Bank, Arnold v. City Bank (1876), 1 Q. P. D. 578; *Crapp v. East Stonehouse L. B.* (1889), 5 T. L. R. 501; *Smith v. Prosser*, [1907] 2 K. B. 735; *London Joint Stock Bank v. Macmillan & Arthur*, [1918] A. C. 777. *Mentd. Cornish v. Abington* (1859), 28 L. J. Ex. 262; *Barendale v. Bennett* (1878), 3 Q. B. D. 525; *London & South Western Bank v. Wentworth* (1880), 5 Ex. D. 98; *Re Cooper, Cooper v. Vesey* (1882), 20 Ch. D. 611; *Hall v. West-End Advance Co.* (1883), Cab. & El. 161; *Bank of England v. Vagliano*, [1891] A. C. 107; *Marsh v. Joseph* (1896), 75 L. T. 558; *Scholfield v. Londesborough*, [1896] A. C. 514; *Longman v. Bath Electric Tramways*, [1905] 1 Ch. 646; *Lewes Sanitary Steam Laundry Co. v. Barclay* (1906), 95 L. T. 444; *Kepitigalla Rubber Estates v. National Bank of India*, [1909] 2 K. B. 1010; *Morison v. London County & Westminster Bank* (1913), 108 L. T. 379.

—Pltfs., a corporate body, left their seal in the custody of their clerk, who, without authority, affixed it to powers of attorney, under which certain stock in the public funds, the property of pltfs., was sold. The clerk appropriated the proceeds. In an action in which pltfs. claimed that they were entitled to the stock on the ground that it had been transferred without their authority by defts.:—*Held*: assuming pltfs. had been negligent, their negligence was not the proximate cause of the loss, & did not disentitle them from recovering in the action.—*STAPLE OF ENGLAND (MAYOR, ETC. OF MERCHANTS OF) v. BANK OF ENGLAND (GOVERNOR & CO.)* (1887), 21 Q. B. D. 160; 57 L. J. Q. B. 418; 52 J. P. 580; 36 W. R. 880; 4 T. L. R. 46, C. A.

Annotations:—*Consd. Vagliano v. Bank of England* (1888), 22 Q. B. D. 103. *Reid. Crapp v. East Stonehouse L. B.* (1889), 5 T. L. R. 501; *Brocklesby v. Temperance Bldg. Soc.* (1893), 2 R. 594; *Ruben v. Great Fingall Consolidated*, [1904] 2 K. B. 712; *Kepitigalla Rubber Estates v. National Bank of India*, [1909] 2 K. B. 1010; *Macmillan v. London Joint Stock Bank*, [1917] 2 K. B. 439. *Mentd. Bank of England v. Vagliano*, [1891] A. C. 107; *Scholfield v. Londesborough*, [1895] 1 Q. B. 536; *London Joint Stock Bank v. Macmillan & Arthur*, [1918] A. C. 777.

180a. — — — — —.]—*CRAPP v. EAST STONEHOUSE LOCAL BOARD* (1889), 5 T. L. R. 501, C. A.

181. — — — — —.]—Pltfs. advanced a sum of money to the secretary of deft. co. for his own purposes, & received from him as security a document which purported to be a certificate of shares in deft. co. made out in the names of certain nominees of pltfs. The document bore the seal of the co. & appeared to be signed by two of the directors, & was countersigned by the secretary. The seal had been affixed thereto by the secretary fraudulently & without any authority from the directors, acting not for or on behalf of the co. but entirely for his own purposes, & the signatures of the two directors were forgeries by the secretary. It was admitted that the secretary was a proper person to deliver certificates:—*Held*: in the absence of any evidence of a holding out of the secretary by the co. as a person having authority to warrant the genuineness of certificates the co. were not estopped from disputing pltfs.' right to have their nominees registered as shareholders.—*RUBEN v. GREAT FINGALL CONSOLIDATED*, [1906] A. C. 439; 75 L. J. K. B. 843; 95 L. T. 214; 22 T. L. R. 712; 13 Mans. 248, H. L.

Annotations:—*Expld. Lloyd v. Grace, Smith*, [1911] 2 K. B. 489. *Mentd. Malcolm, Brunner v. Waterhouse* (1908), 24 T. L. R. 854; *Russo-Chinese Bank v. Li Yau Sam*, [1910] A. C. 174; *Lloyd v. Grace, Smith*, [1912] A. C. 716; *Rank v. Craig* (1918), 88 L. J. Ch. 46.

182. — — — — —.]—*Requisite formalities not observed in obtaining authority—Whether corporation bound.*

—*D'ARCY v. TAMAR, KIT HILL & CALLINGTON RY. Co.*, No. 174, ante.

183. *Head of corporation—With assent of members—Head & members one entire body.*—In *ejectione firmæ* the case was the master brothers & sisters of the hospital of M. V. by indenture by the name of the M. hospital, omitting the word V. leased the land. The words of the indenture were *haec indentura inter magistrum fratres & sorores hospital M. etc. Testatur*: "the master; with the assent of the brothers & sisters leased to A. in *cujus rei testimonium* the master, with the assent of the brothers & sisters, put their common seal":—*Held*: (1) the lease was void for the brothers & sisters, being one entire body with the master, were not parties to the indenture, but gave their consent only; (2) the omission of the word V. did not invalidate the lease.—*CLARK'S CASE* (1584), 4 Leon. 11; 74 E. R. 693.

184. *Person acting under general authority.*—In an action against a corpn. on a bond defts. pleaded *non est factum*:—*Held*: a clause in the Act authorising the co. to raise money by bond whereby the co. were authorised to any general or special general assembly to order & dispose of the custody of their common seal & the use & application thereof empowered them to make rules & regulations for its custody, but did not require their concurrence in each particular act of sealing, & a bond to which the seal had been affixed by the co.'s clerk under a general authority from the directors was valid.—*HILL v. MANCHESTER & SALFORD WATER WORKS CO.* (1833), 5 B. & Ad. 866; 2 Nev. & M. K. B. 573; 3 L. J. K. B. 19; 110 E. R. 1011.

Annotations:—*Distd. Mestayer v. Biggs* (1834), 4 Tyr. 466. *Reid. Re Young & Brompton, Chatham, Gillingham & Rochester Waterworks Co.* (1861), 1 B. & S. 675.

185. *Majority of members—To change nature of corporation—Right of minority.*—A motion was made on behalf of the minority for an injunction to restrain the majority of the members of a corpn. from surrendering their charter with a view to obtaining a new charter for an object different from that for which the original charter was granted:—*Held*: an injunction would be granted until the hearing.

I am not prepared to say that it can be in the power of any person or persons, to whom the general authority of using the common seal is entrusted, to use it, without at least the consent of every member of the corpn., for the purpose of changing the nature of the institution (*KNIGHT BRUCE, V.-C.*).—*WARD v. SOCIETY OF ATTORNIERS* (1844), 1 Coll. 370; 8 Jur. 1021; 63 E. R. 459.

Annotations:—*Consd. Hoey v. M'Farlane* (1858), 4 C. B. N. S. 718; *Jenkin v. Pharmaceutical Soc. of Great Britain*, [1921] 1 Ch. 392.

186. *Minority of members—Refusal of majority to concur.*—(1) *DR. LUSHINGTON in Veley v. Gosling* (1843), 3 Curt. 253, put the case of a mandamus to do an act ordinarily & legally done by certain persons, as to put a corporate seal on an instrument. The case supposed of course excludes the notion that the seal is in the custody of a particular officer & that, by the charter, he only can affix it, & that he refuses to do so. That would be a case of disobedience to be punished, but the act would *de facto* remain unperformed. If the act were properly to be done by the majority, & the greater number of those present refused to concur, but the lesser number did in fact affix

185 i. *Majority of members—To change nature of constitution—Right of minority.*—The majority of Corpn. of Trin. Coll. Dublin, proposed to affix the corporate seal of the College to an

application to the King for letters patent altering the constitution of the corpn. without the consent & against the protest of minority:—*Held*: the action of the majority

could not be restrained by injunction.—*GRAY & CATHCART v. TRINITY COLLEGE, DUBLIN (PROVOST, ETC.)*, [1910] 1 I. R. 370.—IR.

Sect. 5.—The seal: Sub-sect. 3, A., B. & C.; sub-sect. 4. Sects. 6 & 7: Sub-sects. 1 & 2.]

the seal, we should feel no difficulty in saying that the seal was well affixed (LORD DENMAN, C.J.).

(2) A bye-law, though made by & applicable to a particular body, is still a law, & differs in its nature from a provision made on or limited to particular occasions. It is a rule made prospectively, & to be applied whenever the circumstances arise for which it is intended to provide (LORD DENMAN, C.J.).—GOSLING v. VELEY (1847), 7 Q. B. 406; 16 L. J. Q. B. 201; 11 J. P. 372; 11 Jur. 385; 115 E. R. 542; *sub nom.* GOSLING v. VELEY, BRAINTREE CHURCH RATE CASE, 8 L. T. O. S. 555; *affd.* (1850), 12 Q. B. 328; *reversd.* on other grounds (1853), 4 H. L. Cas. 679, H. L.

Annotations:—Generally, Mentd. R. v. Thomas (1842), 3 Q. B. 589; Francis v. Steward (1844), 5 Q. B. 984; Dale v. Pollard (1847), 11 J. P. 536; Eynsham Case (1849), 12 Q. B. 398, n.; Cordey v. Bentley (1851), 15 J. P. Jo. 754; R. v. Christchurch Overseers (1857), 26 L. J. M. C. 68; R. v. London Consistory Court, *Ex p.* Beall (1862), 12 C. B. N. S. 220; Trench v. Nolan, *Re* Parliamentary Elections Act, 1868, & Galway County Election Petition (1872), 20 W. R. 833; Drinkwater v. Deakin (1874), L. R. 9 C. P. 626; Beresford-Hope v. Sandhurst (1889), 23 Q. B. D. 79; A.-G. v. Wilts United Dairies (1921), 37 T. L. R. 884.

187. Trading corporation—Persons having legal custody of seal.]—CLARKE v. IMPERIAL GAS LIGHT & COKE CO., No. 175, ante.

188. — Persons managing corporation's affairs.]—Whoever as a matter of practice manages the affairs of a trading corp'n. must of necessity, in the absence of any rules contained in the constitution of the co., be able to use the seal of the co. for those acts which he is authorised to perform.—*Re BARNED'S BANKING CO., Ex p. CONTRACT CORPN.* (1867), 3 Ch. App. 105; 37 L. J. Ch. 81; 17 L. T. 267; 16 W. R. 193, L. J.

Annotations:—Reid. Merchants, etc. of Staple of England v. Bank of England (1887), 56 L. T. 665. **Mentd.** R. Asiatic Banking Corp'n., Royal Bank of India's Case (1869), 4 Ch. App. 252; *Re* Peruvian Rys., *Ex p.* International Contract Co. (1869), 19 L. T. 803; *Re* International Contract Co., Hughes' Claim (1872), L. R. 13 Eq. 623; *Re* Land Credit Co. of Ireland, Welkersheim's Case (1873), 28 L. T. 253; Mersey Steel & Iron Co. v. Naylor (1882), 9 Q. B. D. 648; *Re* Thomas, Thomas v. Sully, [1915] 1 Ch. 325.

B. Enforcement of.

189. By mandamus—To compel warden of college to seal answer of fellows in Chancery.]—A mandamus was granted to compel the warden of W. college to affix the common seal of the college to an answer of the fellows etc. in Ch., contrary to his own separate answer put in.

In the Ct. of Ch., where a bill is brought against a corp'n. if the corp'n. is in contempt there is no remedy by way of proceeding for a contempt personally against the real parties who offend; but the mode of compulsion is by sequestration, by taking possession of the personal estate & the rent & profits of the real estate of the college or corp'n. (LORD MANSFIELD, C.J.).—R. v. WINDHAM (1776), 1 Cowp. 377; 98 E. R. 1139.

Annotations:—Reid. R. v. Beeston (1789), 3 Term Rep. 592. **Mentd.** *Re* Queen's College, Cambridge (1828), 5 Russ. 64; Mill v. Hawker (1874), L. R. 9 Exch. 309.

190. — To seal bond securing annuity under Municipal Corporations Act, 1835 (c. 76).]—A person who has filled the office of town clerk &

clerk of the peace of a borough, & as incident thereto has acted as clerk to the justices of such borough, previous to the passing of the above Act, is entitled to compensation under sect. 66 of that stat. for the loss of the fees & emoluments of the latter situation, as the word "office" in that sect. is not to be construed in its strictly legal sense, but, with reference to sect. 37, in its general sense, as equivalent to "situation or employment," & a mandamus lies to compel a corp'n. to put the corp'n. seal to a bond awarded by the Lords of the Treasury securing an annuity as a compensation for removing from such office.—R. v. BRIDGEWATER CORPN. (1837), 6 Ad. & El. 339; 1 Nev. & P. K. B. 466; Will. Woll. & Dav. 129; 6 L. J. M. C. 78; 1 J. P. 21, 213; 1 Jur. 40; 112 E. R. 129; *subsequent proceedings* (1839), 10 Ad. & El. 281.

Annotations:—Folld. R. v. Carmarthen Corp'n. (1839), 11 Ad. & El. 9. **Consd.** Temple v. Eccl. Comrs. (1853), 3 De G. M. & G. 418. **Reid.** *Ex p.* Harvey (1838), 7 Ad. & El. 739; R. v. Poole Corp'n., *Re* Edwards (1838), 7 Ad. & El. 730; R. v. York Corp'n. (1842), 3 Q. B. 550; R. v. Manchester B. C. (1846), 11 Jur. 222; R. v. L. G. Board (1874), L. R. 9 Q. B. 148; *Re* Carpenter & Bristol Corp'n. (1907), 97 L. T. 461. **Mentd.** R. v. Harwich Corp'n. (1842), 2 Q. B. 909; R. v. Norwich Corp'n. (1842), 3 Q. B. 285; R. v. Brighton B. C. (1857), 7 E. & B. 249; R. v. Hayward (1862), 2 B. & S. 585.

191. — To compel sealing of presentation—By mayor.]—A mandamus issued to the mayor of B. to affix the common seal to a presentation to the rectory & hospital of J. The return to the writ denied the right. On an action for a false return:—*Held*: pltf. would be entitled to a verdict & a peremptory mandamus should issue to the then mayor.—*Re* BEDFORD CORPN. (1742), cited 1 Q. B. 378, n.; 113 E. R. 1178.

Annotation:—Folld. R. v. Kendall (1844), 1 Q. B. 366.

192. — — By master.]—Where a hospital for the relief of poor, needy & impotent people is duly incorporated, & consists of a master & twelve poor brethren, & the advowson of a living is conveyed to them to hold to the use of the master & brethren & their successors for ever, the right to nominate to the living belongs to the majority of the entire body of master & brethren in the absence of anything to the contrary in the charter, & the master's concurrence in the act of the majority is not necessary.

Where the majority have nominated the party at a corporate meeting, & the master refuses to put the common seal to a presentation, the ct. will compel him to do so by mandamus.—R. v. KENDALL (1841), 1 Q. B. 366; Arn. & H. 282; 4 Per. & Dav. 603; 10 L. J. Q. B. 137; 5 J. P. 511; 113 E. R. 1172.

Annotations:—Consd. R. v. Orton Trustees (1849), 14 Q. B. 139. **Reid.** R. v. Abrahams (1843), 4 Q. B. 157; R. v. Ottery St. Mary (1843), 3 Gal. & Dav. 382.

C. Effect of.

193. Binding on corporation.]—MAGDALEN COLLEGE CASE (1688), 12 State Tr. 1.

194. — Unless requisite formalities not complied with.]—CLARKE v. IMPERIAL GAS LIGHT & COKE CO., No. 175, ante.

195. Prima facie imports delivery of deed—Unless intended otherwise—By power of attorney—Sealing of lease.]—If a dean & chapter seal a lease it is their deed immediately, but if at the

PART I. SECT. 5, SUB-SECT. 3.—B.

k By mandamus—To compel head of corporation to seal answer of corporation in Chancery—Members must approve of answer.]—GILDERSLEEVE v. WOLF ISLAND RY. & CANAL CO. (1871), 3 Ch. Ch. 358.—CAN.

PART I. SECT. 5, SUB-SECT. 3.—C.

193 i. Binding on corporation.]—EASTVIEW TOWN v. OTTAWA ROMAN CATHOLIC CORPN. (1919), 44 O. L. R. 284; 15 O. W. N. 211.—CAN.

1. — Not where act ultra vires.]—

Where the document to which the seal is affixed is not within the powers of the corp'n. the act of affixing the corporate seal is of no legal force.—FELLOWS v. ALBERT MINING CO. (1875), 3 Pug. 203.—CAN.

same time they make a letter of attorney to deliver it, this is not their deed till the delivery.—*WILLIS v. JERMIN* (1590), Cro. Eliz. 167; 78 E. R. 424.

Annotation:—*Reid*. Phillips & Bury (1694), Skin. 447.

196. ————.]—At a trial in ejectment the case upon evidence was that a dean & chapter having a right to certain land but being out of possession sealed a lease with a letter of attorney to deliver it upon the land which was done accordingly:—*Held*: it was a good lease, for though the putting the seal of a corpn. aggregate to the deed carried with it a delivery, the letter of attorney to deliver it upon the land should suspend the operation of it.—*ANON.* (1674), 1 Vent. 257; 86 E. R. 171.

Annotations:—*Reid*. Merchants, etc. of Staple of England v. Bank of England (1887), 21 Q. B. D. 160. *Mentd.* Goodtitle d. Bridges v. Chandos (1760), 2 Burr. 1065; Sawbridge v. Benton (1793), 2 Anst. 372; Middleton v. Melton (1829), 8 L. J. O. S. K. B. 243.

197. ———— Directions to clerk to retain conveyance until specified condition fulfilled—*Sealing of deed of conveyance.*]—Though the affixing of the common seal to the deed of conveyance of a corpn. is sufficient to pass the estate without a formal delivery, if done with that intent, yet it has no such effect if the order for affixing the seal be accompanied with a direction to their clerk to retain the conveyance in his hands till accounts were adjusted with the purchaser.—*DERBY CANAL Co. v. WILMOT* (1808), 9 East, 360; 103 E. R. 610.

Annotation:—*Reid*. Merchants, etc. of Staple of England v. Bank of England (1887), 21 Q. B. D. 160.

198. *As evidence.*]—In ejectment pltf. held by lease under the city of L.:—*Held*: the common seal of the city proved itself.—*DOE d. WOODMASS v. MASON* (1793), 1 Esp. 52, N. P.

199. ———— Of authority under seal to do act authorised.]—Trover lies against a corpn., if it is essential to the conversion by the corpn. of the property that the corpn. should have authorised it under the seal of the corpn. such authority will be presumed after verdict. Authority to agent under seal not necessary.—*YARBOROUGH v. BANK OF ENGLAND* (1812), 16 East, 6; 104 E. R. 991.

Annotations:—*Consd.* Hall v. Swansea Corpn. (1844), 5 Q. B. 526; Green v. London General Omnibus Co. (1859), 7 C. B. N. S. 290. *Reid*. East London Waterworks Co. v. Bailey (1827), 5 L. J. O. S. C. P. 175; Dunston v. Imperial Gas Light Co. (1832), 3 B. & Ad. 125; Smith v. Birmingham Gas Co. (1834), 1 Ad. & El. 526; Maund v. Monmouthshire Canal Co. (1842), 4 Man. & G. 452; R. v. Birmingham & Gloucester Ry. (1842), 3 Q. B. 223; Eastern Counties Ry. v. Broom (1851), 15 Jur. 297; Stuart v. Anglo-Californian Gold Mining Co. (1852), 19 L. T. O. S. 62; Mill v. Hawker (1874), L. R. 9 Exch. 309; Edwards v. Mid. Ry. (1880), 6 Q. B. D. 289; Lawford v. Billericay R. C., [1903] 1 K. B. 772.

200. ———— Of execution of deed to which seal affixed.]—To an indenture of feoffment by the Bank of E. the seal of the bank was affixed by a paper wafered to the indenture, on which paper was written, "Sealed by order of the ct. of directors of the Governor & Co. of the Bank of E.,

200 i. *As evidence*—Of execution of deed to which seal affixed.]—The production of a document within the powers of the corpn., with the seal attached, is sufficient *prima facie* evidence of its proper execution.—*WOODHILL v. SULLIVAN* (1864), 14 C. P. 265.—*CAN.*

200 ii. ————.]—*FRIEL v. SOUTH* (1864), 24 U. C. R. 196.—*CAN.*

200 iii. ————.]—A corpn. executed a lease on which an ejectment on the title was brought, which lease was signed by the members of the corpn. individually, & purported to be made "under their seal." There

Dec. 12, 1833. K. Secretary":—*Held*: K. was not an attesting witness, & the execution of the feoffment might be proved by the seals without calling K.—*DOE d. BANK OF ENGLAND (GOVERNOR & Co.) v. CHAMBERS* (1836), 4 Ad. & El. 410; 1 Har. & W. 749; 6 Nev. & M. K. B. 539; 5 L. J. K. B. 123; 111 E. R. 841.

Annotation:—*Reid*. Deffell v. White (1866), L. R. 2 C. P. 144.

201. Mutual insurance policy—Whether sufficiently signed—Under 30 & 31 Vict. (c. 23).]—Where a mutual policy is issued duly stamped by a limited co. it is sufficiently signed under s. 7 of the above Act if it is sealed with the seal of the co. & authenticated by the manager.—*MARINE MUTUAL INSURANCE ASSOCN., LTD. v. YOUNG* (1880), 43 L. T. 441; 4 Asp. M. L. C. 357. *See, further*, INSURANCE; REVENUE.

SUB-SECT. 4.—REMOVAL OF.

202. Seal improperly affixed.]—The ct. refused to grant a mandamus to remove the common seal of a railway co. which had been improperly affixed to the register of shareholders provided under Companies Clauses Consolidation Act, 1845 (c. 16).—*Ex p. NASH* (1850), 15 Q. B. 92; 19 L. J. Q. B. 296; 15 L. T. O. S. 111; 117 E. R. 393.

SECT. 6.—NATIONALITY.

See ALIENS, Vol. II., pp. 128, 145, 146, Nos. 48, 49, 194–199 & generally, COMPANIES.

SECT. 7. ————

SUB-SECT. 1.—ENGLISH

203. Necessity for.]—*SUTTON'S HOSPITAL CASE No. 3, ante.*

204. How established.]—*LONDON TOBACCO PIPE MAKERS' Co. v. WOODROFFE*, No. 721, *post.*

For taxing purposes.]—*See COMPANIES; INCOME TAX.*

Residence or place of business—To give county court & Mayor's Court London jurisdiction.]—*See COMPANIES; COUNTY COURTS; MAYOR'S COURT, LONDON.*

Domicil of companies.]—*See COMPANIES.*

SUB-SECT. 2.—FOREIGN CORPORATIONS.

For taxing purposes.]—*See COMPANIES; INCOME TAX.*

Residence within jurisdiction—For service of writ within jurisdiction.]—*See Part XV., Sect. 12, sub-sect. 4., post.*

Foreign companies.]—*See COMPANIES.*

was no evidence that they possessed a common seal:—*Held*: the body being assembled when the seal was affixed, it was their common seal *pro hac vice*, & was admissible in evidence against them.—*JONES v. GALWAY TOWN COMRS.* (1847), 11 I. L. R. 435.—*IR.*

Part II.—Creation of Corporations.

SECT. 1.—ESSENTIALS OF INCORPORATION.

205. General rule.]—SUTTON'S HOSPITAL CASE, No. 3, ante.

206. What words sufficient in law.]—Henry IV. by letters patent, reciting that R. was seised in fee of a house, gave licence that he might give 20 marks rent, issuing out of the house to found a chauntry. By deed R. founded the chauntry, & by the same deed granted to the first chaplain & his successors, 10 marks yearly rent issuing out of the house, & further appointed that he should present to the chauntry during his life, & arranged who, after his death, should make the further presentations. After divers vacations F. was presented to the chauntry, who for rent in arrear entered the house & took a cup for distress. On an action of trespass it was contended against the licence & grant they were *cuidam capellano* & named none in certain, the King had not made any incorporation, & an incorporation was a thing to be made by the King himself, to have perpetual succession, as elective, presentative, or donative, the King's grant should not be taken by implication, as by the words to make an incorporation, & also to give licence to grant the rent, for then the King's grant would inure to two intents:—*Held*: the grant was good, for all the grants of chauntries were of such form, *cuidam capellano*, & although there was no such chaplain at the time, it was not to the purpose. Where the King by his charter said *cuidam capellano* that was a sufficient incorporation, & when he said in the *habendum sibi et successoribus suis* that made a sufficient succession.—**RAMSEY'S CASE** (1487), cited in 10 Co. Rep. 27; 77 E. R. 965.

Annotation:—**Consd.** Rutter v. Chapman (1841), 10 L. J. Ex. 495.

207.—.]—SUTTON'S HOSPITAL CASE, No. 3, ante.

SECT. 2.—WHO MAY BE INCORPORATED.

208. General rule.]—SUTTON'S HOSPITAL CASE, No. 3, ante.

209. Inhabitants.]—If the King grant land to the men of I. without an *habendum* to them, their heirs, & successors, rendering a rent, they become a corp'n. perpetual to this single intent; but they are only tenants at will, & if the King release the rent, it is a dissolution *ipso facto*.—ANON. (1554), Dyer, 100 a; 73 E. R. 219.

Annotations:—**Refd.** Canterbury's Case (1596), 2 Co. Rep. 46 a; R. v. Mashiter (1837), 6 L. J. K. B. 121; Lockwood v. Wood (1844), 6 Q. B. 50; Rivers v. Adams (1878), 3 Ex. D. 361. **Mentd.** Sutton's Hospital Case (1612), 10 Co. Rep. 1 a.

210. —.]—SUTTON'S HOSPITAL CASE, No. 3, ante.

211. —.]—A grant made by the Crown to the inhabitants of a parish is good; though such grant cannot be made by private individuals. Grants by the Crown in derogation of forestal rights are good grants, though they might not be good except made in derogation of such rights.—WILLINGALE v. MATTLAND (1866), L. R. 3 Eq. 103; 36 L. J. Ch. 64; 31 J. P. 296; 12 Jur. N. S. 932; 15 W. R. 83.

Annotations:—**Consd.** Chilton v. London Corp'n. (1878), 7 Ch. D. 735; Rivers v. Adams (1878), 3 Ex. D. 361; Tyne Improvement Comrs. v. Imrie, A.-G. v. Tyne Improvement Comrs. (1899), 81 L. T. 174. **Refd.** Mills v. Colchester Corp'n. (1867), 16 L. T. 626; Austin v. Amhurst (1877), 38 L. T. 217; De La Warr v. Miles (1881), 17 Ch. D. 535; Hyde Corp'n. v. Bank of England (1882), 21 Ch. D. 176.

212. — Grant of profit & prendre out of Crown land.]—A right of lopwood lying within a manor, that is, a right in the inhabitants of a parish at certain periods of the year to lop for fuel the branches of trees growing upon the waste lands of the manor cannot be created by custom or prescription, or otherwise than by Crown grant or Act of Parliament. A grant by the Crown of a *profit d prendre* out of Crown lands to the inhabitants of a parish constitutes the inhabitants a corp'n. *quoad* the grant, & an action to establish any such right is maintainable only by the inhabitants as a corp'n., & not by an individual inhabitant suing on his own behalf alone. *Semble*: a grant to the "inhabitants" of a parish lying within a manor of a *profit d prendre* out of the manorial waste, means a grant to the inhabitants of houses lawfully erected within the parish & does not extend to the inhabitants of houses which, through having been erected on the waste, illegally interfere with the right claimed.—CHILTON v. LONDON CORPN.** (1878), 7 Ch. D. 735; 47 L. J. Ch. 433; 38 L. T. 498; 26 W. R. 474.**

Annotations:—**Consd.** Rivers v. Adams (1878), 3 Ex. D. 361; Tyne Improvement Comrs. v. Imrie, A.-G. v. Tyne Improvement Comrs. (1899), 81 L. T. 174. **Refd.** De la Warr v. Miles (1881), 17 Ch. D. 535; Goodman v. Saltash Corp'n. (1882), 7 App. Cas. 633; Hough v. Clark & Hall (1907), 23 T. L. R. 682.

213. — Grant for specific purpose.]—Defts. to an action for taking underwood for fuel from the waste of pltf.'s manor justified as inhabitants of the parish & proved immemorial user by some inhabitants as such, but they did not prove user by the inhabitants generally as such, & exclusive right was claimed by the tenants of the manor; defts. justified also as occupiers of certain cottages, relying upon user by the occupiers as inhabitants of the parish:—*Held*: (1) the first justification could not stand either upon custom, as the custom would be for the inhabitants to have a *profit d prendre* in the soil of another, or upon a lost grant from a private person, inhabitants being incapable of taking under a grant which does not incorporate them, or upon a lost grant from the Crown, user by the inhabitants generally as such being necessary for supposing a grant to the inhabitants; other considerations against supposing the grant being the absence of evidence of even a *de facto* corp'n. of the inhabitants, the claim by the tenants of the manor, & the unreasonableness & repugnancy to law of the supposed right; (2) as to second justification a prescriptive claim as occupier of a certain house or the like could not be founded upon user in a different character such as inhabitant of a parish.

The result of the decisions in the year-books upon the effect of a royal grant to the inhabitants of a parish or village appears to be that, if the grant is for a specified purpose, the grant incorporates the inhabitants so as to effectuate that purpose, but otherwise is inoperative. Therefore, when a ct. or jury is called upon to presume a lost royal grant to inhabitants, it has to presume a royal grant such as to incorporate them.—**RIVERS (LORD) v. ADAMS** (1878), 3 Ex. D. 361; 48 L. J. Q. B. 47; 39 L. T. 39; 42 J. P. 728; 27 W. R. 381.

Annotations:—**As to** (1) **Consd.** Goodman v. Saltash Corp'n. (1882), 7 App. Cas. 633. **Refd.** De la Warr v. Miles (1881), 17 Ch. D. 535; Smith v. Andrews, [1891] 2 Ch. 678; Chesterfield v. Harris, [1908] 2 Ch. 397; Harris v. Chesterfield, [1911] A. C. 623. **As to** (2) **Refd.** A.-G. v. Horner, [1913] 2 Ch. 140. **Generally, Refd.** Turner v. Salmon

(1885), 1 T. L. R. 482; *A.-G. v. Antrobus*, [1905] 2 Ch. 188. *Mentd. Re De la Warr's Estates* (1881), 16 Ch. D. 587; *A.-G. v. Reynolds*, [1911] 2 K. B. 888.

214. One corporation out of another.]—*SUTTON'S HOSPITAL CASE*, No. 3, *ante*.

Classification of corporations. *See* Part I., Sect. 2, *ante*.

SECT. 3.—MODES OF CREATION.

SUB-SECT. 1.—IN GENERAL.

215. General rule.]—Lawful authority of incorporation is of the essence of a corp'n. & may be given (1) by the common law, as the King himself, etc., (2) by authority of Parliament, (3) by the King's charter, & (4) by prescription.—*BUCKLAND v. FOWCHER* (1486), cited in 10 Co. Rep. 27, 29; 77 E. R. 965.

216. —.]—*TONE RIVER CONSERVATORS v. ASH*, No. 265, *post*.

217. Distinction between fundatio incipiens & fundatio perficiens.]—*SUTTON'S HOSPITAL CASE*, No. 3, *ante*.

218. Corporation within County Palatine of Lancaster.]—Corpns. cannot be made within the Duchy & out of the County Palatine by the Duchy seal, but they can be made by the King within the County Palatine by the Duchy seal, because the Duke of Lancaster had *jura Regalia*.—*ASTILL v. CLARKE* (1697), 2 Lut. 1233; 125 E. R. 684.

Annotation:—Mentd. Thomas v. Thomas (1850), 19 L. J. Ex. 175.

See, further, CONSTITUTIONAL LAW, Vol. XI., pp. 557 *et seq.*

SUB-SECT. 2.—BY COMMON LAW.

219. General rule.]—*SUTTON'S HOSPITAL CASE*, No. 3, *ante*.

220. —.]—*TONE RIVER CONSERVATORS v. ASH*, No. 265, *post*.

SUB-SECT. 3.—BY CHARTER.

A. Who may incorporate.

221. The Crown.]—*SUTTON'S HOSPITAL CASE*, No. 3, *ante*.

222. —.]—It was agreed by the ct., that the King might make corpns., & grant to them that they may make ordinances for the ordering & govt. of any trade; but thereby they cannot make a monopoly, for that is to take away free-trade, which is the birthright of every subject.

A corp'n. cannot be empowered to decide whether there has been a breach of its charter, for in this way it would be a judge in its own cause, which is against the law, & the King cannot grant unto another to do a thing which is against the law.—*IPSWICH CLOTHWORKERS' CASE* (1614), Godb. 252; *sub nom. IPSWICH TAILORS' CASE*, 11 Co. Rep. 53 a; *sub nom. IPSWICH TAYLOR v. SHERRING*, 1 Roll. Rep. 4.

Annotations:—Reid. Norris v. Staps (1616), Hob. 210; *French v. Adams* (1763), 2 Wils. 168. *Mentd. Jolliffe v. Brode* (1621), W. Jo. 13; *Thomas v. Sorrel* (1673), 3 Keb. 223; *Hacket v. Tilly* (1706), 11 Mod. Rep. 93; *Green v. Durham* (1757), 1 Burr. 127; *Boulton v. Bull* (1795), 2 Hy. Bl. 463; *Beard v. Egerton* (1846), 3 C. B. 97; *Jefferys v. Boosey* (1854), 4 H. L. Cas. 815; *Rogers v. Rajendro Dutt* (1860), 13 Moo. P. C. C. 209; *Dalton v. Saville Street Foundry & Engineering Co.* (1878), 39 L. T. 97; *Davies v. Davies* (1887), 36 Ch. D. 359; *Kruse v. Johnson*, [1898] 2 Q. B. 91.

223. —.]—The Crown, by charter of incorporation, gave power to the founder of a charity to make statutes, ordinances, & constitutions for the maintenance, govt., & rule thereof. The

founder did nothing in exercise of this power until seven years later, when he published a body of rules, ordinances, statutes, & constitutions for the corp'n., in which he ordered that the election of the two members of the corp'n., who were its chief officers, should be made by certain members of the corp'n. & the churchwardens of certain parishes, whom he designated assistants, but who were not members of the corp'n.:—*Held*: the founder had power to make such a constitution.

The erection of a corp'n. by a charter must be by the act of the Crown, but the Crown may delegate to the founder the power of ordaining of what members the corp'n. shall consist, what shall be their qualification & duties, & how the corp'n. shall be continued from time to time, & whether that power is exercised in the first instance by the founder, & his ordinances are contained in the charter itself, or whether they be made by a separate instrument, after the incorporation, they are equally made under the authority of the Crown, & are part of the original constitution of the body corporate.—*R. v. DULWICH COLLEGE* (1851), 17 Q. B. 600; 21 L. J. Q. B. 38; 18 L. T. O. S. 183; 16 J. P. 19; 16 Jur. 654; 117 E. R. 1411.

224. — On petition of inhabitants under Municipal Corporations (General) Act, 1837 (c. 78) —Effect of counter petition against charter.]—

A petition which had been agreed upon at a meeting of the ratepayers of the borough of M. to which all ratepayers had access & which was in fact attended by 1,000 & which petition was afterwards signed by 4,000 of the inhabitant householders of the borough was presented to Her Majesty praying for the grant of a charter of incorporation to the inhabitants of the borough, under the above Act, s. 49. Afterwards, & before the day which was appointed for the Privy Council to take the petition into consideration, a counter-petition signed by 6,000 of such inhabitant householders was presented to Her Majesty praying her not to grant the charter. The whole number of the inhabitant householders amounted to 48,000:—*Held*: (1) such second petition did not necessarily deprive Her Majesty of the power to grant the charter upon the first petition, but that such first petition might still authorise the exercise of the powers conferred by the above sect. of the Act; (2) whether the first petition was, under all the circumstances, the petition of the inhabitants, is a question of fact for a jury & the determination of the Privy Council to advise the Queen to act upon such petition is not conclusive of its validity; (3) the grant of such charter of incorporation is an exercise of the common law prerogative of the Crown, although such charter extends to the new corp'n. the powers of Municipal Corpns. Act, 1835 (c. 76), which the Crown has no power to do except by Municipal Corp'n. (General) Act, 1837 (c. 78), s. 49; (4) the Crown may by its common law prerogative appoint the number & set out the bounds of the wards in such borough; (5) the Crown may also delegate the power of appointing the first members of such new corp'n. & at all events appoint a person to ascertain the individuals who compose the class to whom such charter is granted; (6) such charter may be granted to part of the borough from the whole of which the petition has emanated & need not be conferred on the whole of such borough.—*RUTTER v. CHAPMAN* (1841), 8 M. & W. 1; 11 M. & W. 93; 10 L. J. Ex. 495; 5 J. P. 417; 151 E. R. 925, Ex. Ch.; *subsequent proceedings*, 8 M. & W. 388.

Annotations:—As to (1) Consd. R. v. (1842), 11 L. J. Q. B. 299. As to (2) R. v. Aberavon Corp'n. (1864), & Ellis (1842), 6 J. P. 657; R. v. Aberavon Corp'n. (1864),

238. ———.]—*R. v. HUGHES*, No. 236, *ante*.

239. ——— *Long acquiescence*.]—*R. v.* (1733), 2 Barn. K. B. 390; 94 E. R. 573.

240. ——— *Partial acceptance*.]—No charter granted to a corpⁿ. by the Crown can be partially accepted.

Every corpⁿ. has a power to make bye-laws, incident to the whole body; therefore, where a charter gives to a select body a power to make bye-laws in certain cases specified therein, the incidental power of the whole body to make bye-laws in other cases is not taken away.

A corpⁿ. consisted of mayor, bailiffs, aldermen & burgesses. The bailiffs & aldermen formed a common council, & were chosen out of the burgesses. The charter vested the right of electing burgesses in the mayor & burgesses. The corpⁿ. made a bye-law, vesting the right of electing burgesses in the mayor & common council:—*Held*: the bye-law was good.—*R. v. WESTWOOD* (1830), 4 Bli. N. S. 213; 7 Bing. 1; 5 E. R. 76; *sub nom.* *LOVELL v. WESTWOOD*, 2 Dow & Cl. 21, H. L.

Annotations:—*Refd.* *R. v. Attwood* (1833), 4 B. & Ad. 481. *Mentd.* *Chilton v. London & Croydon Ry.* (1847), 18 M. & W. 213.

241. ——— *Acting under charter—Written declaration of assent*.]—*R. v. HUGHES*, No. 236, *ante*.

242. *Effect of—On customary mode of election—Inconsistent with charter*.]—On the acceptance of a charter, whereby the election of burgesses is directed in a manner different from what had obtained by ancient usage, the usage being inconsistent with the charter, can no longer subsist, but is determined by the acceptance of the charter, which must afterwards be the only measure by which the election of burgesses is to be governed.—*POWELL v. R.* (1728), 2 Bro. Parl. Cas. 298; 1 E. R. 956, H. L.; *affg.* *S. C. sub nom. R. v. POWELL* (1724), 8 Mod. Rep. 291.

243. ——— *Grant of borough in fee farm—Crown remitting part of rent & willing that corporation should repair certain buildings, etc.—Obligation to effect such repairs*.]—The King granted by letters patent to the Mayor & Burgesses of L. R., the borough so called, & also the pierquay or cob, with all liberties, & profits, etc., belonging to the same, & remitted part of their ancient rent payable to the King: & he willed that the Mayor & Burgesses, & their successors, all & singular, the buildings, banks, sea-shore, etc., within the borough, or thereto belonging, or situate between it & the sea, & also the pier, etc., at their own costs & charges thenceforth for ever should repair, maintain & support:—*Held*: the Mayor & Burgesses, having accepted the letters patent or charter, became legally bound to repair the buildings, banks, & sea-shore; & this obligation being one which concerned the public, an indictment would lie against them in case of non-repair, & an action on the case for a direct & particular damage sustained by any individual.—*LYME REGIS CORPN. v. HENLEY* (1834), 2 Cl. & Fin. 331; 1 Bing. N. C. 222; 8 Bli. N. S. 690; 1 Scott, 29; 6 E. R. 1180, H. L.; *affg.* *S. C. sub nom. HENLY v. LYME CORPN.* (1829), 5 Bing. 91.

Annotations:—*Consd.* *Nicholl v. Allen* (1862), 1 B. & S.

PART II. SECT. 3, SUB-SECT. 3.—C.

n. Effect of—On customary number of corporation—Inconsistent with charter.]—If a corpⁿ. by prescription accept a charter limiting the corpⁿ. to a less number than existed by custom, the corpⁿ. will be bound by that acceptance, & no subsequent vicious custom departing from the charter can avail,—

PAGE v. R. (1792), 2 Rldg. Parl. Rep. 445, 502.—*IR.*

PART II. SECT. 3, SUB-SECT. 3.—D. (a).

o. Whether express words necessary—Intention to incorporate evident—Persons acting for public purpose.]—When a charter invests a body with certain rights, & contemplates the

935. *Distd.* *Young v. Davis* (1862), 7 H. & N. 760. *Refd.* *R. v. Beeby* (1839), 3 J. P. 241; *M'Kinnon v. Penon* (1853), 8 Exch. 319; *Winch v. Thames Conservators* (1872), L. R. 7 C. P. 458; *Bathurst Borough v. Macpherson* (1879), 4 App. Cas. 256; *Esher & Dittons U. C. v. Marks* (1902), 71 L. J. K. B. 309; *Simpson v. A.-G.*, [1904] A. C. 476. *Mentd.* *Wilkes v. Hungerford Market Co.* (1835), 2 Bing. N. C. 281; *Cane v. Chapman* (1836), 6 L. J. K. B. 49; *James v. Lynn* (1849), 18 L. J. Q. B. 347; *R. v. Sheffield Canal Co.* (1849), 13 Q. B. 913; *Liverpool Borough Bank v. Eccles* (1859), 4 H. & N. 139; *Parsons v. St. Matthew Bethnal Green Vestry* (1867), 37 L. J. C. P. 62; *Gibson v. Preston Corpⁿ.* (1870), L. R. 5 Q. B. 218; *Hudson v. Tabor* (1877), 2 Q. B. D. 290; *A.-G. v. Tomline* (1879), 12 Ch. D. 214.

244. *Validity of—Right of acting member to dispute*.]—*LONDON TOBACCO PIPE MAKERS' CO. v. WOODROFFE*, No. 721, *post*.

Acceptance of new charter.]—*See* Sect. 5, sub-sect. 2, *post*.

D. Construction of Charters.

(a) In General.

245. *General principles of construction—Words of permission—Or mandate—"Shall" or "may."*]—(1) If governors are visitors also, they are accountable to this Ct. of Ch. *quoad* the estates of the charity.

(2) "Shall" or "may" in private constitutions are to be construed imperatively.—*A.-G. v. LOCK* (1744), 3 Atk. 164; 26 E. R. 897, L. C.

Annotation:—*Mentd.* *St. Mary Castlegate v. St. Mary Bishophill the Elder* (1852), 16 J. P. 87.

246. ——— *To do act for public benefit—Obligatory*.]—If there are words of permission in a charter to do an act which is clearly for the public benefit, they are obligatory; therefore where a charter declared that the mayor & jurats of an ancient town might hold a ct. of record for the holding of pleas, but which had been long disused:—*Held*: a mandamus would be granted to compel such ct. to be held at the instance of an inhabitant of the town, though he was not a corporator.—*R. v. HASTINGS CORPN.* (1822), 5 B. & Ald. 692, n.; 1 Dow. & Ry. K. B. 148; 1 Dow. & Ry. M. C. 53; 106 E. R. 1344.

Annotations:—*Distd.* *R. v. Eye Corpⁿ.* (1822), 2 Dow. & Ry. K. B. 172. *Refd.* *R. v. Havering Atto Bower* (1822), 5 B. & Ald. 691. *Mentd.* *Bolton v. Crowther* (1824), 4 Dow. & Ry. K. B. 195.

247. ——— *Forms imperative or directory*.]—*FOSS v. HARBOTTLE*, No. 1377, *post*.

Compare CONSTITUTIONAL LAW, Vol. XI., p. 568, No. 674.

———.]—*See, generally*, DEEDS & OTHER INSTRUMENTS; STATUTES.

248. *What passes by particular words—"Appurtenances"—Toll*.]—Where the King, before the time of legal memory, was entitled to the soil of the town of C. & to toll traverse within it, & afterwards granted to the burgesses of the town, "the town of C. with all its appurtenances": these words are sufficient to pass the toll.—*BRETT v. BEALES* (1829), Mood. & M. 416, N. P.; *subsequent proceedings* (1830), 10 B. & C. 508.

Annotations:—*Mentd.* *Beaumont v. Mountain* (1834), 10 Bing. 404; *Woodward v. Cotton* (1834), 1 Cr. M. & R. 44; *Pim v. Curell* (1840), 6 M. & W. 234; *Beaufort v. Smith* (1849), 4 Exch. 450; *York & North Midland Ry. v. R.* (1853), 22 L. J. Q. B. 225.

See, generally, CONSTITUTIONAL LAW, Vol. XI., pp. 564–568.

discharge by that body of certain duties which purposes cannot be carried into effect unless the body is a corpⁿ, then the law would hold it to be a corpⁿ, whatever the words might be, & even in the absence of express terms of incorporation.—*COLQUHOUN v. NOLAN TOWN COMRS. OF CASHEL* (1849), 13 I. L. R. 248, 250; 1 Ir. Jur. 263.—*IR.*

Sect. 3.—Modes of creation: Sub-sect. 3, D. (a) & (b), E. & F.; sub-sect. 4, A.]

249. Right of trial of issues—Forfeiture not included.]—If the King by his letters patents grant to the corp'n. all issues within any places; the issue that the corp'n. itself shall forfeit, shall be excepted by intendment of law. Otherwise it would be a defrauding of justice; for then the corp'n. would never appear.—*CASE OF ISSUES (circa 1630)*, Het. 30; 124 E. R. 318.

250. Ambiguous charter—Interpretation of—By reference to bye-law.]—A bye-law cannot explain a doubtful charter; if there is any ambiguity on the face of the charter, it is the province of the ct. to expound it.—*TUCKER v. R.* (1742), 2 Bro. Parl. Cas. 304; 1 E. R. 960, H. L.; *affg. S. C. sub nom. R. v. WEYMOUTH CORPN.* (1741), 7 Mod. Rep. 373.

Annotations:—Consd. Lee v. Wallis (1756), Say. 262. *Refd. R. v. Spencer* (1766), 3 Burr. 1827.

Bye-laws generally, see Part VI., *post*.

251. Affirmative disqualifying clause—Disqualifications previously established not removed.]

—Where a modern charter of an ancient borough contained a clause expressly disqualifying certain persons from voting for corporate offices, but at the same time ratified & confirmed the ancient usages of the borough, by which certain other & different persons were also disqualified from voting at any nomination or election of corporate officers, & a person was elected to a corporate office in pursuance of the words of the charter, but not conformably to the ancient custom:—*Held*: his election was void.—*R. v. ABELL* (1823), 3 Dow. & Ry. K. B. 390; 1 L. J. O. S. K. B. 250.

252. "Inhabitants"—Meaning of.]—The word "inhabitants" in a charter has not in itself any definite legal meaning, but must be explained, in each case, extrinsically, as by evidence of usage, or by reference to the context & objects of the charter.

A party who seeks to disturb another elected to an office, on the ground that he had not a majority of votes, must show the qualification of the electors, & that another candidate had the majority of those duly qualified, before the ct. will grant a *quo warranto* information.—*R. v. MASHITER* (1837), 6 Ad. & El. 153; 1 Nev. & P. K. B. 314; Will. Woll. & Dav. 173; 6 L. J. K. B. 121; 112 E. R. 58.

Annotations:—Refd. R. v. Davie (1837), 6 Ad. & El. 374; *R. v. St. Paul's, Covent Garden* (1846), 11 J. P. 70.

By reference to usage.]—See No. 260, *post*.

(b) *Usage as Evidence.*

See, generally, CONSTITUTIONAL LAW, Vol. XI., pp. 573, 574; CUSTOM & USAGES; DEEDS & OTHER INSTRUMENTS.

253. Definition of usage.]—What is usage but a collection through a great period of time of the regulations, by which the parish has from time to time agreed to put a construction upon the instrument, under which their title was derived (LORD ELDON, C.).—*A.-G. v. NEWCOMBE* (1807), 14 Ves. 1; 33 E. R. 422, L. C.

Annotations:—Refd. R. v. Davie (1837), 6 Ad. & El. 374. *Mentd. Milligan v. Mitchell* (1835), 4 L. J. Ch. 281; *Nightingale v. Coulburn* (1848), 12 Jur. 317; *Re St. Stephen, Coleman Street, Re St. Mary the Virgin, Alder-manbury* (1888), 39 Ch. D. 492.

254. To explain doubtful words.]—Usage will be good or bad, according to circumstances; where the words of a charter are equivocal, & it stands indifferent how to interpret, contemporary usage will explain the words.—*R. v. JOHNS* (1772), Lofft, 76; 98 E. R. 541.

255. —.]—It is in the nature of all corpns. to do corporate acts; & where the power of doing them is not specially delegated to a particular number, the general mode is, for the members to

meet on charter days, & the major part who are present do the act, but where there is a select body it is a different thing, for there it is a special appointment. All the reasoning therefore is different. But suppose the words of the charter are doubtful, the usage in this case is of great force; not, that usage can overturn the clear words of a charter; but if they are doubtful, the usage under the charter will tend to explain the meaning of them (LORD MANSFIELD).—*R. v. VARLO* (1775), 1 Cowp. 248; 98 E. R. 1068.

Annotations:—Refd. R. v. Bellringer (1792), 4 Term Rep. 810. *Mentd. Watcham v. A.-G. of East Africa Protectorate*, [1919] A. C. 533.

256. —.]—*R. v. MILLER*, No. 305, *post*.

257. Of powers conferred by charter.]—Where from 1554, when the borough of St. A. was first incorporated by charter, till a charter of 1676 the mayor & the ten principal burgesses alone elected the parson of a church, & since the charter of 1676 the parson had been constantly elected by the mayor & aldermen, without any interferences of the commonalty or burgesses at large; & no claim had ever been made by the burgesses at large to vote in the election:—*Held*: by the construction of the charter, with the uniform usage under it, the mayor & aldermen only ought to have the disposal of the advowson.—*GAPE v. HANDLEY* (1777), 3 Term Rep. 288, n.; 100 E. R. 579.

Annotations:—Consd. Blankley v. Winstanley (1789), 3 Term Rep. 279. *Refd. Rennell v. Lincoln* (1825), 3 Bing. 223; *R. v. Salway* (1829), 4 Man. & Ry. K. B. 314. *Mentd. Arnold v. Bath & Wells* (1829), 2 Moo. & P. 559.

258. — Prescriptive corporation.]—Where a corp'n. has from time immemorial been used to repair banks etc. of a river, an obligation to repair is presumed.

This is a corp'n. by prescription: & by the same prescription they are bound to do these things; & it might be the original condition of their existence. They must have had their existence as a corp'n. by charter; & prescription is evidence of what was in the charter, but does not now appear (LORD MANSFIELD, C.J.).—*ANON.* (1774), Lofft, 556; 98 E. R. 796.

259. — Election by subsisting members.]—A charter, directing an election to be made by the remaining members of a definite body of a corp'n., is good in law. In prescriptive corp'n., an usage to this effect is evidence of such a charter. Consequently in either case a person is well elected by a majority of the subsisting members as distinguished from a majority of the full body.—*R. v. HOYTE* (1795), 6 Term Rep. 430; 101 E. R. 632.

Annotations:—Expld. R. v. Wyllysams (1823), 3 Dow. & Ry. K. B. 75. *Consd. R. v. Headley* (1827), 7 B. & C. 496.

260. — Election of common councilmen.]—By a charter of Elizabeth, it was provided that vacancies in the common council of the borough of L. should be filled up by election out of the burgesses & inhabitants. The charter was accepted, but the corp'n. afterwards elected burgesses, not being inhabitants, to the office of common councilmen, as they had done before. This charter, & all other franchises, were surrendered to Charles II. & William & Mary by a charter of restoration granted that the corp'n. should enjoy all franchises, elections, right of election, etc., that they had previously enjoyed by virtue or pretence of any charter, or by any other lawful manner, right or title:—*Held*: (1) under the charter of Elizabeth, burgesses could not be elected to be common councilmen unless they were inhabitants; & that an usage to elect burgesses not inhabitants was repugnant to the charter, & could not be pleaded in explanation of it. (2) The charter of William & Mary only restored such rights as had been lawfully exercised under or by pretence of former

charters, &, therefore, did not enable the corp'n. to elect burgesses, not being inhabitants, to the office of common councilmen. (3) The charter of William & Mary was limited by the words "or by any other lawful manner, right or title" & must be confined to a lawful pretext.—*R. v. SALWAY* (1829), 9 B. & C. 424; 4 Man. & Ry. K. B. 314; 7 L. J. O. S. K. B. 277; 109 E. R. 158.

Qualification of members generally, see Part III., Sect. 2, *post*.

E. Presumption of Charters.

See Sub-sect. 5, *post*.

Presumption of grants generally, see CONSTITUTIONAL LAW, Vol. XI., pp. 574, 575.

F. Surrender of Charters.

See Part XVI., Sect. 1, *post*.

SUB-SECT. 4.—BY STATUTE.

A. How effected.

See Municipal Corporations Act, 1882 (c. 50).

261. Charter assented to by Parliament.]—*R. v. HAYTHORNE*, No. 306, *post*.

262. —.]—*R. v. ATTWOOD*, No. 726, *post*.

263. —.]—Where a first charter purported to be granted *de assensu praelatorum, comitum, etc. in instanti Parlamento convocato*, a new charter granted to hold a market within the prescribed distance would be void, & would be repealable by *sci. fa.* The words stated would have the effect of giving the first charter the authority of an Act of Parliament. Such a charter could only be repealed by Act of Parliament.—*Re ISLINGTON MARKET BILL* (1835), 3 Cl. & Fin. 513; 12 M. & W. 20, n.; 6 E. R. 1530, H. L.

Annotations:—*Expld.* *Goldsmid v. G. E. Ry.* (1883), 25 Ch. D. 511. *Apprvd.* *Windsor Corp'n. v. Taylor* (1898), 79 L. T. 450. *Mentd.* *Young v. Thank* (1845), 6 L. T. O. S. 146; *Newton v. Cubitt* (1859), 5 C. B. N. S. 627; *Ellis v. Bridgnorth Corp'n.* (1863), 15 C. B. N. S. 52; *Wortley v. Nottingham L. B.* (1869), 33 J. P. 806; *Manchester Corp'n. v. Peverley* (1882), 22 Ch. D. 294, n.; *G. E. Ry. v. Goldsmid* (1884), 9 App. Cas. 927; *Scott v. Glasgow Corp'n.*, [1899] A. C. 470; *Wilcox v. Steel*, [1904] 1 Ch. 212; *Gingell, Son & Foskett v. Stepney B. C.*, [1906] 2 K. B. 468; *A.-G. v. Horner*, [1913] 2 Ch. 140; *Hammerston v. Dysart*, [1916] 1 A. C. 57; *Morpeth Corp'n. v. Northumberland Farmers' Auction Mart Co.*, [1921] 2 Ch. 154.

264. —.]—A charter of Edward III., by the King & Parliament, purported to give to the citizens of L. & their successors exclusive right of market in a certain area. The charter was not included in the statute roll, but was in the charter roll:—*Held*: the charter of Edward III. had the force of a private Act of Parliament, & amounted to a grant of market to the corp'n.—*GREAT EASTERN RY. Co. v. GOLDSMID* (1884), 9 App. Cas. 927; 54 L. J. Ch. 162; 52 L. T. 270; 49 J. P. 260; 33 W. R. 81, H. L.

Annotations:—*Refd.* *A.-G. v. Horner*, [1913] 2 Ch. 140. *Mentd.* *A.-G. v. Horner* (1884), 14 Q. B. D. 245; *Aber-gavenny Improvement Comrs. v. Straker* (1889), 42 Ch. D. 83; *Birmingham Corp'n. v. Foster* (1894), 10 T. L. R. 309; *Hampstead Corp'n. v. Mid. Ry.*, [1904] 2 K. B. 802; *Wilcox v. Steel*, [1904] 1 Ch. 212; *Toronto Corp'n. v. Russell*, [1908] A. C. 493; *Stepney B. C. v. Gingell, Son & Foskett* (1909), 100 L. T. 629; *Haynes v. Ford*, [1911] 1 Ch. 375; *Hammerston v. Dysart*, [1916] 1 A. C. 57; *Selby v. Whitbread*, [1917] 1 K. B. 736; *Morpeth Corp'n. v. Northumberland Farmers' Auction Mart Co.*, [1921] 2 Ch. 154.

PART II. SECT. 3, SUB-SECT. 4.—A.

265 1. Whether express words necessary—*Intention to incorporate evident—Persons acting for public purposes—Empowered to hold property by succession.*]—The vesting of real & personal property by statute in comrs. & their successors, makes them a corp'n. by implication. — *BOWER v. GRIFFITH*

(1868), 16 W. R. 540.—IR.

P. — *No intention to incorporate—Agricultural societies—R. S. N. S. c. 56.*]—*BROOKLYN AGRICULTURAL SOCIETY v. REAGH* (1911), 10 E. L. R. 295.—CAN.

Q. — *Statutory recognition of hospital supported by voluntary subscription—5 & 6 Geo. 3, c. 20.*]—When

265. Whether express words necessary—*Intention to incorporate evident—Persons acting for public purpose—Empowered to take land by succession.*]—Where it appeared under an Act for making & keeping the river T. navigable, that certain persons should be conservators of the river, with powers to cleanse, etc., & cut a new channel if occasion required, & the conservators, or the major part of them, were authorised to make any contract, which contract should bind the whole body of the conservators, & the conservators might sue & be sued by the name of the Conservators of the River T., & also, by a subsequent Act, the conservators were authorised to make orders in writing for the government of the boatmen, bargemen, or others, in navigating boats or barges, or floating timber on the said river:—*Held*: as it appeared from the different clauses of these Acts of Parliament that the conservators should take land by succession & not by inheritance, although they were not created a corp'n. by express words, they were so by implication; & that being so, they were entitled to sue in their corporate name for an injury done to their real property.

A corp'n. generally speaking have a right to make bye-laws to bind their own members, but not to bind strangers. The Act authorising the conservators to make any orders or regulations in writing for the government of the boatmen, etc., is a bye-law to bind strangers which could not have been made unless the Act of Parliament had enabled them to do so (*BAYLEY, J.*).

A corp'n. may exist, (1) by common law, as a King, bishop, or parson, (2) by authority of Parliament, (3) by Charter; & (4) by prescription. A name is essential to a corp'n. (*LITLEDALF, J.*).—*TONE RIVER CONSERVATORS v. ASH* (1829), 10 B. & C. 349; 8 L. J. O. S. K. B. 226; 109 E. R. 479.

Annotations:—*Expld.* *Bower v. Griffith* (1868), 16 W. R. 540; *Salford Corp'n. v. Lancashire County Council* (1890), 25 Q. B. D. 384. *Refd.* *Bridgwater & Taunton Canal Co. v. Bluett* (1829), 10 B. & C. 393. *Mentd.* *Re St. Alphage, London Wall* (1888), 59 L. T. 614.

266. —.]—*BRIDGWATER & TAUNTON CANAL NAVIGATION v. BLUETT* (1829), 10 B. & C. 393; 8 L. J. O. S. K. B. 239; 109 E. R. 496.

267. —.]—*Churchwardens & overseers empowered to take & hold parochial property.*]—*GOULDSWORTH v. KNIGHTS*, No. 22, *ante*.

268. —.]—*Trustees appointed for inclosing common—Trust for unlimited time.*]—A question being raised whether certain trustees appointed under an Act of Parliament for inclosing a piece of land were to execute conveyances in their own names, or as a corporate body:—*Held*: although the Act did not expressly constitute them a corp'n. yet as the trusts to be executed were to continue for an unlimited time, the trustees must, by the very constitution of the body & the powers given them, be taken to be a corp'n.—*Ex p. NEWPORT MARSH TRUSTEES* (1848), 16 Sim. 346; 18 L. J. Ch. 49; 60 E. R. 907; *sub nom. Re NEWPORT MARSH ACT*, 12 Jur. 932.

Annotation:—*Consd.* *Willingale v. Maitland* (1866), L. R. 3 Eq. 103.

269. Municipal Corporations Act, 1835 (c. 76)—*New corporations not created by.*]—*Semble*: the

a hospital supported by voluntary subscriptions was recognised by a public Act, which directed sums to be paid out of public money for purposes therein specified:—*Held*: such hospital was not thereby constituted a corp'n., within above Act.—*GRIFFIN v. ST. JOHN'S HOSPITAL* (1852), 2 I. C. L. R. 390.—IR.

Sect 3.—Modes of creation: Sub-sect. 4, A., B. & C.; sub-sect. 5. Sect. 4.]

above Act does not create new corps.—**LUDLOW CORPN. v. TYLER** (1836), 7 C. & P. 537.

270. —Reference therein to boroughholders & freemen as corporate body—Not conclusive.]—The fact that G. is mentioned as a borough in sched. A of above Act, & in the same sched., the boroughholders & freemen of the borough of G. are mentioned in connection with it, as the corporate body is not conclusive of the place having been a borough, or the boroughholders & freemen a municipal corpn., before the Act. On evidence to the contrary:—**Held**: a mandamus would be refused, calling on the stewards, etc., of such boroughholders & freemen to deliver up money & documents to the corpn. established in G. under the Act.—**R. v. GREENE** (1837), 6 Ad. & El. 548; 1 Nev. & P. K. B. 631; Will. Woll. & Dav. 291; 112 E. R. 210.

Annotation:—**Reid. R. v. Haughton** (1853), 17 Jur. 455.

271. Charter granted in pursuance of statute.]—A trustee empowered by will to invest in the shares of any co. incorporated by Act of Parliament invested in the shares of "The London Assurance," a co. created by royal charter granted in pursuance of an Act of Parliament, with rights & privileges which the Crown could not have conceded apart from the Act:—**Held**: the co. was a co. incorporated by Act of Parliament within the meaning of the power.—**ELVE v. BOYTON**, [1891] 1 Ch. 501; 60 L. J. Ch. 383; 64 L. T. 482, C. A.

Annotations:—**Consd. Re Smith, Davidson v. Myrtle**, [1896] 2 Ch. 590. **Reid. Wakefield & District Light Rys. v. Wakefield Corpn.** (1908), 2 Konst. Rat. App. 1904-8, 433.

Right of corporation to apply for new charter—For remodelling or alteration of constitution.]—See No. 292, *post*.

B. Effect of Statutory Incorporation.

See COMPANIES.

Limitation of powers (ultra vires) of corporations.]—See Part IX., Sect. 5, *post*.

—Benefit of act received by corporation.]—See Nos. 1120, 1170, *post*.

272. On liabilities of corporation & members—Under Chartered Companies Act, 1837 (c. 73)—Incorporation on petition under Act—No reference to Act in charter.]—The above Act, s. 29 enacted that it shall be lawful for her Majesty, in any charter of incorporation, either by reference to this Act or otherwise, to make the corpn., thereby formed, & the members thereof, subject to all of the provisions, liabilities, & directions hereinbefore authorised to be imposed on any unincorporated co. or its members. By s. 24, judgments obtained against the co. shall have effect against the property of individual members. A co. was incorporated by charter on a petition referring to the Act, but the charter did not mention either the Act or its clauses:—**Held**: neither the corpn. nor its members were subject to the provisions or liabilities authorised to be imposed by the sects. previous to s. 29 on unincorporated bodies.—**FINNIS v. YOUNG** (1858), 31 L. T. O. S. 163; 6 W. R. 577.

273. On obligation to grant licence—On payment of alleged immemorial fee.]—By 31 Geo. 2, c. 71, passed to preserve the C. Fishery which had been by ancient charters vested in a suspended corpn., it was enacted that certain justices of E. were to grant licences to oyster-dredgers, under the usual & accustomed payments & fees, & in such manner as the mayor & commonalty used

to grant such licences. Sect. 5 provided that the powers so given to the justices should cease when the borough was re-incorporated & thenceforth be & remain in such body corporate. The borough was re-incorporated by charter in 1763, & in an action against the new corpn. for refusing to grant a dredging licence to pltf.:—**Held**: whatever the immemorial custom might be, there was nothing in the Act of Parliament which imposed upon the corpn. the duty or obligation of granting licences for any accustomed payment or fee.—**MILLS v. COLCHESTER CORPN.** (1864), 17 C. B. N. S. 635; 144 E. R. 254; *subsequent proceedings* (1868), L. R. 3 C. P. 575, Ex. Ch.

274. On vesting of property—Incorporation of district—Public Health Act, 1875 (c. 55), s. 310.]—**HYDE CORPN. v. BANK OF ENGLAND**, No. 74, *ante*.
See, further, Part I., Sect. 3, *ante*.

C. Alteration and Revocation of Constitution.

275. Cannot be varied by subsequent charter.]—**R. v. MILLER**, No. 305, *post*.

See, also, No. 306, *post*.

276. Can only be revoked by statute.]—**Re ISLINGTON MARKET BILL**, No. 263, *ante*.

SUB-SECT. 5.—BY PRESCRIPTION.

277. Nature of prescription—Evidence of contents of charter.]—**ANON.**, No. 258, *ante*.

See, also, No. 259, *ante*.

278. What corporations may be such by prescription—Corporation aggregate—Bailliff & burgesses.]—The bailiff & burgesses of I., a corpn. by prescription, had from time immemorial, been lords of the manor of I., & as such, had during all that time holden a ct. leet for the manor, on certain days, in the Guildhall of the borough, which was their property. In 1555, they accepted a charter which purported to grant to them a court leet to be held in the Guildhall, as of ancient time had been used. By an award afterwards made, in pursuance of a private Act, the manor of I., with the rights, members, cts., view of frankpledge, etc., royalties & appurtenances, excepting to the bailiff & burgesses the Guildhall, houses, buildings, ct., or garden belonging to the same, etc., were conveyed to Lord H.:—**Held**: although the exception retained in the bailiff & burgesses the property in the Guildhall, yet the lord of the manor had a right to hold the court leet there.—**R. v. ILCHESTER (BAILIFF, ETC.)** (1824), 2 B. & C. 764; 4 Dow. & Ry. K. B. 324; 2 L. J. O. S. K. B. 147; 107 E. R. 567.

279. —Free fishermen.]—**HILLS v. HUNT**, No. 749, *post*.

280. Evidence of prescription—Corporation book 200 years old.]—A demise was made by a corpn. to pltf. of the office of meter, with fees & privileges belonging to it, under which pltf. claimed a toll from deft. in respect of a cargo of coals imported by him into the port of T. At the trial two leases from the corpn. of the office & dues were put in evidence, the first dated in 1752, the second in 1795. It was proved that a fee of 4d. a chaldron for coal had been paid without interruption, from 1772 to 1828, although the meter never actually measured them himself, the only measurement being for the purpose of ascertaining the custom-house duties payable on them. A corpn. book of the date of 1630 was also produced:—**Held**: this was sufficient *prima facie* evidence that the corpn. & office of meter were immemorial; & it

sufficiently supported the immemorial claim for coals not actually meted.—*JENKINS v. HARVEY* (1835), 2 Cr. M. & R. 393; 1 Gale, 454; 5 Tyr. 871; 5 L. J. Ex. 17.

Annotations:—*Reid. Mills v. Colchester Corp.* (1867), 36 L. J. C. P. 210. *Mentd. Brune v. Thompson* (1843), 4 Q. B. 543; *Newcastle-upon-Tyne (Master Pilots & Seamen) v. Hammond* (1848), 4 Exch. 285; *Newcastle-upon-Tyne (Master Pilots & Seamen) v. Bradley* (1852), 21 L. J. Q. B. 190; *Benjamin v. Andrews* (1858), 5 C. B. N. S. 299; *Shepherd v. Payne* (1864), 16 C. B. N. S. 132; *Bryant v. Foot* (1868), L. R. 3 Q. B. 497; *Northumberland v. Houghton* (1870), 22 L. T. 491; *Brecon Markets Co. v. Neath & Brecon Ry.* (1872), L. R. 7 C. P. 555; *Norfolk v. Arbuthnot* (1879), 4 C. P. D. 290; *Brocklebank v. Thompson*, [1903] 2 Ch. 344.

281. — Recognition by statute—No grant in existence.—A co. or fraternity of free fishermen existed from time immemorial within the manor of F., all the members of which were admitted tenants of the manor, & took an oath of homage to the lord. No grant to the co. as a corp. was in existence, but from numerous ancient documents it appeared that the co. had the exclusive right of dredging for oysters & taking other kinds of fish within the manor, for which it paid rent to the lord. By an Act of 1840 it was recognised as a co. in the nature of a prescriptive corp., & it was recited that the members had time out of mind dredged oysters exclusive of all other persons, & that the fishery was of great benefit to the public; it was thereby enacted that the co. might exercise all the powers then vested in it, & fresh powers of raising money & charging the profits of the fishery by way of mtge. were given it, the form of mtge. containing no power of sale. Rules were laid down for the management of the co., but it was provided that nothing in the Act should be construed to incorporate the co. The co. made bye-laws for the regulation of the dredging of oysters, & subject to these bye-laws, the privilege of dredging & fishing was enjoyed by the members for their own benefit. A petition having been brought by a creditor for winding up the co.:—*Held*: the co. was a corp. in which the exclusive right of fishing within the manor was vested; but that the corp. held the right on a condition or trust for the individual members; & if the co. was wound up this right of fishing could not be sold by the liquidator, & therefore the winding-up order would be useless.—*Re FREE FISHERMEN OF FAVERSHAM (CO. OR FRATERNITY OF)* (1887), 36 Ch. D. 329; 57 L. J. Ch. 187; 57 L. T. 577; 3 T. L. R. 797, C. A.

Annotations:—*Mentd. Re South London Fish Market Co.* (1888), 39 Ch. D. 324; *Re Barton-upon-Humber & District Water Co.* (1889), 42 Ch. D. 585; *Re London Health Electrical Institute* (1897), 76 L. T. 98.

282. When prescriptive incorporation presumed—Notwithstanding charter—Containing only creative words.—Where a charter of Edward VI., granted to a borough, used creative words only, yet recited that it was an ancient borough, & certain evidence as to previous existence had been adduced:—*Held*: taking the whole of the charter & the parol testimony together, the preponderance of the evidence was, that this was a corp. by prescription, though words of creation only were used in the incorporating part of the charter of Edward VI.—*R. v. STRATFORD-UPON-AVON CORPN.* (1811), 14 East, 348; 104 E. R. 636.

Annotations:—*Reid. R. v. Birmingham & Gloucester Ry.* (1842), 3 Q. B. 223; *Newcastle-upon-Tyne (Master Pilots*

& Seamen) v. Hammond (1848), 12 L. T. O. S. 151. *Mentd. Tepper v. Nichols* (1864), 18 C. B. N. S. 121.

283. — — — Containing no words of confirmation.—Where a corp. has existed for several centuries, an ancient charter, containing no words of confirmation, but otherwise might be read as the original grant, is not evidence of the origin of the corp., so as to do away with the presumption that it has existed immemorially.—*NEWCASTLE-UPON-TYNE (MASTER PILOTS & SEAMEN) v. HAMOND* (1848), 12 L. T. O. S. 151.

284. — — — Of inhabitants for specific purpose.—*RIVERS (LORD) v. ADAMS*, No. 213, *ante*.

285. — — — Not for purpose of supporting right otherwise incapable of having legal origin—Presumption inconsistent with past existing state of things.—The ct. will not presume an incorporating charter from the Crown for the mere purpose of supporting a right otherwise incapable of having a legal origin, where the presumption is inconsistent with the past existing state of things & there is no trace of such a corporation having ever existed.—*HARRIS v. CHESTERFIELD (EARL)*, [1911] A. C. 623; 80 L. J. Ch. 626; 105 L. T. 453; 27 T. L. R. 548; 55 Sol. Jo. 686, H. L.

Annotation:—*Mentd. A.-G. v. Horner*, [1913] 2 Ch. 140.

Presumption of grants generally, see CONSTITUTIONAL LAW, Vol. XI., pp. 574, 575.

Usage as evidence in reference to grants generally, see CONSTITUTIONAL LAW, Vol. XI., pp. 573, 574.

Usage as evidence in reference to charitable trusts, see CHARITIES, Vol. VIII., pp. 334, 335.

SECT. 4.—VALIDITY OF INCORPORATION.

286. Valid until impeached.—*ROBINSON v. LONDON HOSPITAL (GOVERNORS)*, No. 1028, *post*.

287. How questioned—Quo warranto information—Against individual member.—No information in nature of *quo warranto* at the relation of a private person against a corp., acting as such, to show why they acted as a body corporate, but only against individual members.—*R. v. CARMARTHEN CORPN.* (1759), 1 Wm. Bl. 187; 2 Burr. 869; 96 E. R. 99.

Annotations:—*Consd. R. v. Ogden* (1829), 10 B. & C. 230. *Reid. R. v. White* (1836), 5 Ad. & El. 613.

288. — — — By Attorney-General.—An information in the nature of *quo warranto*, against persons for claiming to act as a corp., must be filed by & in the name of the A.-G. Such an information cannot be filed at the instance of an individual against persons for usurping a franchise of a private nature, not connected with public govt.—*R. v. OGDEN* (1829), 10 B. & C. 230; 109 E. R. 436.

Annotations:—*Distd. R. v. White* (1836), 5 Ad. & El. 613. *Reid. R. v. Lloyd* (1860), 2 L. T. 232.

289. — — — Not against officer of corporation—Coroner.—The ct. will not grant a *quo warranto* information against an officer of a corp., a coroner, established by charter pursuant to Municipal Corpns. (General) Act, 1837 (c. 78), s. 49, if it appear that the object in prosecuting such information is to try the legality of the charter.—*R. v. TAYLOR* (1840), 11 Ad. & El. 949; 3 Per. & Dav. 652; 9 L. J. Q. B. 219; 113 E. R. 675.

Annotations:—*Consd. A.-G. v. Avon Corp.* (1863), 33 Beav. 67. *Reid. R. v. Boucher* (1842), 3 Q. B. 641; *R. v. Warwickshire JJ.* (1842), 11 L. J. Q. B. 299.

281 i. Evidence of prescription—Recognition by statute—No grant in existence.—*WOODHILL v. SULLIVAN* (1864), 14 C. P. 265.—CAN.

s. — — — Insperimus recited in letters patent.—The *insperimus* recited in letters patent is perfect evidence of the original charter of a corp., when

the original is not to be found.—*A.-G. v. GALWAY CORPN.* (1828), 1 Mol. 95, 111; Heat. 298.—IR.

PART II. SECT. 4.

t. Whether affected by exercise of powers within one locality only—& for local objects only.—The fact that a

corp. chooses to confine the exercise of its powers to one locality, & to local objects, does not affect its status as a corp., nor does it operate to render its original incorpn. illegal.—*COLONIAL BUILDING & INVESTMENT ASSOCN. v. A.-G. OF QUEBEC* (1883), 9 App. Cas. 157.—CAN.

Sect. 4.—Validity of incorporation. Sect. 5: Sub-sects. 1, 2, 3, 4 & 5.]

290. — Mayor.]—The ct. will not grant a *quo warranto* information against an individual exercising the office of Mayor to try the legality of a charter of municipal incorpn.—*R. v. JONES* (1863), 8 L. T. 503.

Quo warranto generally, see CROWN PRACTICE.

291. — Scire facias—Not certiorari to quash rate.]—*R. v. BENEKER & ELLIS* (BIRMINGHAM CHURCHWARDEN & OVERSEER), No. 226, *ante*.

Scire facias generally, see CROWN PRACTICE.

SECT. 5.—NEW CHARTERS.

SUB-SECT. 1.—APPLICATION FOR.

292. By joint stock company incorporated by Act of Parliament—Remodelling constitution—Extension of objects & powers.]—Where an injunction was sought to restrain the G. J. Water Works Co. from applying to Parliament for an Act authorising the co. to procure its supply of water by means of an aqueduct from the river O. instead of the Thames, as authorised by the existing Acts under which it was incorporated:—*Held*: the injunction would be refused.

A ct. of equity will not, at the instance of a shareholder restrain a joint stock co., incorporated by Acts of Parliament which prescribe its constitution & objects, from applying in its corporate capacity to Parliament, & from using its corporate seal & resources to obtain the sanction of the legislature to the remodelling of its constitution, or to a material alteration & extension of its object & powers. The right of making such an application is incident to a joint stock co. of that description.—*WARE v. GRAND JUNCTION WATER CO.* (1831), 2 Russ. & M. 470; 9 L. J. O. S. Ch. 169; 39 E. R. 472, L. C.

Annotations:—*Consd. Simpson v. Denison* (1852), 10 Hare, 51; *Lancaster & Carlisle Ry. v. North Western Ry.* (1856), 2 K. & J. 293; *Re London Chatham & Dover Ry. Arrangement Act, Ex p. Hartridge & Allender* (1869), 5 Ch. App. 672, n. *Reid. Parker v. River Dunn Navigation Co.* (1847), 1 De G. & Sm. 192; *Cooper v. Powis* (1850), 3 De G. & Sm. 688.

Joint stock companies generally, see COMPANIES.

SUB-SECT. 2.—ACCEPTANCE OF.

293. Sufficiency of—Part acceptance.]—*R. v. CAMBRIDGE (VICE-CHANCELLOR)*, No. 42, *ante*.

294. —.]—*R. v. ROUTLEDGE* (1780), 2 Doug. K. B. 531; 99 E. R. 338.

Annotation:—*Consd. R. v. Westwood* (1830), 4 Bl. N. S. 213.

295. — Acceptance by majority—Refusal by minority.]—*R. v. PASMORE*, No. 1579, *post*.

Effect of.]—See Sect. 5, sub-sect. 5, *post*.

Acceptance of charters generally, see Sect. 3, sub-sect. 3, C., *ante*.

SUB-SECT. 3.—FORM OF.

296. Royal proclamation for restoring corporations—Operates as grant of revival.]—The pro-

clamation of James II., in 1689, for restoring corpns. to their ancient charters, etc., operates, when accepted, as a grant of revival to such of the old corpns. as had surrendered their corporate franchises to Charles II., which surrenders were not enrolled, & overturns new charters granted by Charles II.—*NEWLING v. FRANCIS* (1789), 3 Term Rep. 189; 100 E. R. 525.

Annotations:—*Reid. R. v. Fisher* (1862), 4 B. & S. 575. *Mentd. R. v. Westwood* (1830), 7 Bing. 1.

297. Words of creation only used—In incorporating part of charter.]—*R. v. STRATFORD-UPON-AVON CORPN.*, No. 282, *ante*.

298. No express words necessary—To create corporation.]—*TONE RIVER CONSERVATORS v. ASH*, No. 265, *ante*.

SUB-SECT. 4.—VALIDITY OF.

299. Charter granted in consideration of void surrender of old charter—Surrender not enrolled.]—A new charter granted in consideration of the surrender of an old charter, which surrender was not enrolled, is void.—*BULLY v. PALMER* (1698), 12 Mod. Rep. 247; 88 E. R. 1296; *sub nom. BUTLER v. PALMER*, 1 Salk. 190.

Annotation:—*Distd. R. v. Tunwell* (1783), 3 Doug. K. B. 207.

300. —.]—The surrender of a charter is void for want of enrolment.

Where a charter granted in consideration of a surrender of an old charter to the mayor & commonalty stated that any alderman being wanted, the rest of the aldermen might nominate two burgesses for the choosing of one of them as alderman by the commonalty, *per communitatem*:—*Held*: commonalty included the whole corpns. & an alderman so elected by the votes of the other aldermen, as well as the burgesses at large, was properly elected.

It seems that contemporaneous & continuing usage may be resorted to in aid of the construction of doubtful words in an old charter.

Where an information in nature of *quo warranto* was moved for on the ground of a disputed mode of election, which alone was in controversy at the time of the deft.'s election, & which ground was afterwards answered on showing cause, the ct. would not in their discretion make the rule absolute to try another incidental & secondary question, as to whether there were a sufficient interval of time allowed between the nomination & election of the deft., no person's right having been set aside by means of such acceleration of the election, if it were accelerated.—*R. v. OSBOURNE* (1803), 4 East, 327; 102 E. R. 856.

301. —.]—Where a charter was surrendered but not enrolled:—*Held*: a charter granted on a void surrender of a former charter was void.—*PIPER v. DENNIS* (1698), 12 Mod. Rep. 253; 88 E. R. 1302.

302. — Surrender by wrong name.]—*R. v. BRIDGEWATER CORPN.* (1719), 11 Mod. Rep. 291; 88 E. R. 1046.

303. Misrecital of old charter.]—Where a charter, reciting that by a former charter the power of electing jurats was in the mayor, jurats & commonalty; whereas it should be mayor & jurats only, declares that it shall & may be lawful to & for the mayor, jurats & commonalty to

PART II. SECT. 5, SUB-SECT. 2.

a. Sufficiency of—Acceptance by some members only.]—The Queen's University in Ireland, as incorporated by a Royal charter of 1864, was constituted a corpns., consisting of a

chancellor, senators, secretary, professors, graduates, & students. In 1866 a supplemental charter was granted to the University. At a meeting of the senate it was resolved by a majority of those present that

the supplemental charter should be accepted:—*Held*: it was not competent for the senate alone to accept the supplemental charter.—*MACCOR-MACK v. QUEEN'S UNIVERSITY* (1867), 1 R. 1 Eq. 160.—*IR.*

choose jurats out of the commonalty at large :—*Held* : it operated as a new grant, & the misrecital did not vitiate the charter.—*R. v. BLUNT* (1738), *Andr.* 293 ; 95 *E. R.* 404.

304. Prior grant still in existence.]—Where the King grants a charter to a corp., there being a prior charter existing at the time, the new charter is void *ab initio* ; because two corps. for the same purposes of govt., cannot by law exist within one & the same place, & at one & the same time.—*R. v. AMERY* (1790), 2 *Bro. Parl. Cas.* 336 ; 1 *E. R.* 981, *H. L.*

305. Charter purporting to vary prior charter confirmed by statute.]—The constitution of a corp. as settled by Act of Parliament, cannot be varied by the acceptance of any charter inconsistent with it.

Qu. : whether usage may be pleaded to assist the ct. in the construction of a doubtful charter.—*R. v. MILLER* (1795), 6 *Term Rep.* 268 ; 101 *E. R.* 517.

Annotations :—*Distd.* *R. v. Haythorne* (1826), 5 *B. & C.* 410. *Mentd.* *R. v. Morris* (1803), 4 *East*, 17 ; *R. v. Thornton* (1803), 4 *East*, 294 ; *R. v. Bower* (1823), 1 *B. & C.* 492 ; *R. v. Headley* (1827), 7 *B. & C.* 496 ; *Blacket v. Blizard* (1829), 9 *B. & C.* 851 ; *Ardaseer Cursetjee v. Perozeboye* (1856), 6 *Moo. Ind. App.* 348.

306. Charter releasing power reserved to Crown by prior charter—& causes of complaint for non-compliance with prior charter—Prior charter non-existent.]—By an ancient Parliamentroll, it appeared that the Commons, by their petition exhibited in Parliament, prayed Edward III., that the charter made to his liege subjects, burgesses of the town of B., & the franchises granted to them by him should be ratified & confirmed in that Parliament. The answer to the petition was, that it was assented & agreed in Parliament that the franchises whereof the petition made mention should be ratified & confirmed under the King's Great Seal. The charter was ratified by Edward III. accordingly :—*Held* : the Crown was not prevented by this proceeding in Parliament from granting a new charter to the burgesses of B., varying the mode of electing a mayor from that provided for in the charter, recited in the petition to the King in Parliament.

Anne, by charter granted to the burgesses of B., that they should be a body corporate, etc., & released to the corp. that power of removing its members which had been reserved by a former charter of Charles II., & released any just cause of complaint which might be against the corp. for having acted in opposition to it :—*Held* : it did not thereby appear that the Queen granted this charter in consideration of the former charter granted by Charles II., & the Queen's charter was not therefore void, although the supposed charter of Charles II. did not exist.—*R. v. HAYTHORNE* (1826), 5 *B. & C.* 410 ; 8 *Dow. & Ry. K. B.* 228 ; 108 *E. R.* 153.

307. Charter reviving dormant corporation.]—*R. v. HUGHES*, No. 236, *ante*.

See, also, Nos. 315, 1585, *post*.

SUB-SECT. 5.—EFFECT OF.

Liberties granted by charter cannot be divested, but by surrender or forfeiture. Corp. takes a new charter of liberties, it may be used as a grant or confirmation (*HOLT, C.J., & EYRE, J.*).—*R. v. LARWOOD* (1694), 1 *Ld. Raym.* 29 ; *Comb.* 315 ; 1 *Salk.* 167 ; *Skin.* 574 ; 91 *E. R.* 916.

Annotations :—*Reffd.* *R. v. Westwood* (1830), 7 *Bing.* 1. *Mentd.* *London City v. Vanacre* (1699), 12 *Mod. Rep.* 269 ;

R. v. Aldborough (1713), 10 *Mod. Rep.* 100 ; *R. v. Bosworth* (1739), 2 *Stra.* 1112 ; *Johnston v. Wilson* (1740), 7 *Mod. Rep.* 345 ; *R. v. Grosvenor* (1742), 1 *Wils.* 18 ; *Evans v. Harrison* (1762), *Wilm.* 130 ; *R. v. Walker* (1817), 6 *M. & S.* 277.

309. Confirmatory—Although words of creation only used.]—*R. v. STRATFORD-UPON-AVON CORPN.*, No. 282, *ante*.

310. Revives dormant corporation—Disabled from acting.]—*COLCHESTER CORPN. v. SEABER*, No. 1585, *post*.

311. ———.]—*R. v. HUGHES*, No. 236, *ante*. *See, also*, No. 315, *post*.

312. ——— Corporation having surrendered corporate franchises—Surrender not enrolled.]—*NEW-LING v. FRANCIS*, No. 296, *ante*.

313. On ancient powers & privileges—Ancient court—New grant under new name.]—A new grant from the King, taken by a corp. under a new name, will not destroy an ancient ct.—*WELD v. WIGGETT* (1674), 1 *Freem. K. B.* 320 ; 89 *E. R.* 237.

314. ——— Power to remove & other franchises—New charter accepted by corporation by prescription.]—*HADDOCK'S CASE*, No. 121, *ante*.

315. ——— Right of free fishery—Though corporation dormant before grant of new charter.]—A right of free fishery was granted to the burgesses of the borough of O., by a charter of Richard I. which recited a previous enjoyment of the franchise by the borough. In the year 1740, by reason of judgments of ouster against all the existing members of the corp., it became incapable of continuing itself ; & there was no mayor or aldermen till 1763, when a new charter of incorporation was granted to the borough, by which all the former rights, liberties, & fisheries were ratified, confirmed, & restored to the new corp. :—*Held* : the corp. were, under the new charter, entitled to the fishery.

The corp. exercised their right by granting to persons called dredgers, not being members of the corp., licences to dredge & take oysters within the limits of the fishery :—*Held* : the above licences did not operate as demises of the fishery, so as to entitle deft. to a verdict on the issues.—*COLCHESTER CORPN. v. BROOKE* (1846), 7 *Q. B.* 339 ; 15 *L. J. Q. B.* 173 ; 5 *L. T. O. S.* 192 ; 10 *J. P.* 217 ; 10 *Jur.* 610 ; 115 *E. R.* 518.

Annotations :—*Reffd.* *Morant v. Chamberlin* (1861), 6 *H. & N.* 541 ; *Gann v. Whitstable Free Fishers* (1864), 11 *H. L. Cas.* 192 ; *Northumberland v. Houghton* (1870), *L. R.* 5 *Exch.* 127. *Mentd.* *Dimes v. Petley* (1850), 15 *Q. B.* 276 ; *R. v. Betts* (1850), 16 *Q. B.* 1022 ; *Tuff v. Warman* (1857), 2 *C. B. N. S.* 740 ; *Whitstable Free Fishers v. Foreman* (1867), *L. R.* 2 *C. P.* 688 ; *Evison v. Marshall* (1868), 32 *J. P.* 691 ; *McCarthy v. Metropolitan Board of Works* (1872), *L. R.* 8 *C. P.* 191 ; *Jolliffe v. Wallasey L. B.* (1873), *L. R.* 9 *C. P.* 62 ; *Hawkins v. Rutter*, [1892] 1 *Q. B.* 668 ; *Thames Conservators v. Smeed Dean*, [1897] 2 *Q. B.* 334 ; *Campbell Davys v. Lloyd*, [1901] 2 *Ch.* 518 ; *The Swift*, [1901] *P.* 168 ; *Liverpool & North Wales S.S. Co. v. Mersey Trading Co.*, [1908] 2 *Ch.* 460 ; *The Bien*, [1911] *P.* 40.

316. On right to sue—For debt to old corporation—Whether recoverable under new name.]—*COLCHESTER CORPN. v. SEABER*, No. 1585, *post*.

317. On duration of office.]—Where a charter appoints a particular method of electing a mayor, & directs that he shall take an oath to execute the office for a year, & until another shall be

in office under it, & that the corp. had petitioned to alter *quatenus modum et tempus eligendi* of the mayor, & then confirming all their former rights & privileges, abolishes the former manner *eligendi nominandi et appointuandi* the mayor, & appoints his election to be in a different manner & upon a different day, *pro uno anno integro tunc proxime*

Sect. 5.—New charters: Sub-sects. 5 & 6. Part III.
Sects. 1, 2, 3 & 4: Sub-sects. 1 & 2.]

sequente: the right of holding over is thereby taken away.—*R. v. PHILIPS* (1720), 1 Stra. 394; 93 E. R. 588.

Annotations:—*Consd. R. v. Ellames* (1734), 2 Stra. 976. *Refd. R. v. Philips* (1757), 1 Burr. 292. *Mentd. Gwynne v. Burnell* (1840), 6 Bing. N. C. 453.

318. On mode of election of officers—Election under old charter—Void.]—Where by one charter, jurats are to be chosen by the mayor & jurats, out of the freemen; but by a subsequent charter, they are to be chosen by the mayor, jurats, & commonalty, out of the inhabitants:—*Held*: an election of a jurat according to the former charter was bad.—*R. v. MASSORY* (1738), Andr. 295; 95 E. R. 405.

See, generally, Part IV., post.

Effect of change of name on corporation.]—*See Part I., Sect. 4, sub-sect. 4, ante.*

SUB-SECT. 8.—OPPOSITION TO AND AVOIDANCE OF.

319. Opposition to sealing—How objection made—Whether by caveat.]—*R. v. SACHEVERELL*, No. 1563, *post*.

320. ———.]—There is no instance of a caveat against the affixing the great seal to a new charter of incorpn.; but the Lord Chancellor in exercising his official discretion as to the contents of the charter, will receive any information or objections respecting it; & such information must be regularly brought before him by petition.

—*Re INCORPORATED LAW SOCIETY* (1845), 4 L. T. O. S. 430.

321. ———.]—**What objections must be alleged.]**—In order to stop the sealing of a supplemental charter granted to an existing corpn., it must in general be shown that the proposed charter is contrary to law, or that no proper authority for the application had been given, or that some personal right of a member of the Society would be wrongly interfered with.—*Ex p. SOCIETY OF ATTORNEYS, ETC.* (1872), 8 Ch. App. 163, L. C.

322. Injunction to restrain majority from surrendering old charter—& obtaining new charter with different object.]—*WARD v. SOCIETY OF ATTORNEYS*, No. 185, *ante*.

323. Effect of avoidance—On lease made by corporation.]—*A.-G. v. GORE (LORD)* (1740), Barn. Ch. 145; 9 Mod. Rep. 224; 27 E. R. 589, L. C.

Annotations:—*Mentd. A.-G. v. Magwood* (1811), 18 Ves. 315; *A.-G. v. Wilson* (1812), 18 Ves. 518.

324. ———.]—On an information, in the nature of a *quo warranto*, brought in the Exch. Ct. in Ireland in 1686, against the corpn. of D.; judgment was given against them, & their liberties, etc., seised into the King's hands:—*Held*: the information would not lie in that ct., & therefore the judgment was void.

In consequence of the judgment in the Ct. of Exch. King James II. had created a new corpn. by charter, who made a reversionary lease to S. of some lands belonging to the old corpn. The charter having been declared void by an Act of 1689, the lease was void also.—*PIPPARD v. DROGHEDA CORPN.* (1759), 2 Bro. Parl. Cas. 321; 1 E. R. 971, L. C.

Part III.—The Members.

SECT. 1.—CAPACITY FOR MEMBERSHIP.

325. Corporation sole.]—*FORD v. HARRINGTON*, No. 53, *ante*.

326. Woman—Member of county council.]—At an election of members of a county council under Local Government Act, 1888 (c. 41), resp. obtained a majority of votes over petitioner & was declared to be elected. On a petition claiming the seat on the ground that resp., being a woman, was disqualified:—*Held*: women are incapacitated from being elected members of a county council, & the votes given to resp. were thrown away, & petitioner was duly elected.—*BERESFORD-HOPE v. SANDHURST (LADY)* (1889), 23 Q. B. D. 79; 58 L. J. Q. B. 316; 61 L. T. 150; 37 W. R. 548; 5 T. L. R. 472; *sub nom. HOPE v. SANDHURST (LADY)*, 53 J. P. 805, C. A.

Annotations:—*Appl. De Souza v. Cobden*, [1891] 1 Q. B. 687. *Refd. Hobbs v. Morey*, [1904] 1 K. B. 74; *Bebb v. Law Soc.* (1913), 83 L. J. Ch. 363; *Rhondda's Claim* (1922), 38 T. L. R. 759. *Mentd. Unwin v. M'Mullen* (1891), 7 T. L. R. 450.

327. ———.]—Deft., a woman, was elected a member of a county council, & twelve months elapsed without any proceedings taken to question the validity of her election. After the expiration of the twelve months she acted on several occasions as a member of the council:—*Held*: deft. was liable to the penalties imposed by Municipal Corpn. Act, 1882 (c. 50), s. 41, for acting when disqualified.—*DE SOUZA v. COBDEN*, [1891] 1 Q. B. 687; 60 L. J. Q. B. 533; 65 L. T. 130; 55 J. P. 565; 39 W. R. 454; 7 T. L. R. 441, C. A.

See, now, Sex Disqualification (Removal) Act, 1919 (c. 71).

—**Shareholder of company.]**—*See COMPANIES.*

Alien—Shareholder in company.]—*See ALIENS*, Vol. II., pp. 129, 130, No. 59; *COMPANIES.*

328. Infant.]—Although infancy in the mayor, bailiff, or other head of a corpn. shall not avoid the deeds or grants of a corpn. because he acts in his corporate, & not in his natural capacity, yet this does not affect the question with respect to members of the corpn.—*R. v. WHITE* (1733), Lee temp. Hard. 8; 95 E. R. 5.

—**Member of building society.]**—*See BUILDING SOCIETIES*, Vol. VII., p. 465, No. 69.

—**Shareholder in company.]**—*See COMPANIES.*

Membership of building societies.]—*See BUILDING SOCIETIES*, Vol. VII., p. 465, Nos. 66–69.

Membership of friendly societies.]—*See FRIENDLY SOCIETIES.*

Membership of industrial societies.]—*See INDUSTRIAL, PROVIDENT, & SIMILAR SOCIETIES.*

Membership of loan societies.]—*See LOAN SOCIETIES.*

Shareholders in companies.]—*See, generally, COMPANIES.*

Membership of municipal corporations.]—*See, generally, ELECTIONS; LOCAL GOVERNMENT.*

SECT. 2.—QUALIFICATION FOR MEMBERSHIP.

Mayor.]—*See LOCAL GOVERNMENT.*

Alderman.]—*See LOCAL GOVERNMENT.*

Councillor.]—*See LOCAL GOVERNMENT.*

Burgess.]—*See LOCAL GOVERNMENT.*

Freeman.]—*See LOCAL GOVERNMENT.*

Fellow.]—See CHARITIES, Vol. VIII., pp. 366, 367, Nos. 1711–1718.

— Of Royal College of Surgeons.]—See MEDICINE & PHARMACY.

Member of Royal College of Physicians.]—See MEDICINE & PHARMACY.

329. Trustee appointed under statute to perform public duties—Taking of oath prescribed by Act.]—11 Geo. 4, c. lxix., s. 11, for building a bridge over the river Avon, directed that the trustees should cause to be kept a proper book, & proper entries to be made therein of all orders & proceedings relative to the execution of the Act, & that the chairman of every meeting of the trustees should subscribe his name at the end of the proceedings of the trustees at such meeting. Sect. 6 enacted that no person should be capable of acting as a trustee until he should have taken & subscribed the oath therein set forth, which oath so taken & subscribed by each trustee should be entered in the book of proceedings of the trustees. The book contained a blank form of oath, under which the names of the trustees were written by themselves without any date, but there were entries from time to time in the proceedings to the effect that they were appointed trustees, having qualified by taking & subscribing the oath prescribed by the Act. By Sect. 85 the persons who had agreed to lend any money towards carrying the act into execution, were required to pay it to the treasurer of the trustees, at such times & in such parts & proportions as the trustees should order & direct, & in default of payment, it should be lawful for the trustees to sue for or recover it in the name of the treasurer by action of debt or on the case, etc. The order of the trustees directed the money to be paid into the bank of M. & Co., to be placed to the account of M., as treasurer. By Sect. 109, the notices given by the trustees should be signed by three or more of the trustees, or by the clerk or clerks for the time being to the trustees by their order. The notices of the calls were drawn up in the office of the solicitors, who were clerks to the trustees, & one of their clerks, who had a general authority to sign the name of the firm to all documents issued out of the office, wrote the signature of the firm upon the notices:—*Held*: (1) such a signing was not a compliance with the provisions of the Act; (2) the signature of the minutes of the proceedings at one meeting by the chairman of the following meeting was sufficient; (3) it sufficiently appeared that the trustees were properly sworn; (4) the treasurer was sufficiently designated in the order of the trustees & the form of action might be either in debt or on the case.—*MILES v. BOUGH* (1842), 3 Q. B. 845; 3 Gal. & Dav. 119; 3 Ry. & Can. Cas. 668; 12 L. J. Q. B. 74; 7 Jur. 81; 114 E. R. 732; *subsequent proceedings* (1844), 3 Ry. & Can. Cas. 687; (1845), 3 Dow. & L. 105.

Annotations:—As to (1) *Distd.* *Miles v. Coote* (1844), 3 L. T. O. S. 281. *Refd.* *R. v. Kent JJ.* (1873), 42 L. J. M. C. 112. As to (2) *Consd.* *West London Ry. v. Bernard* (1843), 3 Q. B. 873. *Refd.* *Inglis v. G. N. Ry.* (1852), 19 L. T. O. S. 149. *Generally, Mentd.* *Miles v. Williams* (1847), 9 Q. B. 47.

SECT. 3.—ELECTION OF MEMBERS.

See Part VI., Sect. 3, sub-sect. 3, A., post.

SECT. 4.—RIGHTS OF MEMBERS AS AGAINST CORPORATION.

SUB-SECT. 1.—REMEDIES FOR NON-ADMISSION.

330. Mandamus—To admit Quaker—On affirmation.]—A mandamus was granted peremptorily to

admit a Quaker who had taken his affirmation but refused to take the oath prescribed by 26 Geo. 2, c. 18, into the freedom of the Turkey Co.—*R. v. MARCH* (1760), 2 Burr. 999; 97 E. R. 673.

331. — To admit member of trading company.]—A mandamus issued to receive D. into the Russia Co., & afterwards a rule was made for the return of the same at a certain day. It was now moved to set aside the rule, this not being a case within 9 Ann. c. 20, which made mandamus directed to corps. for the restoring of corporate officers returnable at a day certain, whereas before the Act it was not so, but an *alias et pluries* went out, & now this Act being introductive of a new law, was exclusive of all cases not within it:—*Held*: before the stat. a rule might have been made for the return of a mandamus, & the stat. had not taken away this power.—*R. v. RUSSIA Co.* (1727), Fitz.-G. 4; 94 E. R. 627.

332. — To admit commissioner—Drainage commissioners.]—Rule calling on the comrs. of drainage for K. to show cause why a writ of mandamus should not issue commanding them to swear in S. as a comr.:—*Held*: the mandamus would go.—*R. v. KEYENHAM LEVEL DRAINAGE COMRS.* (1844), 2 L. T. O. S. 327; 8 J. P. Jo. 308.

333. — Town improvement commissioners.]—Motion for mandamus to swear in one G. to be a town improvement comr. At the previous election E. had a larger number of votes than G., & was declared elected, & was sworn in, but on the polling day notice had been given that E. was not qualified, & the Ct. of Q. B. made a rule absolute for a *quo warranto* against him, & judgment of ouster had since been signed:—*Held*: a mandamus would not be granted because, if it were, those voters who polled before notice of E.'s disqualification would lose their votes, but a rule for a new election would be granted.—*R. v. BIRKENHEAD IMPROVEMENT COMRS.* (1859), 32 L. T. O. S. 256.

334. — To admit trustee under local Act.]—A rule *nisi* had been obtained calling on the trustees of Newport Inclosure Act to show cause why a mandamus should not issue commanding them to admit F. to the office of a trustee under the Act, & to allow him to act as such. It appeared by the affidavits on which the rule was moved that resident burgesses for the time being of the town of N. having a certain qualification, were entitled to be trustees to carry out the provisions of the Act, & it was sworn that F. was elected a burgess of N. in the year 1833, that he still continued a burgess, & was duly qualified to act as one of the trustees under the Inclosure Act. The trustees, however, had refused to admit F. to that office, upon which the present rule *nisi* was obtained:—*Held*: rule would be made absolute.—*R. v. NEWPORT INCLOSURE ACT TRUSTEES* (1848), 12 J. P. Jo. 73.

—.]—*See, generally, CROWN PRACTICE.*

Of alderman.]—See LOCAL GOVERNMENT.

Of councillor.]—See LOCAL GOVERNMENT.

Of burgess.]—See LOCAL GOVERNMENT.

Of freeman.]—See LOCAL GOVERNMENT.

Of fellow.]—See CHARITIES, Vol. VIII., pp. 386, 388, Nos. 2020–2022, 2062.

Legal proceedings generally against corporations. *See Part XV., post.*

SUB-SECT 2.—REMEDIES FOR DISFRANCHISEMENT.

See No. 385, post.

Sect. 4.—Rights of members as against corporation:
Sub-sect. 3, A. & B.]

SUB-SECT. 3.—INSPECTION OF BOOKS AND DOCUMENTS.

A. Who entitled to.

See, generally, DISCOVERY, INSPECTION, & INTERROGATORIES.

335. Parties interested in corporation.]—Motion to have inspection of the public books of the corp'n. of B. L. Affidavits were produced upon which a rule was made for granting a *quo warranto* to know by what authority the duke of B. claimed to be governor of the corp'n. of the conservators of B. L., & by them it appeared that the parties prosecuting were parties in interest:—*Held*: motion would be granted before the original rule was made absolute.—*R. v. BEDFORD (DUKE)* (1729), 1 Barn. K. B. 273; 94 E. R. 186; *subsequent proceedings*, 1 Barn. K. B. 280.

336. Member—In dispute with another.]—A mandamus was granted to admit a person into this co.: & by the return it appeared to be a question, whether the master he served had been admitted to his freedom in the corp'n. at large; whereupon he moved for a general rule to inspect the books of the corp'n. This was opposed on behalf of the corp'n. as they were no parties to the dispute:—*Held*: every member of the corp'n. had, as such, a right to look into the books for any matter that concerned himself, though it was in a dispute with others, & the rule would be granted, but would be confined to the book wherein admissions of freemen were entered.—*R. v. NEWCASTLE-UPON-TYNE (FRATERNITY OF HOSTMEN)* (1745), 2 Stra. 1223; 93 E. R. 1144.

*Annotations:—*Consd. *R. v. Merchant Taylor's Co.* (1831), 2 B. & Ad. 115. *Reid. Mutter v. Eastern & Midlands Ry.* (1888), 38 Ch. D. 92.

337. — Not becoming such until after action brought—In respect of which inspection sought.]—In an action for tolls due to a corp'n., deft., who has acquired the character of a corporator after the cause of action arose but before trial, has no right to inspect the books of the corp'n. & must still be considered as a foreigner *quoad* this action.—*BRISTOL CORPN. v. VISGER* (1826), 8 Dow. & Ry. K. B. 434; 4 Dow. & Ry. M. C. 100.

338. — Claiming office—To prove custom as to election.]—A corporator made a claim to be elected to an office in the corp'n. & founded it upon a supposed invariable custom to elect the person who at the time of a vacancy filled the position which he then occupied. The co. admitted the general practice set up by him, but said it was not invariable:—*Held*: (1) the ct., at the instance of the corporator, would grant a mandamus to allow him to inspect the minutes of the corp'n. as to former elections to assist him in starting his case, even though the ct. entertained great doubt whether such alleged custom, if proved, could contradict the charter, which prescribed that there was to be a free election; (2) the ct. had no power to grant a rule to inspect documents when no cause or proceeding in ct. had been commenced.—*Re BURTON & SADDLERS' Co.* (1861), 31 L. J. Q. B. 62; *sub nom. R. v. SADDLERS' Co.*, 10 W. R. 87.

*Annotations:—*As to (1) *Reid. Mutter v. Eastern & Midlands Ry.* (1888), 38 Ch. D. 92. *Generally, Mentd. R. v. Fisher* (1862), 4 B. & S. 575.

339. — Acting as solicitor for litigant against corporation.]—Defts. were incorporated under private Acts of Parliament which provided for inspection by the shareholders of the co.'s books & documents. A shareholder was solr. to a

waterworks co., who had obtained a decree in Ch. against defts., & it was under consideration whether defts. should appeal. This shareholder applied to defts.' secretary, without stating his object, for inspection of the register of shareholders, & was refused. Upon a rule for mandamus by the shareholder to obtain this inspection, defts.' secretary stated on affidavit, & it was not contradicted, that the prosecutor made his application for inspection in the interest of his clients, & not for any purpose or in the interest of defts. or of any member of their co. as such, & that his object was to canvass the shareholders & endeavour to persuade them to oppose the appeal:—*Held*: this was not sufficient reason for discharging the rule.—*R. v. WILTS & BERKS CANAL NAVIGATION* (1874), 29 L. T. 922; *subsequent proceedings*, 30 L. T. 498.

340. — Through accountant.]—The rules of a registered trade union provided that its books & accounts & list of members should be open to the inspection of all the members, & of all the persons having an interest in the funds, in accordance with Trade Union Act, 1871 (c. 31), s. 14, & sched. 1 (6):—*Held*: members of the society were entitled to inspect the books & accounts by means of an accountant employed by them for the purpose, the accountant undertaking that the information obtained would only be used for informing his client of the result of his inspection.—*NOREY v. KEEP*, [1909] 1 Ch. 561; 78 L. J. Ch. 334; 100 L. T. 322; 25 T. L. R. 289.

341. — Supporting non-member in dispute with corporation.]—A dispute having arisen between A. & the H. Borough Council as to a closing order & a subsequent demolition order made in respect of a certain house the property of A., an inquiry was instituted by the Local Govt. Board to determine the same. At the inquiry parts of a report made by the medical officer of health were read, & later on the Local Govt. Board wrote a letter to the council inviting observations on A.'s appeal against the demolition order, to which a reply was sent. There were also legal proceedings in progress between A. & the H. Borough Council. During the course of the dispute A. issued a circular to the members of the council inviting them to inspect the house in question, & W., an architect, who was one of the members of the council did so. W. came to the conclusion that A. was being dealt with too severely, & gave evidence in his favour at the Local Govt. Board inquiry, & filed an affidavit in support of his case in the course of the legal proceedings. W. then applied to the council for permission to inspect & to take copies of the medical officer's report & of the reply sent by the council in answer to the letter of the Local Govt. Board. He claimed to be entitled to inspect these documents on the grounds that they related to matters of public importance in the administration of the business of the council, & that, as a member of the council, he ought to have access to the same for the purpose of framing an opinion thereon & discussing the acts of the council with regard to the matters dealt with by such documents. The town clerk refused inspection on the ground that W. had given evidence on behalf of A. in his various proceedings against the council, & that litigation was still pending, but offered to allow inspection when the legal proceedings were finally determined. W. declined his offer & applied for a rule *nisi* for a mandamus to permit inspection of the documents:—*Held*: although appct. had a *prima facie* common law right, as a member of the council, to inspect the documents in

question, under all the circumstances of the case his action was not dictated solely by motives of public interest, & the rule *nisi* would be discharged.—*R. v. HAMPSTEAD BOROUGH COUNCIL, Ex p. WOODWARD* (1917), 116 L. T. 213; 81 J. P. 65; 33 T. L. R. 157; 15 L. G. R. 309.

342. Prebendary—Charters of chapter.]—A prebendary may inspect charters, etc., of the chapter in a suit concerning his prebend at seasonable times.—*YOUNG v. LYNCH* (1747), 1 Wm. Bl. 27; 96 E. R. 14.

343. Solicitor burgess—Action against corporation for costs—To prove retainer.]—The circumstance of an attorney being a burgess does not entitle him, in an action against the corp. for costs, to inspect the corp. books in order to prove his retainer.—*STEVENS v. BERWICK-UPON-TWEED CORPN.* (1835), 4 Dowl. 277; 1 Har. & W. 517; 3 Nev. & M. M. C. 150.

344. Freemen—In dispute with corporation—As to right to cut down trees.]—Disputes had arisen between certain freemen of a borough, whose rights of pasturage on some land were reserved by Municipal Corpns. Act, 1835 (c. 76), s. 2, & the new corp. as to the right to cut down the trees on the land, & an injunction had been obtained from the Ct. of Ch.:—*Held*: a mandamus would be granted to allow inspection of the deeds, etc., which were in the possession of the new corp. in order to enable the freemen to dissolve the injunction.—*R. v. BEVERLEY CORPN.* (1839), 8 Dowl. 140; 1 Will. Woll. & H. 343.

345. Accountant—Acting for member.]—*NORFOLK v. KEEP*, No. 340, *ante*.

Strangers to corporation.]—See Part VIII., Sect. 3, *post*.

Possession of books, etc., see Part VIII., Sect. 1, *post*.

B. What Documents may be inspected.

What documents may be inspected generally, see Part VIII., Sect. 3, *post*.

346. General rule—Roving commission not allowed.]—(1) A member of a municipal corp. has no right to a roving commission to examine the books or documents of the corp. merely because he is a member of the corp.

(2) An agreement to let corporate lands is a document which a member of the corp. has a right to see, & the mere fact that the member might make use of the information thereby acquired in a way antagonistic to the policy of the council is no ground for refusing inspection.

(3) The ct. has power in a proper case to enforce by writ of mandamus the production of public documents which the person who applies has a right to see & a *bona fide* ground for wishing to see.—*R. v. SOUTHWOLD CORPN., Ex p. WRIGHTSON* (1907), 97 L. T. 431; 71 J. P. 351; 5 L. G. R. 888.

347. — Only such documents as tend to illustrate definite right or object of member seeking inspection.]—The ct. will not grant an application by members of a corporate body for a mandamus to inspect the documents of the corp. unless it be shown that the inspection is necessary with reference to some specific dispute or question depending, in which the parties applying are interested; & the inspection will then only be granted to such extent as may be necessary for the particular occasion.—*R. v. MERCHANT TAILORS' CO.* (1831), 2 B. & Ad. 115; 9 L. J. O. S. K. B. 146; 109 E. R. 1086.

Annotations:—*Folld. Bank of Bombay v. Suleman Somji* (1908), 99 L. T. 62. *Reid. R. v. Saddlers' Co.* (1861), 10

W. R. 87; *Mutter v. Eastern & Midlands Ry.* (1888), 38 Ch. D. 92.

348. — — —.]—Members of a corp. have no absolute right to inspect whenever they think fit all papers belonging to the aggregate body, but the privilege of inspection is confined to cases in which the member has in view some definite right or object of his own, & to such documents as would tend to illustrate such right or object.—*BANK OF BOMBAY v. SULEMAN SOMJI* (1908), 99 L. T. 62; 24 T. L. R. 698, P. C.

349. Common council book—Containing orders for admission of burgesses.]—32 Geo. 3, c. 58, does not bind an officer of a corp. having the custody of the records to permit any member of the corp. to inspect the order for the admission & swearing in of the freemen, etc., of the corp.

A town clerk offered to permit an inspection of the entries made upon stamps of the admission & swearing in of burgesses, but refused an inspection of the common council book, in which it was usual to enter the order for the admission & swearing in of the burgesses:—*Held*: he did not thereby incur a penalty.—*DAVIES v. HUMPHREYS* (1814), 3 M. & S. 223; 105 E. R. 593.

350. Trading corporation documents—Accounts—To ascertain profits for dividend purposes.]—The ct. will not grant a mandamus to a trading corp. at the instance of one of its members to compel them to produce their accounts for the purpose of declaring a dividend of the profits.—*R. v. BANK OF ENGLAND (GOVERNOR & CO.)* (1819), 2 B. & Ald. 620; 106 E. R. 492.

Annotations:—*Mentd. R. v. London Assce.* (1822), 1 Dow. & Ry. K. B. 510; *R. v. Hopkins* (1841), 10 L. J. Q. B. 63; *Leeman v Lloyd, Wilkinson v Lloyd* (1845), 14 L. J. Q. B. 165.

351. — Books—To assist directors in defence.]—Defts. were sued by a corp. for making, while they were directors, false entries in the books of the corp.:—*Held*: they were not entitled to inspect the books of the corp. without an affidavit that such inspection was necessary to their defence.—*IMPERIAL GAS CO. v. CLARKE* (1830), 7 Bing. 95; 4 Moo. & P. 727; 9 L. J. O. S. C. P. 28; 131 E. R. 36.

352. Parish documents—For non-parochial purposes.]—The ct. will not compel the vestry clerk of a parish to produce & permit copies to be taken of documents from the parish chest in his custody for any other than parochial purposes.—*MAY v. GWYNNE* (1821), 4 B. & Ald. 301; 106 E. R. 948.

353. Agreement to let corporate land.]—*R. v. SOUTHWOLD CORPN., Ex p. WRIGHTSON*, No. 346, *ante*.

354. Case for counsel & counsel's opinion thereon—Parochial elector suing third party for trespass—Petition by third party to district council to take action in support of alleged rights over applicant's land.]—A rural district council, being petitioned by inhabitants in their district to take action under Local Govt. Act, 1894 (c. 73), with reference to alleged public rights of way over certain land, took counsel's opinion on the matter. The owner of the land, who was a parochial elector in the council's district, & who had brought an action for trespass against certain individuals who were setting up the existence of the public rights of way in question, sought inspection of the case submitted to counsel & his opinion thereon under Local Govt. Act, 1894 (c. 73), s. 58 (5), & upon the council's refusal to produce such documents, applied for a mandamus calling upon the council to permit him to inspect them:—*Held*: the ct. ought not to grant the mandamus.—*R. v. BRADFORD-ON-AVON RURAL DISTRICT COUNCIL*,

Sect. 4.—Rights of members as against corporation: Sub-sect. 3, B., C. & D. Sects. 5 & 6: Sub-sect. 1.]

Ex p. THORNTON (1908), 99 L. T. 89; 72 J. P. 348; 6 L. G. R. 847.

Annotation:—Folld. R. v. Godstone R. C., [1911] 2 K. B. 465.

355. — Parochial elector about to sue district council.]—R. v. GODSTONE RURAL COUNCIL, No. 879, *post*.

Books & papers in which freemen enrolled.]—See Nos. 478, 876, *post*.

Company books.]—See Companies Clauses Consolidation Act, 1845 (c. 16), s. 119, Companies Clauses Act, 1863 (c. 118), s. 28, & Companies (Consolidation) Act, 1908 (c. 69), ss. 30, 101, 102, 114, 221.

C. Grounds for granting.

356. Necessity for specific dispute in which applicant interested.]—R. v. MERCHANT TAILORS' Co., No. 347, *ante*.

357. — No absolute right of inspection.]—BANK OF BOMBAY v. SULEMAN SOMJI, No. 348, *ante*.

358. Not to furnish evidence—On information against magistrate of corporation for misdemeanour.]—On an information against a magistrate of a corp. for a misdemeanour the ct. will not grant a rule to inspect the books of the corp. to furnish evidence.—R. v. PURNELL (1749), 1 Wm. Bl. 37; 1 Wils. 239; 96 E. R. 20.

Annotations:—Folld. R. v. Heydon (1762), 1 Wm. Bl. 351. *Consd. R. v. Holland* (1792), 4 Term Rep. 691. *Refd. Entick v. Carrington* (1765), 2 Wils. 275; *R. v. Shelley* (1789), 3 Term Rep. 141.

359. Not to aid defence—In criminal proceedings to which corporation not party—Although application by freeman for benefit of defendant.]—An information was filed against the sheriff of the county of C. for not executing a criminal condemned to death for felony committed in the county:—*Held*: a mandamus would not be issued to the corp. of the city of C. to allow an inspection, on deft.'s behalf, of its muniments, so far as they related to an alleged obligation of that corp. or its officers to execute criminals, though it was sworn that the muniments were believed to contain matter important to the defence, & though the party applying for the inspection was a freeman, who had demanded it in that character, stating at the same time that his object was to obtain information for the benefit of deft.—*R. v. ANTROBUS* (1835), 2 Ad. & El. 788; 6 C. & P. 784; 1 Har. & W. 96; 4 Nev. & M. K. B. 565; 4 L. J. K. B. 91; 111 E. R. 304.

Annotations:—Consd. R. v. Bedfordshire (1855), 4 E. & B. 535. *Refd. Pritchard v. Powell* (1845), 15 L. J. Q. B. 166; *R. v. Bourdon* (1847), 2 Car. & Kir. 366.

360. Not to fish out defence—Action for calls.]—In an action against a shareholder for calls:—*Held*: deft. could not claim to inspect the minute books of the co. & of the directors' meetings for the purpose of framing his plea, & a rule *nisi* for such inspection would be discharged.—BIRMINGHAM, BRISTOL, & THAMES JUNCTION RY. Co. v. WHITE (1841), 1 Q. B. 282; 4 Per. & Dav. 649; 2 Ry. & Can. Cas. 863; 10 L. J. Q. B. 121; 5 Jur. 800; 113 E. R. 1139.

See, further, COMPANIES.

D. How and When enforced.

361. How enforced—Mandamus—General rule.]—R. v. SOUTHWOLD CORPN., *Ex p.* WRIGHTSON, No. 346, *ante*.

362. — — — Against steward—To produce public books.]—On an affidavit being made that

the steward who kept the public books had refused to produce them at the corporate meeting to enter the elections of members:—*Held*: a mandamus would be granted to him to attend with the books at the next corporate assembly.—*CALNE BOROUGH CASE* (1733), 2 Stra. 948; 93 E. R. 960; *sub nom.* ANON., 2 Barn. K. B. 235.

363. — — — Against mayor & corporation—Charters & grants to borough.]—A mandamus lies to compel a mayor & corp. to allow the burgesses at all seasonable times to inspect the charters & grants made to the borough.—*Ex p.* STAFFORD CORPN. (1822), 1 L. J. O. S. K. B. 41.

364. — — — Against company—Copy of shareholders' address book.]—The right given to a shareholder by Cos. Clauses Consolidation Act, 1845 (c. 16), s. 10, to have a copy of the shareholders' address book is a private right conferred on him as a member of the co. & not as a member of the public, & the appropriate remedy for enforcing this right is either an injunction to restrain the co. from refusing to supply or a mandatory injunction directing the co. to supply him with the copy required, & on granting this relief there is no jurisdiction to inquire into the motives of appct.—*DAVIES v. GAS LIGHT & COKE Co.*, [1909] 1 Ch. 708; 78 L. J. Ch. 445; 100 L. T. 553; 25 T. L. R. 428; 53 Sol. Jo. 399; 16 Mans. 147, C. A.

See, further, COMPANIES.

365. — — — If sufficient refusal—Duty to state when demand made object for which inspection wanted.]—One of the proprietors of a canal co. applied to the clerk of the co. for an inspection of the books which were under his charge in accordance with the provisions of the private Act incorporating the co. The clerk said he would refer the demand to the committee. The proprietor attended the committee, & there repeated his request, & the chairman said they would take time to consider it. Ten days afterwards the proprietor applied again to the clerk, who refused the inspection. On motion for a mandamus to the co. to allow inspection of the books:—*Held*: that there had been no sufficient refusal by the committee to warrant the application.

Semble: a party applying for a mandamus to give inspection of such documents, ought to show that, when he demanded the inspection, he stated the object for which he wanted it.—*R. v. WILTS & BERKS CANAL Co.* (1835), 3 Ad. & El. 477; 5 Nev. & M. K. B. 344; 111 E. R. 495.

Annotations:—Consd. R. v. London & St. Katherine Docks Co. (1874), 44 L. J. Q. B. 4; *Holland v. Dickson* (1888), 37 Ch. D. 669; *Bank of Bombay v. Suleman Somji* (1908), 99 L. T. 62; *Davies v. Gas Light & Coke Co.*, [1909] 1 Ch. 248. *Refd. R. v. Bristol & Exeter Rys.* (1843), 7 J. P. 130; *R. v. Wilts Canal Co.* (1874), 38 J. P. 311.

366. — — — Injunction—To restrain company from refusing to supply—Copy of shareholders' address book.]—*DAVIES v. GAS LIGHT & COKE Co.*, No. 364, *ante*.

See, further, COMPANIES.

367. Time when inspection granted—Before action brought.]—A mandamus having been granted to admit S. mayor it was moved that the mayor in possession should have a rule to see the charter so that he might be able to make a return:—*Held*: the rule would be denied before an action on the case was brought.—ANON. (1699), 2 Salk. 430; 91 E. R. 374.

Annotation:—Refd. Anon. (1727), 1 Barn. K. B. 26.

368. — — — Whether before rule made absolute.]—R. v. BEDFORD (DUKE), No. 335, *ante*.

369. — — — No cause or proceeding in court commenced.]—Re BURTON & SADDLERS' Co., No. 338, *ante*.

370. Form of rule to inspect.]—Deft. had a rule for inspection of the records & public books of a corpn. It was moved to discharge the rule on the grounds that it was too general & that, as drawn up, it would entitle deft. to see the charter :—*Held* : motion would be refused for this was the manner in which these rules were always drawn up.—*R. v. CHAPMAN* (1728), 1 Barn. K. B. 107 ; 94 E. R. 75.

SECT. 5.—LIABILITY OF MEMBERS.

See Part XV., Sect. 6, *post*.

SECT. 6.—DISFRANCHISEMENT.

SUB-SECT. 1.—IN GENERAL.

371. Definition of disfranchisement.]—The word "disfranchisement" signifies taking a franchise from a man for some reasonable cause. It is incident to the corpn. at large to disfranchise, but not to a select body, & it does not follow that the select body who has a right to elect has from thence a right to disfranchise (LORD MANSFIELD).—*SYMMERS v. R.* (1776), 2 Cowp. 489 ; 98 E. R. 1203.

Annotations :—*Consd. R. v. Smith* (1816), 5 M. & S. 271. *Reid. R. v. Mein* (1790), 3 Term Rep. 596 ; *R. v. Hughes* (1825), 4 B. & C. 368. *Mentd. Goodburne v. Bowman* (1833), 9 Bing. 532 ; *Faucourt v. Bull* (1835), 1 Hodg. 98 ; *Gwynne v. Burnell* (1840), 7 Cl. & Fin. 573.

372. — Suspension from perception of profits.]—A corporator who was entitled to divide a certain share of the profits of a fishery, which the corporators worked & enjoyed in partnership, was suspended from the perception of his profits until he paid a fine imposed by a bye-law, with the breach of which he was charged :—*Held* : a mandamus to restore him to his office would be refused, he being still an officer, & having a remedy by an action for the tort against any who disturbed him in the lawful perception of his profits, if the bye-law were illegal, or he were not guilty of a breach of it, or had been unlawfully suspended, or, considering the corporators as partners in the fishery, he having a remedy in equity for his share of the partnership funds unjustly withheld from him.

The party, notwithstanding this suspension, has still a right to attend & vote at corporate meetings ; the suspension, therefore, is not equivalent to a removal from his office, but he is left in possession of his office & only excluded from participating in the profits (LORD ELLENBOROUGH, C.J.).—*R. v. WHITSTABLE FREE FISHERS, ETC.* (1806), 7 East, 353 ; 3 Smith, K. B. 319 ; 103 E. R. 136.

373. Power to remove.]—(1) The chamberlain of a corpn. cannot be removed from the office of a capital burgess for misconduct as chamberlain.

(2) None of the members of a corpn. can be removed upon a general charge of obstinately refusing to obey several orders & laws made by the corpn. for the good of the corpn.

(3) The common council of a corpn. have not of common right a power to remove any of the members of the corpn.—*R. v. DONCASTER CORPN.* (1729), 2 Ld. Raym. 1564 ; 1 Barn. K. B. 264 ; 92 E. R. 513.

Annotations :—*As to* (2) *Consd. R. v. Doncaster Corpn.*

(1752), Say. 37. *As to* (3) *Reid. R. v. Ward* (1730), 1 Barn. K. B. 411.

374. —.]—To a mandamus to the mayor & aldermen of London, to admit A. into the office of alderman it was returned that by certain proceedings at a ct. of wardmote, A. was declared elected, that a return thereof was made to the ct. of mayor & aldermen, that that ct. had from time immemorial had cognisance to adjudge upon all elections at wardmote cts. to city offices upon petition by any person interested, that persons interested petitioned against the return of A., that the ct. of mayor & aldermen, upon inquiry, declared the election void, & that A. was not duly elected. Traverse, that A. was not duly elected, & issue. Proof, that at the election three poll clerks were first appointed, & two of them afterwards dismissed, that upon a scrutiny being demanded the wardmote was adjourned to meet again on a fresh summons, that the mayor then went out of office, & the new mayor assembled a wardmote by a fresh summons, took the scrutiny, & declared A. duly elected, & that a return thereof being made to the ct. of mayor & aldermen, they, upon petition, declared the election void. On a special case stating these facts :—*Held* : (1) the return was good in form ; (2) the claim of cognisance by the ct. of mayor & aldermen did not exclude the jurisdiction of the Ct. of K. B. ; (3) the dismissal of the poll clerks, & the change of the mayor were no objections to the validity of the election ; (4) the mode of adjourning the wardmote was not a dissolution, & did not affect the proceedings at the scrutiny.

(5) The return was not inconsistent, & there was no inconsistency in alleging that a person has not been duly elected, & that a tribunal authorised to decide upon his election has declared his election void.

Corpns. in general have power to remove the members of the select body for sufficient cause (LORD TENTERDEN, C.J.).—*R. v. LONDON CORPN.* (1829), 9 B. & C. 1 ; 4 Man. & Ry. K. B. 36 ; 109 E. R. 1.

Annotation :—*As to* (2) *Consd. Scales v. Key* (1840), 11 Ad. & El. 819.

375. Power to accept resignation.]—A burgess came to the mayor of a corpn. & asked him to oust & dismiss him from being a burgess, & the mayor did so. The burgess then obtained a mandamus to the mayor to restore him :—*Held* : the party had resigned voluntarily & had estopped himself from saying that the mayor had no power to remove him.

Any corpn. as a corpn. has power to accept such a resignation & consequently for good cause can remove (HALE, C.B.).—*R. v. TIDDERLEY* (1660), 1 Sid. 14 ; 82 E. R. 941.

Annotations :—*Reid. R. v. Griffiths* (1822), 5 B. & Ald. 731 ; *R. v. Patteson* (1832) 4 B. & Ad. 9. *Mentd. R. v. Simpson* (1717), 1 Stra. 44.

376. Right of member to be heard.]—Although a corpn. have lawful authority either by charter or prescription to remove anyone from the freedom & have just cause to remove him, yet, if it appears that they removed him without hearing him answer to what was objected, or that he was not reasonably warned, such removal is void & shall not bind the party (*per CUR.*).—*BAGG'S CASE* (1615), 11 Co. Rep. 93 b ; 1 Roll. Rep. 224 ; 77 E. R. 1271.

Annotations :—*Consd. Protector & Kingston-upon-Thames,*

PART III. SECT. 6, SUB-SECT. 1.

b. Power to amove—Remedy by appeal to visitor or mandamus.]—A corpn., whether eleemosynary or otherwise, has power to amove a member

for sufficient cause, & will not be restrained by injunction from holding an inquiry into the conduct of a member, & expelling him if it thinks fit. The remedy of a member aggrieved by such proceeding is by visitation or

mandamus in the respective cases of eleemosynary & civil corpns.—*O'GRADY v. MERCERS' HOSPITAL (GOVERNORS)* (1887), 19 L. R. Ir. 350.—IR.

Sect. 6.—Disfranchisement: Sub-sects. 1 & 2. Part IV. Sect. 1: Sub-sects. 1 & 2.]

Yates' Case (1855), Sty. 477; Exeter City v. Glide (1690), 4 Mod. Rep. 33; R. v. Lane (1709), Fortes. Rep. 275; Bruce's Case (1728), 2 Stra. 819; R. v. Derby Corp'n. (1734), Lee temp. Hard. 153; R. v. Richardson (1758), 1 Burr. 517. *Reid.* R. v. Gloucester Corp'n. (1816), 3 Bulst. 189; Audly's Case (1626), Lat. 123; R. v. Campion (1660), 1 Sid. 14; R. v. Patrick (1667), 2 Keb. 164; Phillips v. Bury (1692), 4 Mod. Rep. 106; R. v. Wilton Corp'n. (1695), 5 Mod. Rep. 257; R. v. Heathcote (1712), Fortes. Rep. 283; R. v. Carlisle Corp'n. (1720), 1 Stra. 385; R. v. Doncaster Corp'n. (1729), 2 Ld. Raym. 1564; R. v. Ponsonby (1753), 1 Keny. 1; R. v. Liverpool Corp'n. (1758), 2 Keny. 424; Rutter v. Chapman (1841), 8 M. & W. 1; R. v. Darlington School (1844), 6 Q. B. 682; R. v. Saddlers' Co. (1861), 4 L. T. 54. *Mentd.* Barnardiston v. Soam (1674), 3 Keb. 428; Kendall v. John (1708), Fortes. Rep. 104; R. v. Dublin (1722), 1 Stra. 536; R. v. Barker (1762), 1 Wm. Bl. 351; R. v. Gaskin (1799), 8 Term Rep. 209; R. v. Hewes (1835), 3 Ad. & El. 725; *Re* Kinning (1847), 9 L. T. O. S. 225; *Re* Hammersmith Rent Charge (1849), 4 Exch. 87; Bonaker v. Evans (1850), 16 Q. B. 162; Haylock v. Sparke (1853), 1 E. & B. 471; Swann v. Dakins (1855), 3 C. L. R. 602; R. v. Cheshire Lines Committee, *Same v. Same* (1873), 42 L. J. M. C. 100; Darlow v. Shuttleworth, [1902] 1 K. B. 721.

377. —.]—R. v. CHALKE, No. 6, *ante*.

378. **Necessity to prove cause of removal—Statement that member present & not denying charge insufficient.]**—In a return to a mandamus to a corp'n. to restore a member who has been removed it should appear that the body removing has proved the charge for which the member was removed, & it is not sufficient to state merely that he was present when the charge was made, & did not deny it.

Semble: a bye-law made by a company carrying on trade in partnership to prevent any one of the members carrying on a separate trade on his own account is good.

With regard to the form of the bye-law though a bye-law may be good in part & bad in part yet it can be so only where the two parts are entire & distinct from each other (LORD KENYON, C.J.).—R. v. FAVERSHAM FISHERMEN'S CO. (1799), 8 Term Rep. 352; 101 E. R. 1429.

Annotations:—*Reid.* Bennett v. Blackpool Local Board of Health, Kenyon v. Same (1859), 28 L. J. M. C. 203; R. v. Lundie (1861), 31 L. J. M. C. 157. *Mentd.* Osgood v. Nelson (1869), 10 B. & S. 119; Strickland v. Hayes (1896), 60 J. P. 164.

379. **Mode of disfranchisement—Corporator appointed by patent under common seal.]**—R. v. CHALKE, No. 6, *ante*.

380. — **Corporator constituted by election.]**—R. v. CHALKE, No. 6, *ante*.

381. — **Quo warranto information—When information lies.]**—9 Ann. c. 20, which only regulates proceedings on information against individuals usurping corporate offices or franchises in corporate places & does not extend to a private co. & consequently in other cases where the information at common law is exhibited advantage cannot be taken of its provisions.—HORN v. CUTLERS' CORPN. (1736), cited in 2 Selwyn's N. P. 1113.

382. — **Trustees under public local Act.]**—A *quo warranto* information does not lie for the office of trustees of the parish of M. who are, under 5 Geo. 4, c. cxxv., elected as vacancies occur by occupiers in the parish, & taking an oath of office.—R. v. HANLEY (1830), 3 Ad. & El. 463, n.; 111 E. R. 489.

Annotations:—*Consd.* R. v. Ramsden (1835), 3 Ad. & El. 466. *Reid.* Darley v. R. (1846), 12 Cl. & Fin. 520.

383. — **Within what time.]**—A rule

nisi for a *quo warranto* information for exercise of a franchise had been obtained within six years after the earliest time at which deft. appeared to have exercised it, but the motion for a rule absolute was not made till the six years had expired:—*Held*: the rule would be discharged as it was too late, under 32 Geo. 3, c. 58, s. 1, to file the information.—R. v. HARRIS (1840), 11 Ad. & El. 518; 8 Dowl. 499; 3 Per. & Dav. 266; 9 L. J. Q. B. 114; 4 Jur. 459; 113 E. R. 512.

See, now, Municipal Corporations Act, 1882 (c. 50), s. 225.

384. — **Judgment of ouster against one corporator conclusive—Against another corporator deriving title under him.]**—(1) If several inconsistent causes be returned to a mandamus the ct. will quash the whole return. It is inconsistent to state, in a return to a mandamus to certify the election of a recorder, supposed in the writ to be on Jan. 15, that the corp'n. were not then duly assembled, & afterwards to state the election of another corporate officer, to wit, on Jan. 15, for the day in such a case is material.

(2) A judgment of ouster against one corporator is conclusive evidence against another who derives title under him.—R. v. YORK CORPN. (1792), 5 Term Rep. 66; 101 E. R. 38.

Annotations:—*As to* (1) *Overd.* R. v. Lodgare (1841), 1 Q. B. 616. *Reid.* R. v. Dover Corp'n. (1847), 11 Q. B. 277. *As to* (2) *Consd.* R. v. Hughes (1825), 4 B. & C. 368. *Generally*, *Reid.* R. v. Margate Pier Co. (1819), 3 B. & Ald. 220.

See, further, CROWN PRACTICE.

SUB-SECT. 2.—CAUSES OF.

385. **Whether reasonable cause for removal necessary—Charter empowering corporation to expel whom they please.]**—The charter of a corp'n. provided that the mayor & major part of the corp'n. might turn out whom they pleased:—*Held*: there was no remedy against it.—R. v. ANDOVER (VILLAGE) (1702), 12 Mod. Rep. 665; 1 Ld. Raym. 710; 88 E. R. 1589.

Annotations:—*Reid.* R. v. Ipswich (1730), 1 Barn. K. B. 407; R. v. London Corp'n. (1832), 3 B. & Ad. 255.

— **Of fellow.]**—*See* CHARITIES, Vol. VIII., p. 367, No. 1727.

386. **What is reasonable cause for removal—Misapplication of corporation money.]**—R. v. CHALKE, No. 6, *ante*.

387. — **Alteration of corporation books—In immaterial respects.]**—R. v. CHALKE, No. 6, *ante*.

388. — **Speaking disrespectfully of head of corporation.]**—A custom to disfranchise a corporator for speaking disrespectful words of one of the heads of the corp'n. is void.—R. v. ROGERS (1702), 2 Ld. Raym. 777; Holt, K. B. 331; 7 Mod. Rep. 28; 2 Salk. 425; 92 E. R. 18.

389. — **Not general charge of obstinately refusing to obey corporation orders & laws—Made for benefit of corporation.]**—R. v. DONCASTER CORPN., No. 373, *ante*.

— **Of fellow.]**—*See* CHARITIES, Vol. VIII., p. 367, Nos. 1728–1730, 1732.

— **Of mayor.]**—*See* LOCAL GOVERNMENT.

— **Of alderman.]**—*See* LOCAL GOVERNMENT.

— **Of councillor.]**—*See* LOCAL GOVERNMENT.

— **Of freeman.]**—*See* LOCAL GOVERNMENT.

— **Of guardians of the poor.]**—*See* POOR LAW.

Part IV:—Officers.

See NOTE on p. 270, *ante*.

SECT. 1.—APPOINTMENT.

SUB-SECT. 1.—POWER AND DUTY OF CORPORATIONS TO APPOINT.

390. Grant of office by bishop—Must be in customary manner.]—(1) A grant by a bishop of an ancient office with the ancient fees only annexed, if confirmed by the dean & chapter, is not restrained by 1 Eliz. c. 19.

(2) A bishop cannot grant a new office, nor add new fees to old offices, except they be necessary, nor grant offices in any manner not warranted by usage.—GEE (BP. OF CHICHESTER) *v.* FREEDLAND (1626), Cro. Car. 47; 79 E. R. 645; *sub nom.* CHESTER (BP.) *v.* FREELAND, Ley, 71.

Annotations:—As to (1) *Consd.* Young *v.* Fowler (1639), Cro. Car. 555. *Refd.* Threadneedle *v.* Linum (1674), Freem. K. B. 179; Ridley *v.* Pownell (1675), Freem. K. B. 394; Trelawny *v.* Winchester (1757), 1 Burr. 219. *Generally, Mentd.* Churchman *v.* Harvey (1757), Amb. 335; Kerrison *v.* Cole (1807), 8 East, 231.

391. — New office—Only where necessary.]—GEE (BP. OF CHICHESTER) *v.* FREEDLAND, No. 390, *ante*.

—By corporation sole—Whether binding on successor.]—See No. 466, *post*.

392. Must conform to regulations—In making appointment.]—THOMPSON *v.* DANIEL, No. 410, *post*.

393. Obligation to fill vacant offices—Terms of charter.]—The charter of the Mason's Co. provided that 24 or more "assistants" should be elected in a specified manner. In an action of mandamus to order the co. to elect 11 assistants to make the full number up to 24:—*Held*: according to the terms of the charter it was essential that the co. should always have 24 "assistants."—WELLS *v.* MASONS' CO. OF CITY OF LONDON (1885), Cab. & El. 521.

394. Power to appoint clerk, treasurer & other officers & assistants—No power to appoint assistant treasurer.]—3 & 4 Will. 4, c. 1, s. 18, empowered a corp. to appoint a clerk, treasurer, & such other officers & assistants as they might think necessary for the purposes of the Act. Sect. 19 prohibited the corp. from appointing the clerk, in the execution of the Act, or his partner or clerk, the

was imposed on such persons who should in any manner officiate for the treasurer:—*Held*: (1) the corp. had no power to appoint an assistant treasurer; (2) where they had appointed the clerk of the clerk to that office it was a question for the jury whether he had acted *bonâ fide*, believing himself an independent officer, or in colourable evasion of the Act.—HAWKINS *v.* NEWMAN (1839), 1 Horn. & H. 471.

395. Enforcement of duty—By mandamus—To commissioners of land tax—To elect clerk.]—A mandamus was granted to the comrs. of land tax to elect a clerk to them in the department for the rates & duties on windows, houses & lights.—R. *v.* ST. MARTIN IN THE FIELDS LAND-TAX COMRS. (1786), 1 Term Rep. 146; 99 E. R. 1022.

396. — New election of chaplain—Refused where invalidity of usage not established.]—R. *v.* DAVIE, No. 414, *post*.

397. — Return to mandamus—Sufficiency.]—A return to a mandamus for the election of a corporate officer must either expressly deny the

right of election mentioned in the writ, or show an election under it, & a return stating a different right & an election under that is bad.—R. *v.* MALDEN CORPN. (1699), 1 Ld. Raym. 481; 2 Salk. 431; 91 E. R. 1220.

398. — Tested by quo warranto to individuals.]—A mandamus was granted to the Co. of Surgeons to choose officers, & they made a return under their common seal. A rule was moved for to file an information against some particular persons of the co. for that return:—*Held*: the rule would be granted.

The ct. must proceed by way of information, for being a matter concerning public government no particular person is so concerned in interest as to maintain an action; & the information must be granted against particular persons though the return be under their common seal for there is no other way to try the right, & if it is found for the King there must be a peremptory mandamus (HOLT, C.J.).—SURGEONS' CO. CASE (1699), 1 Salk. 374; 91 E. R. 325.

Annotation:—Refd. Anon. (1730), 1 Barn. K. B. 327.

See, generally, CROWN PRACTICE.

399. Custom to elect stewards for annual feast—Good.]—A custom in a corp. to elect stewards for an annual feast is good.—WALLIS'S CASE (1619), Cro. Jac. 555; 79 E. R. 475.

Annotations:—Consd. Carter *v.* Sanderson (1828), 5 Bing. 79. *Refd.* Gee *v.* Wilder (1685), 2 Lut. 1320; Scriveners' Co. *v.* Brooking (1842), 3 Q. B. 95.

Officers of local authorities & municipal corporations.]—See LOCAL GOVERNMENT.

SUB-SECT. 2.—QUALIFICATION FOR OFFICE.

400. Residence—Though non-continuous & for short periods—Sufficient if bonâ fide.]—Deft. having prior connections with a borough town previous to his election to the office of bailiff, for which residence was a necessary qualification, took a house at first for four years, but afterwards at his landlord's request for one year, & slept there one night before the election. He did not return again for nearly a month afterwards, when he stayed two days, but he retained possession of his house under his lease the whole time:—*Held*: this was a sufficient legal residence to satisfy the qualification required, the taking of the house

(1793), 5 Term Rep. 466; 101 E. R. 262.

Annotations:—Distd. R. *v.* Richmond (1796), 6 Term Rep. 560. *Refd.* Whithorn *v.* Thomas (1844), 14 L. J. C. P. 38. *Mentd.* R. *v.* Stapleton (1853), 22 L. J. M. C. 102.

401. Tenure of other office—For certain period—Not "title derived" within 32 Geo. 3, c. 58.]—R. *v.* STOKES, No. 599, *post*.

402. Restricted selection—"From members"—Restriction omitted from subsequent charter—Restriction not dispensed with.]—By several charters the sheriffs of N. were to be chosen by the citizens & commonalty "from themselves." A subsequent charter, confirming former privileges & regulating the time & mode of electing sheriffs, omitted the words "from themselves." The usage both before & since had been to elect from among the freemen:—*Held*: the last charter was not meant to vary the qualifications, the restriction in the former charters could not be dispensed with, & the election of a person not free was irregular.—R. *v.* GROUT (1830), 1 B. & Ad. 104; 109 E. R. 725; *sub nom.* R. *v.* GRANT, 8 L. J. O. S. K. B. 325.

Sect. 1.—Appointment: Sub-sects. 2, 3, 4, 5, 6

403. — Usage under bye-law—Construction of subsequent statute.]—The corp'n. of L., as owners, under a grant from the Crown, of a hospital or charity, made an ordinance in 1557, that three aldermen should be governors, one whereof to be a grey cloak, & to be president. A grey cloak meant an alderman who either was or had been lord mayor. From 1557, with a few exceptions, the person elected president had always been a grey cloak. About 1729 the hospital was rebuilt & enlarged chiefly by voluntary subscription, & persons who subscribed were made donation governors. 22 Geo. 3, c. lxxvii. was passed, confirming the old usages, & making other regs. which recognised the right of donation governors to take part in the management & appointing of officers, & the power of appointing officers was general:—*Held*: there was nothing in the stat. to restrict the election to a grey cloak, although since the Act the usage had been to appoint a grey cloak.—*R. v. ST. BARTHOLOMEW'S HOSPITAL (TREASURER)* (1866), 31 J. P. 277.

—*See, also*, Part V., Sect. 4, sub-sect. 1, & Part VI., Sect. 3, sub-sect. 3, A. (b), *post*.

Restriction on duplication of offices—Whether extending to assistants.]—*See* No. 394, *ante*.

-SECT. 3.—LIABILITY TO SERVE.

404. General rule.]—(1) It is clear that, of common right, there is a power inherent in all corpns. to call upon their members for the performance of all corporate duties, & the execution of offices is one of these duties. (2) The power of making bye-laws is incident to every corp'n. (3) A bye-law imposing a reasonable fine for the refusal of a corporate office is a good bye-law (*WILMOT, C.J.*).—*EVANS v. HARRISON* (1762), *Wilm.* 130; 97 E. R. 51; *affd. sub nom. HARRISON v. EVANS* (1767), 3 Bro. Parl. Cas. 465, H. L.

Annotations:—*Reid. Atcheson v. Everitt* (1775), 1 Cowp. 382; *A.-G. v. Bradlaugh* (1885), 14 Q. B. D. 667; *Bowman v. Secular Soc.*, [1917] A. C. 406. *Mentd. Bourne v. Keane*, [1919] A. C. 815.

405. Attorney—Though resident in corporation town—Exempt.]—An attorney is privileged from serving corp'n. offices though resident in the corp'n. town.—*NORWICH CORPN. v. BERRY* (1767), 1 Wm. Bl. 636; 4 Burr. 2109; 96 E. R. 369.

Annotations:—*Reid. R. v. Warner* (1799), 8 Term Rep. 375 *Ex p. Jefferies* (1829), 3 Moo. & P. 450.

See, generally, SOLICITORS.

SUB-SECT. 4.—TERMS OF APPOINTMENT.

406. Duration of office—"For year ensuing & until another chosen"—Officer holds until tenure put an end to.]—The layer keeper of S. was an officer employed to keep the layers or beds for shipping in the port free from obstacles & in a proper state. He was appointed, by custom, at a leet & baron ct., & took an oath that he would well & truly execute the office for the year ensuing & until another should be chosen in his stead. Pltf. had, for some years before the passing of Municipal Corpns. Act, 1835 (c. 76), been annually

appointed layer keeper. In May 1836 he was re-appointed under protest from the mayor of the then corp'n. In Oct. 1838 the corp'n. prevented the holding of the ct. leet & ct. baron &, in consequence, no ct. was held till May 1842, when they were resumed. No appointment of layer keeper took place from May 1836 till May 1842, when pltf. was re-appointed. In Oct. 1836 the town council resolved that the appointment of layer keeper should be vested in the corp'n. & the revenue added to the corp'n. fund. The corp'n. accordingly received the layer keeper's dues from Jan. 1837 to June 1842. Pltf. sued them for the amount in assumpsit for money had & received:—*Held*: (1) pltf. had not ceased to be layer keeper by the omission to appoint from 1836 to 1842, & continued in his office till something was done to put an end to his tenure of it; (2) an action for money had & received would lie against the corp'n. for wrongfully retaining the money of pltf.—*HALL v. SWANSEA CORPN.* (1844), 5 Q. B. 526; 1 Dav. & Mer. 475; 13 L. J. Q. B. 107; 2 L. T. O. S. 345; 8 J. P. 503; 8 Jur. 213; 114 E. R. 1348.

Annotations:—*Consd. Lowe v. L. & N. W. Ry.* (1852), 18 B. 632. *Reid. Lawford v. Billericay R. C.*, [1903] 1 K. B. 772.

407. — Appointment subject to invalid limitation—Appointment bad—Not an appointment for life.]—Pltf. was elected remembrancer of the city of London under the terms of a standing order of the Ct. of Common Council that the office should be held subject to annual election. He was re-elected twice but the third time he was not. He then objected on the ground that the office was a freehold & held for life or *dum se bene gesserit*. The office had been held in three different ways since its institution, *dum se bene gesserit*, *durante bene placito* & subject to annual election. Pltf. contended that the corp'n. could alter the constitution of an ancient office only by an Act of the Common Council, & not by a mere resolution, & that it had no power to make bye-laws, & that even if he were elected subject to annual election, as the end of the year had passed & a new year begun, he could not be turned out till the end of that new year:—

Held: (1) if the appointment to the office with the limitation of a year was bad, that would not entitle the pltf. to hold it for life free from the limitation, but would make the whole appointment bad; (2) there being no evidence of any ancient usage as to the mode of election, it having been made in three different ways, the ct. could not infer that by any ancient ordinance or constitution it was to be *dum se bene gesserit*, but rather that the corp'n. had power from time to time to modify the mode of appointment; (3) the fact that the office was held over into the new year did not make it tenable till the end of that year, but on sufferance & at the will of the electors, & from such an office the holder could be removed by a mere declaration of the will of the electors to that effect.—*ROBARTS v. LONDON CORPN.* (1883), 49 L. T. 455; 31 W. R. 529, C. A.

See, also, No. 448, *post*.

408. — Terms varied from time to time—No inference that appointment *dum bene se gesserit*.]—*ROBARTS v. LONDON CORPN.*, No. 407, *ante*.

PART IV. SECT. 1, SUB-SECT. 4.

a. Duration of office—For term of years—Employment continued at expiration of term—Necessity of year's notice.]—The A. University College Council, by contract under seal, appointed a professor for a term of five years at a yearly salary & emoluments

&, after that term had expired, without entering into any further express contract, continued his appointment for eight years, paying him the same salary & emoluments, at the end of which time the employment was summarily determined:—*Held*: the continued employment of the professor under

the terms of the original contract, & the payment of his salary & emoluments, were evidence of an implied contract of employment which could not be terminated without a year's notice.—*TUBBS v. AUCKLAND UNIVERSITY COLLEGE COUNCIL* (1907), 27 N. Z. L. R. 149.—N.Z.

409. — Appointment for a year—Officer holding over—Holds on sufferance at will of electors.]—ROBARTS *v.* LONDON CORPN., No. 407, *ante*.

410. Duties of officers regulated by own bye-laws—Appointment subject to bye-laws.]—Under the corpn. of L., a body of eighteen deputy day oyster meters were appointed, who were entitled to certain payments for each hundred bushels of oysters loaded, established by a trial on *quantum meruit* in the year 1760. Purchasers of oysters were accustomed also to pay 1d. per peck gratuity to the holdsmen. Two vacancies occurred; & the corpn. appointed two holdsmen to the office of meters, on an agreement that they would not conform to the bye-laws of the body, & would also refuse the gratuity of 1d. per peck. By the bye-laws employment was given to the meters according to rota; & the payments of 8s. & 4s. were put into a common stock, & equally divided, while the corpn. desired the rota to be abandoned, & each meter to have his own earnings. The sixteen filed a bill against the two to restrain their working, except according to the usages of the deputy day oyster meters. It was proved that for at least sixty years past the affairs of the deputy day oyster meters had been regulated by themselves, & there was no evidence of any interference with the body either by the yeomen of the waterside or the corpn.:—*Held*: (1) this body had authority to make bye-laws binding on the whole of its members; (2) although the corpn. had the power to appoint the members, they had no power to appoint to the office on any terms differing from the regulations of the body.—THOMPSON *v.* DANIEL (1853), 10 Hare, 296; 22 L. J. Ch. 507; 22 L. T. O. S. 33; 17 Jur. 773; 1 W. R. 108, 532; 68 E. R. 939.

SUB-SECT. 5.—OATH ON APPOINTMENT.

Refusal to take oath.]—See Nos. 469, 470,

SUB-SECT. 6.—EVIDENCE OF APPOINTMENT.

411. Compensation assessed by corporation for loss of office—Corporation estopped from denying holding of office.]—Corpns. having assessed compensation in respect of loss of office are estopped from denying the holding of such office.—SANDWICH CORPN. *v.* R. (1847), 10 Q. B. 571; 16 L. J. Q. B. 432; 116 E. R. 218, Ex. Ch.; *affg.* S. C. *sub nom.*

Officers of banking corporation.]—See & BANKING, Vol. III., pp. 142, 143, Nos. 144–146.

SUB-SECT. 7.—VALIDITY OF APPOINTMENT.

A. In General.

412. Election of unqualified candidate by majority—Candidate qualifying before minority

PART IV. SECT. 1, SUB-SECT. 6.

d Where person acts notoriously as officer—& is recognised as such officer by corporation—Presumption of due appointment—Written proof of appointment not necessary.]—HAMILTON SCHOOL TRUSTEES *v.* NEIL (1881), 28 Gr. 408.—CAN.

e. — — — — —.]—McEDWARDS *v.* OGILVIE MILLING CO. (1887), 4 Man. L. R. 1.—CAN.

f. — — — — —.]—A person duly elected to municipal office at a council meeting of a municipal

corpn. which has statutory power so to appoint its officers, becomes thereby the servant of the corpn. without further evidencing or ratification of the contract either by writing under the corporate seal or otherwise.—TUCK *v.* VICTORIA CITY CORPN. (1892), 2 B. C. R. 179.—CAN.

g. — — — — — Chamberlain of defunct corporation.]—DRISCOLL *v.* KINSALE TOWN & HARBOUR COMRS. (1842), 2 Leg. Rep. 185.—IR.

PART IV. SECT. 1, SUB-SECT. 7.—A.

h. Appointment by unqualified per-

candidate sworn in—Election valid.]—R. *v.* PARRY, R. *v.* PHILLIPS, No. 588, *post*.

413. — Candidate qualifying after minority candidate sworn in—Election invalid.]—HAWKINS *v.* R., No. 589, *post*.

414. Power of appointment with consent of inhabitants—Approval of nominee by inhabitants—Sufficient.]—A charter of Edward VI. granted that the inhabitants of the vill of S. in the parish of C. should have a chapel for all the inhabitants, with a chaplain, to be paid out of the profits of the vicarage of C., that they should elect chapel-wardens, & that certain governors, appointed for the said vill pursuant to that charter, *una cum assensu majoris partis inhabitantium ejusdem villatæ* should nominate & appoint the chaplain.

In 1836 the governors, upon a vacancy, nominated a chaplain, gave notice to the inhabitants of S. that a nomination had been made, & required them to meet at a time & place named for the purpose of assenting or dissenting. At the meeting the resident payers of church & poor rates only were admitted to vote, but some persons not rated tendered their votes. The majority of ratepayers assented to the nomination. On motion for a mandamus to the governors to elect a chaplain, on the ground that such election was void, it appeared that the two preceding nominations & elections, in 1814 & 1771, had been conducted in the same manner. Aged persons deposed that they had always understood that to be the customary mode, & a decree of Lord Hardwicke, C. in a suit relative to the chaplaincy of S. in 1741 was proved, in which the same course was prescribed as the proper one, but it did not appear with certainty by the decree that the decision on this point was a judgment on any question litigated in the suit:—*Held*: (1) the nomination by the governors with a subsequent reference to the inhabitants for their assent was a compliance with the words *una cum assensu, etc.*; (2) referring to the context of the charter & the proof given as to usage, the word “inhabitants” in the charter might be construed as meaning inhabitants paying church & poor rates; (3) the rule would be discharged.—R. *v.* DAVIE (1837), 6 Ad. & El. 374; 1 J. P. 291; 112 E. R. 143; *sub nom.* R. *v.* SANDFORD (GOVERNORS), 1 Nev. & P. K. B. 328; Will. Woll. & Dav. 177; 6 L. J. K. B. 126.

415. Misrepresentation as to qualification—Appointment void—Though bye-law imposing restriction not binding on corporation.]—(1) If the governor & trustees of a corporate charity choose to adopt a bye-law not binding on themselves & to elect a person under it, on the ground that he has conformed to certain regs., & possesses certain qualifications, & that person makes a misrepresentation in these respects he gains no right by the application of the common seal to his appointment.

(2) If that person be expelled a mandamus does not lie to compel his re-admission.—R. *v.* TANCRED'S CHARITY (1843), 1 L. T. O. S. 230; 8 J. P. 441.

sons—Appointment valid.]—The constitution of a musical academy incorporated under Educational Endowments (Ireland) Act, 1885, provided that its governors should before attendance at any meeting of the governors formally accept the office of governor. It was necessary to appoint a professor of music & A. was appointed at a meeting of the governors where there was not a quorum of qualified governors:—*Held*: A.'s appointment was valid.—WOODHOUSE *v.* ROYAL IRISH ACADEMY OF MUSIC, [1908] 2 I. R. 357.—IR.

Sect. 1.—Appointment: Sub-sect. 7, A. & B. (a) & (b) i. & ii.]

Incompatibility of two offices—Statutory prohibition.]—*See* No. 394, *ante*.

Effect of second appointment.]—*See* Nos. 532, 533, *post*.

Whether seal necessary.]—*See* Part I., Sect. 5, sub-sect. 2, *ante*.

B. Testing Validity.

(a) Jurisdiction.

416. Court of equity will not assume.]—A bill was filed by four shareholders in a railway co. incorporated by Act of Parliament against twelve of the directors elected at the first general meeting, & six other directors afterwards chosen, alleging that four of the twelve directors ought to have been ballotted out of the direction on a particular day, but that the directors refused to make such ballot, & in consequence some four of the twelve directors were not legally directors:—*Held*: the ct. of equity had never exercised the jurisdiction of deciding the legality of titles to corporate offices, & as it could not regulate corpsns. the ct. would not assume the preliminary jurisdiction, & on that ground a demurrer to the bill would hold.—*MOZLEY v. ALSTON* (1847), 1 Ph. 790; 4 Ry. & Can. Cas. 636; 16 L. J. Ch. 217; 9 L. T. O. S. 97; 11 Jur. 315, 317; 41 E. R. 833, L. C.

Annotations:—Expld. Baillie v. Oriental Telephone & Electric Co., [1915] 1 Ch. 503. *Refd.* Hattersley v. Shelburne (1862), 31 L. J. Ch. 873; MacDougall v. Gardiner (1875), 1 Ch. D. 13; Dominion Cotton Mills Co. v. Amyot, [1912] A. C. 546. *Mentd.* Lord v. Copper Miners' Co. (1848), 1 H. & Tw. 85; Yetts v. Norfolk Ry. (1848), 5 Ry. & Can. Cas. 487; Cooper v. Shropshire Union Ry. & Canal Co. (1849), 6 Ry. & Can. Cas. 136; Edwards v. Shrewsbury & Birmingham Ry. (1849), 2 De G. & Sm. 537; Carlisle v. S. E. Ry. (1850), 1 Mac. & G. 689; Cooper v. Powis (1850), 3 De G. & Sm. 688; Fawcett v. Laurie (1860), 1 Drew. & Sm. 192; Hoole v. G. W. Ry. (1867), 3 Ch. App. 262; Seaton v. Grant (1867), 36 L. J. Ch. 638; Gray v. Lewis (1869), L. R. 8 Eq. 526; Wandsworth & Putney Gas Light & Coke Co. v. Wright (1870), 22 L. T. 404; Gray v. Lewis, Parker v. Lewis (1873), 8 Ch. App. 1035; Ward v. Sittingbourne & Sheerness Ry. (1874), 9 Ch. App. 490, n.; MacDougall v. Gardiner (1875), 10 Ch. App. 606; Russell v. Wakefield Waterworks Co. (1875), L. R. 20 Eq. 474; Lambert v. Neuchatel Asphalt Co. (1882), 51 L. J. Ch. 882; Wall v. London & Northern Assets Corpn. (1898), 79 L. T. 249; Burland v. Earle, [1902] A. C. 83; Foster v. Foster, [1916] 1 Ch. 532.

(b) By Quo Warranto.

i. In General.

See, generally, CROWN PRACTICE.

417. General rule.]—The ct. will not decide the validity of the election of a corporate officer, if the question is new or doubtful, on a rule to show cause for an information in the nature of *quo warranto*.—*R. v. GODWIN* (1780), 1 Doug. K. B. 397; 99 E. R. 255.

Annotation:—Distd. R. v. London Corpn. (1786), 1 Term Rep. 423.

418. Who may be relator—Person concurring in election impeached.]—It is no objection to an application for an information in nature of *quo warranto* against a mayor for not having taken the sacrament within the proper time before his election in accordance with 13 Car. 2, stat. 2, c. 1, that the relators concurred in his election, because that defect is a latent one, arising from the omission of an act positively required by the legislature.—*R. v. SMITH* (1790), 3 Term Rep. 573; 100 E. R. 740.

419. ———.]—It is no objection to the persons applying for an information in nature of a *quo warranto*, which would operate in its effect to dissolve the corpns. that they attended the meeting at which the mayor was elected, whose

election they impeach on the ground that the corpns. was then dissolved by the loss of an integral part, & that they voted for another candidate, & afterwards attended other corporate meetings at which such mayor presided.—*R. v. MORRIS, R. v. STEWART* (1803), 3 East, 213; 102 E. R. 579; *subsequent proceedings*, 4 East, 17.

Annotations:—Mentd. R. v. Trevenen (1819), 2 B. & Ald. 339; R. v. Slythe (1827), 6 B. & C. 240.

420. ——— Not corporator voting at election impeached.]—A corporator who has voted at an election of corporate officers is not a competent relator to impeach that election on the ground of an objection to the presiding officer, at least, without showing that he was ignorant of the objection when he voted at the election.

It is a general rule of corpns. law that a corporator is estopped from coming forward as a relator to impeach a title conferred by an election in which he has concurred, or the titles of those mediately or immediately claiming through that election (*ABBOTT, C.J.*).—*R. v. LANE, R. v. COBBOLD* (1827), 9 Dow. & Ry. K. B. 183; 4 Dow. & Ry. M. C. 293.

421. ——— Though ignorant of objection at time of voting.]—It is a valid objection to a relator applying for a *quo warranto* information that he was present & concurred at the time of the objectionable election, even although he was then ignorant of the objection, for a corporator must be taken to be cognizant of the contents of his own charter & of the law arising therefrom.—*R. v. TREVENEN* (1819), 2 B. & Ald. 339; 106 E. R. 391; *subsequent proceedings*, 2 B. & Ald. 479.

Annotations:—Consd. R. v. Slythe (1827), 6 B. & C. 240. *Distd.* R. v. Wakelin (1830), 1 B. & Ad. 50. *Refd.* R. v. Benney (1831), 1 B. & Ad. 684; Darley v. R. (1846), 12 Cl. & Fin. 520.

422. ——— Unless ignorant of objection at time of voting.]—Where a corporator has attended & voted at a meeting for the election of officers of the borough he will not be allowed to become relator in *quo warranto* & impeach the titles of the persons there elected on account of an objection to the title of the presiding officer, unless he shows that at the time of the election he was ignorant of the objection.—*R. v. SLYTHER* (1827), 6 B. & C. 240; 9 Dow. & Ry. K. B. 181; 4 Dow. & Ry. M. C. 291; 5 L. J. O. S. M. C. 41; 108 E. R. 441.

Annotation:—Mentd. R. v. Ireland (1868), 37 L. J. Q. B. 73.

423. ——— Private person whose rights interfered with—Though existence of corporation called in question.]—The ct. will grant a *quo warranto* information at the instance of a private relator when private rights are interfered with, although the result may be that the existence of the corpns. may be called in question.—*R. v. LLOYD* (1860), 2 L. T. 232; *subsequent proceedings, sub nom.* LLOYD v. R. (1862), 2 B. & S. 656, Ex. Ch.

Annotation:—Expld. R. v. Jones (1863), 8 L. T. 503.

424. Who may defend — Stranger.]—*R. v. MARSHALL*, No. 441, *post*.

425. Joinder of defendants.]—*R. v. BEDFORD (DUKE)*, No. 152, *ante*.

426. Conditions precedent to grant—Proof of due election of another—By qualified electors.]—*R. v. MASHITER*, No. 252, *ante*.

427. Evidence — Disqualification of presiding officer—Judgment of ouster.]—On an information in nature of a *quo warranto* against deft. as bailiff of S. he made title as elected under the bailiffship of B. & A., & upon issue joined whether they were bailiffs or not a record of a judgment of ouster against them was read in evidence. Upon motion for a new trial:—*Held*: it was properly admitted in evidence, & a new trial would be denied.—*R. v.*

HEBDEN (1739), 2 Stra. 1109; Andr. 388; 93 E. R. 1064.

Annotation :—Distd. R. v. Hughes (1825), 4 B. & C. 368.

428. — Onus of proof—Alleged disqualification of electors—On person impeaching election.]—A *quo warranto* information was moved for against an officer elected by ballot on the ground that a large proportion of the persons who voted were not qualified, but it was not shown for whom the votes of those persons were given :—*Held* : the officer could not be required to prove his election valid, but it lay on the opposing parties to show, if that were practicable, that his majority was obtained by bad votes.—R. v. JEFFERSON (1833), 5 B. & Ad. 855; 2 Nev. & M. K. B. 487; 110 E. R. 1007.

429. Limitation of proceedings—Six years tenure of office—Small informality in election—Quo warranto refused.]—On a rule to show cause why an information in the nature of a *quo warranto* should not go against W. for exercising the office of bailiff of A., not being an inhabitant, it was stated that deft. had continued in the exercise of his office for five or six years :—*Held* : (1) if it was a small slip only in the election the ct. would not suffer him to be molested after an enjoyment of five or six years; (2) as that which was offered against deft. went to the very merit of his right, no time would bind the King in such case from calling his election in question.—R. v. WOODMAN (1728), 1 Barn. K. B. 101; 94 E. R. 70.

430. — Officer improperly sworn—Quo warranto refused.]—Where a party had been sworn into, & had exercised a corporate office for more than six years the ct., in the exercise of their discretion, refused to grant a *quo warranto* information against him on the ground of his not having been sworn in before the proper officer.—R. v. BROOKS (1828), 8 B. & C. 321; 2 Man. & Ry. K. B. 389; 1 Man. & Ry. M. C. 425; 6 L. J. O. S. K. B. 322; 108 E. R. 1062.

431. — Defect invalidating whole right—Lapse of time no bar against Crown.]—R. v. WOODMAN, No. 429, *ante*.

See, generally, LIMITATION OF ACTIONS; PUBLIC AUTHORITIES & PUBLIC OFFICERS.

432. Costs—Relator liable—Though information abandoned.]—A person giving notice of an application for information in the nature of a *quo warranto* against a person claiming to hold a corporate office is responsible for costs incurred thereby even though the application is abandoned before it can be heard.—BALLARD v. HALLIWELL (1896), 65 L. J. Q. B. 332; 40 Sol. Jo. 316, D. C.

ii. Grounds for granting.

433. Election not in conformity with charter.]—The constitution of the corp. of E. was vested in the mayor, aldermen, capital burgesses, a recorder & chamberlain, all which put together constituted the Common Council, & by a clause in the charter the mayor, aldermen & burgesses were to proceed to the election as places should become vacant. By a subsequent clause it was expressly provided that the chamberlain should not be present at the election of a recorder, nor the recorder at the election of a chamberlain, so that a recorder & chamberlain could not be elected at a public Common Council, which was contrary to the express words of the charter. It appeared from the books that the election of S. as recorder was at a Common Council, which was contrary to the charter :—*Held* : a motion for an information in the nature of a *quo warranto* would be granted.—R. v. SAUNDS (1733), Kel. W. 268; 25 E. R. 607; *sub nom.* R. v. SANDYS, 2 Barn. K. B. 301.

434. — Or bye-law—Though in accordance with usage.]—If an election has been made agreeably to long usage but contrary to the terms of the charter & it does not appear that any bye-law exists to ground such election an information in the nature of a *quo warranto* will be granted.—R. v. TOMLYN (1736), Lee temp. Hard. 316; 95 E. R. 205.

Annotation :—Consd. R. v. Westwood (1830), 7 Bing. 1.

435. — In accordance with valid usage—Refused.]—R. v. ATTWOOD, No. 726, *post*.

— Election at meeting improperly adjourned.]—*See* Nos. 844, 845, *post*.

436. Result of election disputed.]—R. v. COLCHESTER CORPN., No. 492, *post*.

437. —.]—R. v. BEEDLE, No. 493, *post*.

438. To test title of electors—No other means available.]—(1) An information in nature of a *quo warranto* lies against a portreeve of a borough & manor, who, as portreeve, is the returning officer of the borough.

(2) In general the title of the electors is not to be brought in question by attacking the title of the person elected by them, but this rule does not apply where there is no method of prosecution by which the title of the electors may be questioned in the first instance.—R. v. MEIN (1790), 3 Term Rep. 596; 100 E. R. 752; *subsequent proceedings*, 4 Term Rep. 480.

Annotations :—As to (1) Consd. R. v. M'Kay (1825), 4 B. & C. 351. *Refd.* R. v. Bingham (1802), 2 East, 308. As to (2) Consd. R. v. Hughes (1825), 4 B. & C. 368. *Generally*, *Refd.* Brown v. Gill (1846), 2 C. B. 861. *Mentd.* R. v. Stanger (1871), L. R. 6 Q. B. 352.

439. Appointment inchoate—Officer elected but not sworn—Refused.]—There must be an user as well as a claim of a franchise in order to found an application for an information in nature of a *quo warranto*, & merely stating that deft. who was elected to an office had tendered himself to be sworn in is not sufficient.—R. v. WHITWELL (1792), 5 Term Rep. 85; 101 E. R. 48.

Annotations :—Consd. R. v. Tate (1803), 4 East, 337; R. v. Pepper (1838), 7 Ad. & El. 745. *Refd.* R. v. Slatter (1840), 9 L. J. Q. B. 115; *Re* Armstrong (1856), 25 L. J. Q. B. 238.

440. Claim to office—After corporation dissolved—Refused.]—Where a corp. was dissolved & no corporate body existed in fact at the time, the ct. refused to grant an information in nature of a *quo warranto* against an individual for an impertinent claim to be returning officer at an election of members to serve in Parliament by virtue of his having been elected an alderman while the corp. existed in fact, there being no civil right in controversy, but it being rather the ground of a proceeding *in poenam* by the A.-G.—R. v. SAUNDERS (1802), 3 East, 119; 102 E. R. 542.

Annotation :—*Refd.* R. v. Staples (1867), 9 B. & S. 928, n.

441. To enable party to disclaim—Friendly proceedings.]—(1) A stranger may be admitted to defend deft.'s title to a corporate office.

(2) It is no objection to a *quo warranto* that it is a friendly proceeding in order that the party might disclaim.—R. v. MARSHALL (1817), 2 Chit. 370.

442. Offices held incompatible.]—A *quo warranto* information was granted against a person who had held the incompatible offices of capital burgess & town clerk of a borough before & since 32 Geo. 3, c. 58, without interruption.—R. v. BOND (1825), 6 Dow. & Ry. K. B. 333.

443. Office not authorised by charter.]—Motion for an information in the nature of a *quo warranto*, calling on certain persons, members of the Mercers' Co., to show by what authority they claimed to exercise the office of assistants of that company, & saying there was no right whatever under the charters for such a body as that of assistants to

Sect. 1.—Appointment: Sub-sect. 7, B. (b), ii. & iii.; sub-sects. 8 & 9.]

be elected, & also that the election of wardens by the assistants was illegal as no such body as that of assistants ought to exist:—*Held*: a rule *nisi* would be granted.—*R. v. MERCERS' Co., Ex p. NEWNHAM* (1853), 21 L. T. O. S. 159; 17 J. P. Jo. 407.

See, also, No. 445, post.

444. Non-compliance with alleged custom or bye-law—Custom or bye-law not supported by evidence—Refused.]—The charter of the Saddlers' Co. provides that in case of vacancy in the office of assistants it shall be lawful for the wardens & assistants at their pleasure to elect one other of the commonalty, & that the wardens & assistants in all things appertaining to the good rule & government of the co. should be subject & obedient to the Lord Mayor & Ct. of Aldermen of the city of London. An appct. for a *quo warranto*, relied, among other things, upon an alleged usage & practice of the co. to elect by seniority:—*Held*: (1) the rule would not be made absolute, as the evidence would not warrant a jury in finding the existence of a bye-law to that effect; (2) the Lord Mayor & Ct. of Aldermen could not control this ct. in the exercise of its jurisdiction over the corporate rights of the co. *Semble*: such a bye-law would be void as being inconsistent with the charter.

A clause in the charter could not transfer to the Ct. of Aldermen the prerogative jurisdiction & control which this ct. has over corpus by *quo warranto*. The Ct. of Aldermen might settle questions of precedence & things of that kind, but not the rights of corporate bodies (*CROMPTON, J.*).—*R. v. FISHER* (1862), 4 B. & S. 575; 122 E. R. 575.

Where existence of corporation called in question.]
—*See No. 423, ante.*

iii. In respect of what Officers.

445. General rule—Office of public nature.]—Information in nature of a *quo warranto* against deft. to show by what authority he claimed to be bailiff of the vill of S. On demurrer it was objected that it did not appear S. was a corpn. either by charter or prescription, so as to make this a usurpation upon the Crown, & it might be only a private office, as bailiff of a manor, for a vill was not a borough, & a bailiff was but a servant: *Held*: the information would be granted.

It is said to be an ancient town, & that this is a public office, an office of great trust & pre-eminence within the town, *langens regimen et gubernationem villae praedict., et administrationem publicae justitiae infra eandem villam*, all of which is confessed by the demurrer. Certainly the setting up such an office is a usurpation. Suppose a man should set up to preside at I. as a public officer & have *insignia* carried before him, is he not to be punished for this, & have you any other way to come at him but by such an information? It is never laid otherwise than that it is a public office relating to the administration of public justice (*per CUR.*).—*R. v. BOYLES* (1729), 2 Stra. 836; Fitz-G. 82; 2 Ld. Raym. 1559; 93 E. R. 883.

Annotations:—*Refd.* *R. v. M'Kay* (1826), 5 B. & C. 640; *Darley v. R.* (1845-6), 12 Cl. & Fin. 520.

446. — — —.]—(1) A proceeding by information in the nature of a *quo warranto* will lie for usurping any office, whether created by charter of the Crown alone, or by the Crown with the consent of Parliament, provided the office be of a public nature & a substantive office, & not merely the

function or employment of a deputy or servant held at the will & pleasure of others.

(2) The office of treasurer of the public money of the county of the city of Dublin is an office for which an information in the nature of a *quo warranto* will lie.—*DARLEY v. R.* (1846), 12 Cl. & Fin. 520; 8 E. R. 1513, H. L.

Annotations:—*As to* (1) *Consd. R. v. St. Martin's Grdns.* (1851), 17 Q. B. 149; *Re Lowerstorf Improvements Comrs.* (1854), 18 J. P. Jo. 772; *R. v. Fox* (1858), 8 E. & B. 939; *Re Barlow* (1861), 30 L. J. Q. B. 271; *Ex p. Smith* (1863), 2 New Rep. 321; *R. v. Hampton* (1865), 6 B. & S. 923; *Bradley v. Sylvester* (1871), 25 L. T. 459. *Foll.* *Ex p. Parry* (1887), 3 T. L. R. 649. *Consd. R. v. Burrows*, [1892] 1 Q. B. 399; *R. v. Speyer, R. v. Cassel*, [1916] 1 K. B. 595. *Refd.* *R. v. Mousley* (1846), 8 Q. B. 946; *R. v. Cox* (1858), 6 W. R. 282; *R. v. Smyth* (1858), 22 J. P. Jo. 68; *R. v. South Weald Overseers* (1864), 5 B. & S. 391; *R. v. Dix* (1866), 30 J. P. Jo. 390; *R. v. Wells*, [1895] 39 Sol. Jo. 585. *Generally, Mentd.* *R. v. Collins* (1876), 24 W. R. 732.

447. — — —.]—A proceeding by information in the nature of a *quo warranto* will only lie for usurping an office of a public or quasi-public nature, & will therefore not lie for usurping the office of governor or committeeman of a society formed for eleemosynary purposes, such as the Licensed Victuallers' Society, although it be incorporated by Royal Charter.—*Ex p. SMITH* (1863), 2 New Rep. 321; 8 L. T. 458; *sub nom. Ex p. SMYTH*, 27 J. P. 503; 11 W. R. 754.

448. — — — Substantive office—Not servant—Or deputy dismissible at will.]—15 Car. 2, c. xvii., creating the corpn. of Bedford Level, directed that they should appoint a registrar, etc., & other officers at their pleasure. The duty of the registrar was to register titles to land within B. L., & he took an oath of office. The corpn. at the request of the registrar elected a deputy registrar:—*Held*: (1) an information in nature of a *quo warranto* did not lie against the registrar, he being a mere servant of the corpn. & his office not affecting any franchise or other authority held under the Crown; (2) the deputy registrar must be considered as much a deputy of the principal registrar as if nominated by him; (3) however such deputy were properly or not constituted in the first instance yet his authority necessarily expired on the death of his principal; (4) however the acts of a legal deputy to a ministerial officer may be good after the death of his principal before notice thereof to those who are interested in his acts, as being done under a colour of authority, yet the titles of landowners within B. L. registered by the deputy after the death of his principal was known were invalid; (5) upon affidavit that one of two candidates for the office of registrar had a majority only by means of illegal votes, the ct. would grant a mandamus to the corpn. to admit & swear the other, who appeared upon the affidavits to have the greater number of legal votes, & this although the first was admitted & sworn into the office, there being no other specific, or at least no other such convenient, mode of trying the right.—*R. v. BEDFORD LEVEL CORPN.* (1805), 6 East, 356; 2 Smith, K. B. 535; 102 E. R. 1323.

Annotations:—*As to* (1) *Consd. R. v. Hertford College* (1878), 3 Q. B. D. 693. *Refd.* *R. v. Severn & Wye Ry.* (1819), 2 B. & Ald. 646; *R. v. Ramsden* (1835), 3 Ad. & El. 456; *Darley v. R.* (1846), 12 Cl. & Fin. 520. *Generally, Mentd.* *A.-G. v. Hotham* (1823), Turn. & R. 209.

]—*DARLEY v. R.*,

446, ante.

450. Bailiff of town—Granted.]—*R. v. BOYLES*, No. 445, *ante.*

451. Fellow of college—Refused.]—(1) An information to show by what authority deft. claimed to be fellow of Trinity Hall, Cambridge, was refused.

(2) Such institutions as Trinity Hall are lay

corpns. & as such subject to temporal jurisdiction,
—*R. v. GREGORY* (1772), 4 Term Rep. 240, n.;
100 E. R. 995.

Annotations :—As to (1) *Refd. Darley v. R.* (1846), 12 Cl. & Fin. 520; *R. v. Hertford College* (1877), 2 Q. B. D. 590.
Generally, Mentd. R. v. St. Catherine's Hall (1791), 4 Term Rep. 233.

See CHARITIES, Vol. VIII., p. 366, No. 1709.

452. Recorder.] — *R. v. COLCHESTER CORPN.*, No. 492, *post*.

453. Portreeve — Granted.] — *R. v. MEIN*, No. 438, *ante*.

454. Registrar of Bedford Level — Refused.] — *R. v. BEDFORD LEVEL CORPN.*, No. 448, *ante*.

455. Clerk to commissioners of land tax — Refused.] — *R. v. THATCHER*, No. 491, *post*.

456. Clerk to vestry — Granted.] — An information in the nature of a *quo warranto* will lie to inquire into the validity of the election of a clerk to a vestry.—*R. v. BURROWS*, [1892] 1 Q. B. 399; 61 L. J. Q. B. 88; 40 W. R. 207.

Annotation :—*Refd. R. v. Speyer, R. v. Cassel*, [1916] 1 K. B. 595.

457. Guardian of poor law union — Refused.] — An information in the nature of a *quo warranto* does not lie for exercising the office of guardian of the poor for an union under Poor Law Amendment Act, 1834 (c. 76).—*Re ASTON UNION* (1837), 6 Ad. & El. 784; 112 E. R. 301.

Annotations :—*Consd. Darley v. R.* (1846), 12 Cl. & Fin. 520. *Refd. R. v. St. Martin's Grdns.* (1851), 17 Q. B. 149.

458. — — —.] — A *quo warranto* information does not lie for exercising the office of a poor law guardian under Poor Law Amendment Act, 1834 (c. 76).—*R. v. CARPENTER* (1837), 1 Nev. & P. K. B. 773; Nev. & P. M. C. 290.

459. Master of hospital & grammar school — Refused.] — P., by will, directed that six poor persons of E. parish should have a weekly allowance & lodging in an almshouse to be built in E.; & he devised lands to trustees, out of which the expense was to be defrayed, & also on condition that the trustees should find a person qualified to keep a free grammar school in E. or in R. Afterwards by charter, reciting the will & that there had been built a hospital at E., in which poor persons were relieved, & a free school at R., it was granted that there should be a hospital in E., & a grammar school in R., the hospital & school to consist of a master, a schoolmaster, ushers poor men, & poor scholars, who were made a corpns.:—*Held*: the mastership was not an office for which an information in the nature of a *quo warranto* would lie.—*R. v. MOUSLEY* (1846), 8 Q. B. 946; 16 L. J. Q. B. 89; 7 L. T. O. S. 158; 10 J. P. 340; 11 Jur. 56; 115 E. R. 1130.

460. Treasurer — City of Dublin — Granted.] — *DARLEY v. R.*, No. 446, *ante*.

461. — District council — Refused.] — The office of treasurer to a district council is not one with respect to which the remedy of *quo warranto* will apply.—*R. v. WELLS* (1895), 43 W. R. 576; 11 T. L. R. 458; 39 Sol. Jo. 585.

462. City Livery Company — Masters & wardens — Refused.] — *R. v. ATTWOOD*, No. 726, *post*.

463. — Assistant — Granted.] — *R. v. MERCERS' CO.*, *Ex p. NEWNHAM*, No. 443, *ante*.
See, also, No. 444, *ante*.

464. Governor or committeeman — Society incorporated by Royal Charter — Licensed Victuallers Society — Refused.] — *Ex p. SMITH*, No. 447, *ante*.

465. Assistant overseer — Refused.] — The ct. will not grant a *quo warranto* to inquire into the election of an assistant overseer.—*R. v. SIMPSON* (1870), 19 W. R. 73.

Annotation :—*Refd. R. v. Burrows*, [1892] 1 Q. B. 399.

See, generally, CROWN PRACTICE.

SUB-SECT. 8.—EFFECT OF APPOINTMENT.

466. Whether binding on successor — Appointment to new office by bishop — Confirmed by dean & chapter — Office necessary.] — The bishop of E., after 1 Eliz. c. 19, granted the office of the keeping of his house & garden with the fee of £3 *per annum* to another for his life, & the grant was afterwards confirmed by the dean & chapter:—*Held*: the grant was good against his successor although there was not before any such office, & this being a necessary office & the fee reasonable, it was not restrained by 1 Eliz. c. 19.—*ELY'S (BP.) CASE* (1612), cited in Cro. Car. 48; cited in 1 Burr. 222; 2 Brownl. 137; 79 E. R. 646; *sub nom. HALL v. ELY (BP.)*, cited in Ley, 78; *sub nom. HAWES v. ELY (BP.)*, Ben. & D. 182; *sub nom. HOWSE v. ELY (BP.)*, Moore, K. B. 88.

Annotation :—*Refd. Trolawny v. Winchester* (1757), 1 Burr. 219.

467. — — — — —.] — *GEE (BP. OF CHICHESTER) v. FREEDLAND*, No. 390, *ante*.

468. Exemption from serving other office — Chief accountant to commissioners for victualling navy — Not exempt from serving as churchwarden.] — A motion was made for a writ of privilege for pltf. who was chief accountant to the comrs. for victualling the navy & who had been chosen churchwarden of the parish of B., his attendance on the King's business & the revenue of the Crown being concerned:—*Held*: writ would be denied as it did not appear here that there was a clause of exemption in the patent constituting the comrs. of victualling & the party applying for this writ of privilege was not bound to an attendance in this ct.—*BISHOP v. LLOYD* (1728), Bunb. 255; 145 E. R. 665.

Annotation :—*Consd. R. v. Warner* (1799), 8 Term Rep. 375.

Appointment operating as surrender — Of former office.] — See Sect. 4, sub-sect. 2, *post*.

SUB-SECT. 9.—REFUSAL TO TAKE OR SERVE OFFICE.

469. Refusal to take oath — Equivalent to refusal to serve.] — Debt was brought for a fine imposed upon one elected to be bailiff, for refusing the oath & declaration necessary by 13 Car. 2, stat. 2, c. 1, by which the office became void. Refusal of the oath is in effect a refusal of the office & so within the power given to a corpns. to fine for refusing to accept offices (*per CUR.*).—*STARR v. EXETER CORPN.* (1683), 3 Lev. 116; 83 E. R. 606; *affg. S. C. sub nom. EXETER CORPN. v. STARRE* (1681), 2 Show. 158.

Annotation :—*Distd. Evans v. Harrison* (1762), Wilm. 130.

470. — *Primâ facie* evidence of refusal to serve.] — By the custom of the city of London all persons appointed constables on St. Thomas's Day attended at Guildhall on Plough Monday, & were sworn by the registrar, & those who, when vacancies occurred, were appointed at any other period of the year, were sworn in before the registrar at the Lord Mayor's Ct. office. An indictment charged that deft. being elected to the office of constable had neglected & refused to take upon himself the execution of the office. It was proved that he refused to take the oath of office:—*Held*: that was *primâ facie* evidence of a refusal to take upon himself the execution of the office.—*R. v. BRAIN* (1832), 3 B. & Ad. 614; 1 L. J. M. C. 53; 110 E. R. 224.

Refusal to act as officer of municipal corporation.] — See LOCAL GOVERNMENT.

SECT. 2.—POWERS AND DUTIES OF OFFICERS.

SUB-SECT. 1.—EXERCISE OF POWERS.

471. Act of majority—Power of public nature—Minority bound—“Triers” of leather.]—If a power of a public nature is committed to several who all meet for the purpose of executing it the act of the majority will bind the minority.

A condemnation by four out of the six “triers” of leather appointed under 1 Jac. 1, c. 22, the whole number having met for the purpose of trying, must be considered as the condemnation of all six.—*GRINDLEY v. BARKER* (1798), 1 Bos. & P. 229; 126 E. R. 875.

*Annotations:—*Consd. *Blacket v. Blizard* (1829), 9 B. & C. 851; *Folld. R. v. Whitaker* (1829), 9 B. & C. 648. *Refd.* *R. v. Manchester JJ.* (1822), 1 Dow. & Ry. K. B. 454; *Cortis v. Kent Water Works Co.* (1827), 7 B. & C. 314; *Wilkinson v. Malin* (1832), 2 Cr. & J. 636; *Perry v. Shipway* (1859), 33 L. T. O. S. 102.

472. ——— Assessors of drainage expenses.]—By a local Act for draining the district of A., the comrs. were authorised to assess & tax upon the whole district such sums as should be necessary for carrying into effect the objects of the Act, & to elect assessors to apportion such sums of money amongst the several parishes, townships & places within the district. The comrs. appointed three assessors & the three met to agree upon an apportionment. Two out of the three agreed but the third would not concur:—*Held*: the making of the apportionment being a matter of public duty & trust an apportionment made by two at a meeting of the three was valid.—*R. v. WHITAKER* (1829), 9 B. & C. 648; 7 L. J. O. S. K. B. 332; 109 E. R. 241.

*Annotations:—**Refd.* *Wilkinson v. Malin* (1832), 2 Tyr. 544; *Fitzgerald's Case* (1869), L. R. 5 Exch. 21; *R. v. Leeds JJ.*, *Ex p. Binns* (1906), 95 L. T. 916. *Mentd.* *Marryatt v. Broderick* (1837), 6 L. J. Ex. 113.

473. ——— Notice of chargeability of bastard.]—Under Poor Law Amendment Act, 1834 (c. 76), s. 79, notice of chargeability of a bastard child must proceed from a majority of the parish officers, or three guardians at least, of the removing parish. *Qu.*: whether the notice on the face of it must show, by the signatures of the parties or otherwise, that it proceeds from such a majority.—*R. v. WESTBURY* (1844), 5 Q. B. 500; 1 Dav. & Mer. 605; 1 New Sess. Cas. 33; 17 L. J. M. C. 121, n.; 2 L. T. O. S. 327; 8 J. P. 532; 114 E. R. 1338.

See, also, Part VII., Sect. 3, sub-sect. 1, B., *post*.

474. Act of master—Of body aggregate—Does not bind aggregate body of master & fellows.]—In a body aggregate of many the master alone cannot, by his acceptance of rent, divest any right or interest which is in him & the fellows, especially such acceptance being without deed.—*MAGDALEN COLLEGE, CAMBRIDGE (MASTER & FELLOWS) CASE* (1615), 11 Co. Rep. 66 b; 77 E. R. 1235; *sub nom.* *WARREN v. SMITH, MAGDALEN COLLEGE CASE*, 1 Roll. Rep. 151.

*Annotations:—**Mentd.* *R. v. Hampden* (1637), 3 State Tr. 826; *Lyn v. Wyn* (1665), O. Bridg. 122; *Thomas v. Sorrell* (1673), Freem. K. B. 85; *Elways v. Cottesford* (1675), 3 Keb. 457; *Woodward v. Fox* (1691), 2 Vent. 267; *R. v. London (Bp.) & Birch* (1694), 1 Show. 493; *Thornby v. Fleetwood* (1720), 1 Stra. 318; *A.-G. v. Allgood* (1743), Park. 1; *A.-G. v. Downing* (1767), Wilm. 1; *A.-G. v. Walker* (1849), 3 Exch. 242; *Abergavenny v. Brace* (1872), L. R. 7 Exch. 145; *Moore v. Clench* (1875), 1 Ch. D. 447; *Bradlaugh v. Clarke* (1883), 8 App. Cas. 354; *Perry v. Eames, Salaman v. Eames, Mercers' Co. v. Eames*, [1891] 1 Ch. 658.

475. Act of officer—Presumption that done in official capacity—Evidence against corporation.]—In an action against a body corporate for negli-

gently pulling down a house which belonged to them whereby pltf.'s house was injured, a letter written to pltf. respecting the pulling down of the house by defts.' surveyor, who had the management of all their buildings, is to be presumed to have been written by him in that capacity, & is therefore evidence against them.—*PEYTON v. ST. THOMAS'S HOSPITAL (GOVERNORS)* (1828), 3 C. & P. 363, N. P.; *subsequent proceedings* (1829), 4 Man. & Ry. K. B. 625.

476. Penalty recovered by officer under bye-law—Recovered on behalf of corporation.]—An action of debt was brought upon a bye-law for recovery of a penalty upon a bye-law by the chamberlain of B. The bye-law was made under a power they had by their charter to make bye-laws with penalties to be recovered for the use of the corpn. The bye-law in this case was that every man who should be chosen a common councilman, if he did not appear within such a time & take the office upon him, should forfeit £200. Deft. did not attend & take the office upon him, so the action for the penalty was brought by the chamberlain. It was objected that the chamberlain was a stranger to the corpn., that he was a stranger to the right, & therefore was a stranger to the remedy, for the right was in the corporation:—*Held*: the action was well brought, & *camerarius ex vi termini* signified *thesaurarius* of the corpn., & he recovered for the benefit of the corpn.

This ct. will take notice of the relation there is between the chamberlain & the corpn., & that he is no stranger, but as it were part of the corpn. (*per* CUR.).—*HOLLINGS v. HUNGERFORD* (1717), cited in 1 Wils. 235; 95 E. R. 593.

*Annotations:—*Consd. *Bodwic v. Fennell* (1748), 1 Wils. 233; *Graves v. Colby* (1838), 9 Ad. & EL 356.

SUB-SECT. 2.—BREACH OR NON-PERFORMANCE OF DUTY.

477. Absence from meeting—When presence essential—Information lies.]—An information lies against the mayor of a corpn. for absenting himself on the charter day of election & thereby preventing the election of a successor.—*R. v. TIVERTON CORPN.* (1723), 8 Mod. Rep. 186; 88 E. R. 136.

478. Joint officers—Joint action lies for breach of statutory duty—Though statute refers to single officer.]—(1) Persons empowered by Freemen (Admission) Act, 1763 (c. 15), to inspect the entries of freemen, have a right to inspect all books, papers, etc., in which the admissions of freemen are entered.

(2) Where there are two or more bailiffs, etc., of a borough or corpn. a joint action will lie if they refuse inspection, though the words of the stat. are in the singular number, mayor, bailiff, etc.—*SCHULDAM v. BUNNISS* (1774), 1 Cowp. 192; 98 E. R. 1038.

Interpretation of statutes generally, *see* STATUTES.

479. When mandamus lies—Not until after demand for performance.]—Where no demand has been made on the officer of a corpn. to do an act the performance of which is sought to be enforced by mandamus, the ct. will not allow the writ to go, as a previous demand & refusal are necessary.—*R. v. SEALEY* (1844), 3 L. T. O. S. 105; 8 Jur. 496.

PART IV. SECT. 2, SUB-SECT. 1.

k. Act of officer—Presumption that done in official capacity.]—*McEDWARDS v. OGILVIE MILLING CO.* (1887), 4 Man. L. R. 1.—CAN.

SUB-SECT. 3.—DEPUTIES.

480. Power of principal to appoint—Not conferred by charter—No power to appoint for ministerial duties generally—Though bye-laws provide for performance by deputy.]—The charter of a corp'n. provided that there should be a high steward & an under-steward, & imposed upon the latter various judicial & ministerial duties, but did not give him power to appoint a deputy:—*Held*: he could not appoint a deputy generally to discharge all the ministerial duties of his office, although a bye-law of the corp'n. required that he or his sufficient deputy should attend at every ct. to execute the duties of the office.

Semble: he might appoint a deputy to do some particular ministerial act, with the assent of the corp'n.—*R. v. GRAVESEND CORPN.* (1824), 2 B. & C. 602; 4 Dow. & Ry. K. B. 117; 2 L. J. O. S. K. B. 94; 107 E. R. 507.

481. — May appoint for particular ministerial act—With assent of corporation.]—*R. v. GRAVESEND CORPN.*, No. 480, *ante*

482. — Where oath necessary qualification of principal—Not exercisable until principal sworn.]—The grantee of an office, for which an oath is a necessary qualification, but which may be executed by deputy, cannot appoint a deputy until he has been sworn.—*R. v. ROBERTS* (1835), 3 Ad. & El. 771; 1 Har. & W. 444; 5 Nev. & M. K. B. 130; 4 L. J. M. C. 118; 111 E. R. 606.

483. Effect of appointment by corporation—At request of officer—Equivalent to appointment by officer.]—*R. v. BEDFORD LEVEL CORPN.*, No. 448, *ante*.

484. — Authority expires on death of officer—Whether properly appointed or not.]—*R. v. BEDFORD LEVEL CORPN.*, No. 448, *ante*.

See, also, No. 407, *ante*.

485. Effect of acts of deputy—After authority terminated—Registrar of deeds.]—*R. v. BEDFORD LEVEL CORPN.*, No. 448, *ante*.

See, generally, SALE OF LAND.

SECT. 3.—RIGHTS AND LIABILITIES OF OFFICERS.

SUB-SECT. 1.—RIGHT TO ADMITTANCE.

486. When mandamus lies—Officer removable at will—Serjeant at mace—Refused.]—A motion was made for a mandamus to swear a serjeant at mace in the town of S.:—*Held*: motion would be refused, he being officer dative & removable at the pleasure of the mayor.—*R. v. WINTER* (1666), 2 Keb. 134; 84 E. R. 85.

487. — To hospital—To swear in surgeon—Refused.]—A mandamus does not lie to an hospital to swear in a surgeon.—*ANON.* (1702), 7 Mod. Rep. 118; 87 E. R. 1134.

488. — To Crown corporation—To swear in director—Amicable Assurance Corporation.]—A mandamus was granted to swear in a director of the Amicable Assurance, which is a co. created by charter from the Crown.—*ANON.* (1726), 2 Stra. 696; 93 E. R. 790.

489. — To trustees of meeting house—To admit dissenting preacher duly elected.]—A mandamus lies to trustees of a meeting house to admit a dissenting preacher who has been duly elected.—*R. v. BARKER* (1762), 3 Burr. 1265; 1 Wm. Bl. 352; 97 E. R. 823.

Annotations:—*Distd. R. v. Jotham* (1790), 3 Term Rep. 675. *Reid. Re Orton Vicarage* (1849), 13 Jur. 1049; *Collier v. King* (1861), 11 C. B. N. S. 14. *Mentd. R. v. City of London Union, Ex p. London Corp'n.* (1907), 76 L. J. Q. B. 1087.

490. — To university—To seal appointment of High Steward.]—A mandamus was granted to the keepers of the seal of the University of Cambridge to set the university seal to the appointment of a High Steward.—*R. v. CAMBRIDGE UNIVERSITY* (1765), 1 Wm. Bl. 547; 3 Burr. 1647; 96 E. R. 316.

Annotations:—*Consd. R. v. Windham* (1776), 1 Cowp. 377. *Reid. R. v. Westwood* (1825), 4 B. & C. 781.

491. — To commissioners of land tax—To admit clerk.]—An information in the nature of a *quo warranto* does not lie against the clerk of the comrs. of land tax, but if he is improperly elected under 43 Geo. 3, c. 99, a mandamus lies to the comrs. to admit the person who has the majority of legal votes.—*R. v. THATCHER* (1822), 1 Dow. & Ry. K. B. 426.

Annotation:—*Reid. Re Fox* (1858), 4 Jur. N. S. 410.

492. — Where validity of election disputed—Refused—Proper remedy quo warranto.]—Mandamus to admit a recorder refused, because there was a recorder *de facto*, & the party had another remedy by *quo warranto*, though both of them claimed under the same election.—*R. v. COLCHESTER CORPN.* (1788), 2 Term Rep. 259; 100 E. R. 141.

Annotation:—*Consd. R. v. Oxford Corp'n.* (1837), 6 Ad. & El. 349.

493. — — — — —.]—M. & T. were candidates for the office of comr. to carry into execution 2 & 3 Will. 4, c. cvi., which provided for improving the city of E., & M. was declared elected & sworn in. A rule *nisi* for a mandamus was obtained, upon affidavits that T. had the legal majority, to certify T.'s election & swear him in:—*Held*: the rule would be discharged with costs, & a rule granted to show cause why there should not be an information in the nature of a *quo warranto* against M.—*R. v. BEEDLE* (1834), 3 Ad. & El. 467; 111 E. R. 491.

Annotations:—*Reid. Re Aston Union* (1837), 6 Ad. & El. 784; *R. v. Oxford Corp'n.* (1837), 1 Nev. & P. K. B. 474; *Darley v. R.* (1846), 12 Cl. & Fin. 520; *R. v. St. Martin's in the Fields Grdns.* (1851), 17 Q. B. 149. *Mentd. R. v. Carpenter* (1837), 1 Nev. & P. K. B. 773.

494. — — — — —.]—At the first election of councillors for a ward under Municipal Corpns. Act, 1835 (c. 76), A. & B. were elected by the smallest numbers. At the election of aldermen immediately following, two of the councillors elected by higher numbers were chosen aldermen. C. & D. were chosen councillors in their places, each by fewer votes than had been given for A. & B. At the time for electing councillors in the following year, A. & B. remained in office, & C. was elected councillor in another ward, & was admitted to the office. The candidate for that office who had had the next largest number of votes disputed the election, on the grounds that C. was still a councillor of the first ward, inasmuch as he had been chosen to fill an extraordinary vacancy, that this fact was notorious to the burgesses, & consequently that the votes given for C. in the second ward were thrown away. A mandamus was therefore moved for to swear in the opposing candidate:—*Held*: assuming the objections to be well founded, a mandamus could not go, the office being full & being one for which a *quo warranto* might be brought.—*R. v. DERBY (COUNCILLORS)* (1837), 7 Ad. & El. 419; 2 Nev. & P. K. B. 589; Will. Woll. & Dav. 671; 1 J. P. 356; 112 E. R. 528.

Annotation:—*Reid. R. v. Chester Corp'n.* (1855), 2 Jur. N. S. 114.

495. — Though office already filled—By officer illegally elected.]—*R. v. BEDFORD LEVEL CORPN.*, No. 448, *ante*.

496. Return to mandamus—Sufficiency—Denial

Sect. 3.—Rights and liabilities of officers: Sub-sects. 1 & 2. Sect. 4: Sub-sect. 1, A.]

of fitness—Insufficient without facts.]—By custom the ct. of mayor & aldermen of London have always had authority to examine & determine whether or not any person returned to them by the ct. of wardmote as an alderman is, according to the discretion & sound consciences of the mayor & aldermen, a fit & proper person, & duly qualified in that behalf, whensoever the fitness & qualification of the person so returned has been brought into question. In Feb. 1831 S. was elected alderman by the citizens, & returned as elected to the ct. of mayor & aldermen. That ct., on the petition of persons interested in the election, adjudged & determined that S. was not a person fit & proper to discharge the duties of alderman. In Jan. 1832, S. was a second time elected alderman by a majority of votes, & returned so elected to the ct. of mayor & aldermen, but they again refused to admit him to the office. A mandamus having issued, the return stated that S. was elected by a majority of votes, & returned as so elected to the ct. of mayor & aldermen, that a petition was presented to that ct. against M. S.'s admission to the office, whereupon they examined the merits of the petition according to custom, & determined that he was not a fit & proper person to be admitted to the office nor duly elected, & that he was not in fact duly elected:—*Held*: (1) this return was not inconsistent; (2) an affidavit stating that the ct. of mayor & aldermen had again determined that he was not a fit & proper person to be admitted was no ground for refusing the mandamus, because the prosecutor had a right to have the facts stated in the return in order that he might have an opportunity of controverting the truth of them.—*R. v. LONDON CORPN.* (1833), 5 B. & Ad. 233; 1 Nev. & M. K. B. 285; 2 Nev. & M. K. B. 126; 2 L. J. K. B. 186; 110 E. R. 778.

Annotations:—*Refd.* *Whitwood v. Jokam* (1733), 2 Barn. K. B. 339; *A.-G. v. Powis* (1853), Kay, 186.

497. — Inconsistency.]—*R. v. YORK CORPN.*, No. 384, *ante*.

498. — — — Return that officer elected but not duly elected—Not inconsistent.]—*R. v. LONDON CORPN.*, No. 496, *ante*.

See, generally, CROWN PRACTICE.

499. Jurisdiction of Court of Chancery—None where appointment discretionary.]—*R.*, a bkpt., was under-marshal of the city of London, & refused to surrender, & the assignees obtained an order for disposing of the office. B. agreed with the assignees for the purchase of the office at £850, & was presented to the Ct. of Lord Mayor, etc., who approved of him, & were ready to take the bkpt.'s surrender, but he refused, & was ordered to be committed for his contempt, but had absconded. The present petition was that the Lord Chancellor would order the Ct. of Lord Mayor, etc., to admit B. in the room of R.:—*Held*: an order would not be made upon the Lord Mayor, etc., to admit B. as it was entirely discretionary in them, but he would be recommended upon the bkpt.'s non-attendance, by which his office was forfeited, to dismiss him & admit B.—*Ex p. BUTLER* (1749), 1 Atk. 210; 26 E. R. 136, L. C.

PART IV. SECT. 3, SUB-SECT. 2.

1. Alleged neglect of duty—Officer acting bona fide—& to best of judgment—Not liable.]—*HARRIS v. MARTER* (1874), 2 Pug. 165.—CAN.

PART IV. SECT. 4, SUB-SECT. 1.—A.

500 i. Must be lawfully exercised—

Notice of meetings insufficient.]—A resolution passed by deft. corpn. at a special meeting, suspending for life pltf. from membership in it on account of his misconduct at its meetings, was set aside as the notice calling the meeting did not set out the charges

against pltf. & afford him an opportunity to reply thereto, but merely stated that it was called to consider his conduct at a previous meeting.—*COHEN v. HAZEN AVENUE SYNAGOGUE CORPN.* (1920), 47 N. B. R. 400.—CAN.

SUB-SECT. 2.—OTHER CASES.

Right of action for recovery of penalty under bye-law.]—*See* Part VI., Sect. 6, sub-sect. 2, C. (b). *post*.

500. Town crier—Exclusive right of proclaiming sale of goods—Good by custom.]—A custom that the town crier of a corporate town shall have the exclusive privilege of proclaiming by the sound of the bell the sale of all goods brought into the borough to be sold by auction is a good custom.—*JONES v. WATERS* (1835), 1 Cr. M. & R. 713; 1 Gale, 5; 5 Tyr. 361; 4 L. J. Ex. 109; 149 E. R. 713.

501. Right of indemnity—Officer acting on resolution of corporation—Without specific resolution—Limited to public matters.]—The officer of a corpn. is entitled to indemnification for expenses incurred by him in carrying out the public resolution of the corporate body on his own responsibility, & without any specific resolution to that effect, but not so in the case of private matters.

A corpn. resolved to present to B. the freedom of the borough in a silver box, but did not resolve that the chamberlain should buy such a box, & the chamberlain took upon himself to carry into effect the original resolution:—*Held*: he was not entitled to recover the amount so paid by him from the corpn.—*CLARK v. GRAVESEND CORPN.* (1841), 5 J. P. 708.

502. Liability for statutory penalty—Appointment contrary to statute—Bona fides question for jury.]—*HAWKINS v. NEWMAN*, No. 394, *ante*.

503. To be bail for corporation—In error brought by corporation.]—A shareholder may be bail for his co., & members of a corpn., holding office therein, may be bail for the corpn., in error brought by the corpn.—*R. v. SADDLERS' CO. (MASTER & WARDENS)* (1860), 2 F. & F. 249.

SECT. 4.—TERMINATION OF APPOINTMENT.

SUB-SECT. 1.—BY REMOVAL.

A. In General.

504. Must be lawfully exercised—Officer entitled to be heard.]—Here no notice was given to him, & you ought not to proceed against him & never hear him, though the crime objected against him be true, for it may be he was sick or had some other just excuse for his absence, & he ought to be heard as to all crimes objected against him (*GLYN, C.J.*).—*PROTECTOR v. COLCHESTER TOWN* (1655), Sty. 452; 82 E. R. 855.

Annotation:—*Mentd.* *Carr d. Dagwell v. Singer* (1750), 2 Ves. Sen. 603.

See, also, No. 512, post.

505. — Officer removable at will—Removal must be reasonable.]—*BLAGRAVE'S CASE*, No. 547, *post*.

506. — Notice of meetings insufficient.]—A notice convening a meeting, expressed to be for the purpose of bringing charges against & considering the dismissal of V., a minister of a chapel, was sent round to the members of the congregation, who had power to dismiss the minister at discretion. A second notice was given of another meeting expressed to be held for the purpose of confirming the resolutions passed at the first meeting:—*Held*: the notices were insufficient,

& the resolutions for dismissing the minister come to at the meetings convened in pursuance of the notices were invalid, as the ct. could not say that the discretion of the congregation had been truly exercised.—*DEAN v. BENNETT* (1870), 6 Ch. App. 489; 40 L. J. Ch. 452; 24 L. T. 169; 19 W. R. 363, L. C.

Annotations:—*Reid*. *Hayman v. Rugby School* (1874), L. R. 18 Eq. 28; *Wood v. Prestwich* (1911), 104 L. T. 388. *Mentd.* *R. v. L. C. C., Ex p. Edwardes* (1894), 15 R. 66.

507. — Statutory power to remove.—Though a corp'n. may have by statute a power to remove one of its officers holding a freehold office, the Ct. of Q. B. will see that that power is exercised in a lawful manner, & will interfere if it should not be so. But if exercised in a lawful manner that ct. will refuse to interfere on the mere ground that the power has not been wisely or discreetly put in force in the particular case.

In the case of removal from office of an officer of the corp'n., upon an accusation of inability or neglect of duty, if there has been such evidence given as in an ordinary trial would justify the judge in leaving it to a jury to say, as a matter of fact, whether the accusation was made out, the ct. will not interfere with the decision arrived at by the corp'n.

A corporate body having the power to dismiss one of its officers, holding a freehold office, on complaint against him referred to a committee of its own body the task of examining into the complaint, & receiving evidence upon it, & reporting thereon. The committee performed this duty. The report & evidence were duly furnished to the inculpated officer, who was then called on for his defence. He was afforded the opportunity of being heard, & counsel was heard for him, but the corporate body itself did not rehear the evidence. He was ordered to be dismissed from his office:—*Held*: this was not a case of delegation of lawful authority, but was a due exercise of that authority by the corporate body itself.

The proceedings in this case were not to be assimilated to a criminal proceeding, but were to be treated in the nature of an official inquiry (*LORD COLONSAY*).—*OSGOOD v. NELSON* (1872), L. R. 5 H. L. 636; 41 L. J. Q. B. 329, H. L.

508. Evidence heard by committee—Removal ordered on report from committee—Due exercise of authority.—*OSGOOD v. NELSON*, No. 507, *ante*

509. Whether cause of removal must be shown—Office determinable at will—Not necessary.—*DIGHTON v. STRATFORD-ON-AVON CORPN.*, No. 548, *post*.

510. — — — — —.—*PEPIS'S CASE*, No. 168, *ante*.

— **On return to mandamus to restore.**—*See* Nos. 547–550, 553, *post*.

511. Whether officer entitled to be heard—Officer appointed for life—Quitting country with no intention to return—Not entitled.—A., having the office of town clerk of a borough to hold & exercise for life by himself or his sufficient deputy, appointed a deputy in 1823. A bill of indictment having been found against A. for forgery he, in Apr. 1829, quitted the country. The deputy died

on Apr. 23, 1830. At a meeting of the corp'n. held on May 31, 1830, by adjournment from Apr. 27, one of the grand common days, it was resolved to remove A. from his office, on the ground that he had neglected to attend, by himself or deputy, at that adjourned meeting, & at other meetings of the corp'n.:—*Held*: (1) the want of a summons to A. was no objection to the removal, he not being within reach; (2) no previous notice to the members of the corp'n. of the purposes of the meeting was necessary, inasmuch as it was held by adjournment from one of the grand common days, when every member of the corp'n. was supposed to be present; (3) A. was properly removed from his office, inasmuch as under the circumstances he must have been presumed to have left the country without any intention to return, & therefore on the death of his deputy there was no person capable of executing the office.—*R. v. HARRIS* (1831), 1 B. & Ad. 936; 9 L. J. O. S. K. B. 165; 109 E. R. 1034.

512. — Office determinable at will—Not entitled.—A return to a mandamus to the governors of a grammar school to restore the prosecutor W. to the office of master of the school stated that by letters patent of Elizabeth they were constituted a body corporate, & empowered to appoint from time to time a master to the school, & to remove him according to their sound discretion, & appoint another more fit in his stead. It further stated that they had received complaints of the misconduct of W. as master, whereupon the governors, having given him notice thereof, & having called upon him to answer them, & W. having had reasonable time & opportunity in that behalf, but having failed so to do, & the governors having ascertained & being satisfied of the truth of the complaints, in the exercise of their best discretion, & deeming W. to be an unfit & improper person to fill the office, in pursuance of the letters patent, removed him. The plea traversed the acts of misconduct, & averred, that W. prior to his removal had not reasonable time or opportunity to answer the complaints. The jury found the issues thereon for the prosecutor. Upon motion for judgment *non obstante veredicto*:—*Held*: the office created by the letters patent was not a freehold but an office at pleasure only, & the master was therefore removable without any summons or hearing.—*R. v. DARLINGTON SCHOOL (GOVERNORS)* (1844), 6 Q. B. 682; 14 L. J. Q. B. 67; 4 L. T. O. S. 175; 9 Jur. 21; 115 E. R. 257, Ex. Ch.

Annotations:—*Dbtd.* *Dean v. Bennett* (1870), 6 Ch. App. 489. *Reid*. *R. v. St. Stephen's, Coleman Street* (1844), 14 L. J. Q. B. 34; *R. v. Smith* (1844), 5 Q. B. 614; *Re Fremington School, Ex p. Ward* (1846), 10 J. P. 438; *Doe d. Childe v. Willis* (1850), 5 Exch. 894; *R. v. Owen* (1850), 15 Q. B. 476; *R. v. Poor Law Comrs., Ex p. Teather* (1850), 14 L. T. O. S. 355; *R. v. Manchester, etc. Ry.* (1854), 4 E. & B. 88; *Wildes v. Russell* (1866), L. R. 1 C. P. 722; *Osgood v. Nelson* (1869), 10 B. & S. 119; *Hayman v. Rugby School* (1874), L. R. 18 Eq. 28; *Re Allyn's College, Dulwich* (1875), 1 App. Cas. 68. *Mentd.* *Abergavenny v. Llandaff* (1888), 20 Q. B. D. 460.

513. — Officer duly elected & admitted—Entitled.—*R. v. SADDLERS' CO.*, No. 597, *post*.

— **Effect of irregular removal—On right to restoration.**—*See* No. 561, *post*.

514. Notice of meeting to members removing

507 i. — Statutory power to remove.—A statutory scheme, forming the constitution of an academy endowed with public funds, provided that no professor should be dismissed except upon a resolution of a special meeting of the governors passed after due notice. Pltf. had been appointed a professor of the academy under a contract made subject to the pro-

visions of the scheme, & terminable by three months' notice. Pltf. was given a three months' notice to terminate his contract, which notice was passed at an ordinary meeting of the governors:—*Held*: the provision had reference only to a dismissal in defeasance of the contract, & not to a notice in accordance with its terms, & the omission to summon a special

meeting did not invalidate the notice.—*WOODHOUSE v. ROYAL IRISH ACADEMY OF MUSIC*, [1908] 2 I. R. 357.—*IR.*

m. Power of removal must be strictly pursued.—*McEDWARDS v. OGILVIE MILLING CO.* (1887), 4 Man. L. R. 1.—*CAN.*

n. Evidence heard by committee—Removal ordered on report of committee

Sect. 4.—Termination of appointment: Sub-sect. 1, A. & B.; sub-sects. 2 & 3. Sect. 5: Sub-sects. 1 & 2, A.]

officer—Adjourned meeting.]—R. v. HARRIS, No. 511, ante.

—Sufficiency of notice.]—See No. 506, ante.

515. Mode of removal—Office determinable at will—Seal necessary.]—When a corporate officer is appointed *durante bene placito*, the corpn. must determine their will under seal.

The name of a corpn. is the mayor, bailiffs & burgesses, & the power of electing & removing the recorder is in the mayor & burgesses only: whether a mandamus to restore be well cted to the latter only.

Power of restoring a corporate officer is implied in the power of election (WILD, J.).—HOLT v. MEDLICOTT (1676), 1 Freem. K. B. 428; 89 E. R. 319.

— — —.]—HADDOCK'S CASE, 121, ante.

Appointment of new officer.]—PEPIS'S CASE, No. 168, ante.

518. — — —.]—If a recorder be liable to removal at the pleasure of the corpn. the choosing another person recorder is a declaration of the pleasure of the corpn.—R. v. CANTERBURY CORPN. (1727), 11 Mod. Rep. 403; 1 Stra. 674; 88 E. R. 1115.

Annotation:—Consd. Roberts v. London Corpn. (1882), 46 L. T. 623.

519. How enforced—Removal of fellows of college—Mandamus addressed to master & fellows.]—R. v. ST. JOHN'S COLLEGE (1693), Skin. 546; 4 Mod. Rep. 233; Holt, K. B. 437; Comb. 238; 90 E. R. 245.

Annotations:—Refd. R. v. Bland (1740), 7 Mod. Rep. 355; Green v. Rutherford (1750), 1 Ves. Sen. 462; A.-G. v. Smythies (1836), 2 My. & Cr. 135.

520. — — — Forfeiture for non-attendance — Whether quo warranto lies.]—BRUCE'S (LORD) CASE (1728), 2 Stra. 819; 93 E. R. 870.

Annotations:—Refd. R. v. Ponsonby (1753), 1 Keny. 1; R. v. Richardson (1758), 1 Burr. 517; R. v. Lyme Regis (1779), 1 Doug. K. B. 149.

See, also, No. 477, ante.

Member of select body—Power of corporation to remove—For sufficient cause.]—See No. 374, ante.

521. Presumption of lawful removal—Allegation of removal by quorum.]—R. v. IPSWICH CORPN., No. 809, post.

522. After mandamus to restore—On informal removal—Removal not barred.]—R. v. TAYLOR, No. 545, post.

B. Grounds for Removal.

523. General rule.]—Upon the removal of nine portmen for non-attendance at the cts. of a corpn., & an election of a new portman by the only remaining one:—Held: an incidental power of amoving for offences against the institutions of a corpn. was vested in the body; but an absence from the cts., without having received any special requisition to attend them, was not a sufficient cause for the amotion of officers whose presence was not always indispensable.

There are three sorts of offences for which an officer or corporator may be discharged: (a) such

—Without notice to officer—Void.]—A vice-president of an assocn., incorporated by 37 Vict. c. 96, was charged with improper conduct. A committee was appointed to investigate the charges, & a majority of the committee made a report finding the charges proved. This report was adopted by a meeting of the assocn., & a resolution removing the officer was passed without

notice to him of the meeting:—Held: the removal by the assocn., without having themselves tried the matter, & without notice, was informal & void.—CUTHBERT v. COMMERCIAL TRAVELLERS' ASSOCN. OF CANADA (1876), 39 U. C. R. 578.—CAN.

PART IV. SECT. 4, SUB-SECT. 1.—B. o. Crimes committed previous to

as have no immediate relation to his office, but are in themselves of so infamous a nature as to render the offender unfit to execute any public franchise; (b) such as are only against his oath & the duty of his office as a corporator, & amount to breaches of the tacit condition annexed to his franchise or office; (c) such as are of a mixed nature, as being an offence not only against the duty of his office, but also a matter indictable at common law. It is now established that though a corpn. has express power of amotion yet for the first sort of offences there must be previous indictment & conviction, but where the offence is merely against his duty as a corporator he can only be tried for it by the corpn. Unless the power is incident, franchises & offices might be forfeited for offences, & yet there would be no means to carry the law into execution. Suppose

cause, such bye-law would be good (LORD MANSFIELD, C.J.).—R. v. RICHARDSON (1758), 1 Burr. 517; 2 Keny. 85; 97 E. R. 426.

Annotation:—Refd. R. v. Lyme Regis (1779), 1 Doug. K. B. 149.

524. Non-residence in borough—Good cause.]—VAUGHAN v. LEWIS, No. 535, post.

525. — — —.]—The officer removed had been absent from the corpn. 22 years, & resided at the distance of 200 miles from the borough; which being considered as a total desertion of the duty of his office:—Held: it was a good cause for removing him.—R. v. NEWCASTLE CORPN. (1747), cited Say. 39; 96 E. R. 795.

Annotation:—Consd. R. v. Doncaster Corpn. (1752), Say. 37.

526. Non-attendance at meetings—Attendance not formally required or essential—Insufficient cause.]—R. v. RICHARDSON, No. 523, ante.

See No. 556, post.

527. Insufficient answer of officer—Improperly charged with offence—Insufficient cause.]—R. v. IPSWICH CORPN., No. 809, post.

528. Vacation of office—Office exercisable by officer or deputy—Leaving country without intention of returning—Deputy dead.]—R. v. HARRIS, No. 511, ante.

529. Holder of two offices—Misconduct in one office—Not ground for removal from other office.]—R. v. DONCASTER CORPN., No. 373, ante.

SUB-SECT. 2.—BY ACCEPTANCE OF SECOND OFFICE INCOMPATIBLE WITH FIRST.

530. Whether operating as surrender.]—Information *quo warranto* against a steward of a corpn. for acting as a capital burgess refused.—R. v. TRELAWNEY (1765), 3 Burr. 1615; 97 E. R. 1010.

Annotations:—Consd. R. v. Hughes (1826), 5 B. & C. 886. Refd. R. v. Patteson (1832), 4 B. & Ad. 9. Mentd. R. v. Wardroper (1766), 4 Burr. 1963.

531. — — —.]—Where the town-clerk's accounts are allowed by the aldermen, or where a town-clerk acts ministerially under the aldermen, who are judicial officers, the offices are incompatible; & the appointment to the former office is equivalent to an amotion by the corpn. from the latter

election—No grounds for removal.]—A corpn. has no power to remove a duly elected member of its own body for crimes committed previous to his election.—Re SPENCE (1864), 1 Old. 333.—CAN.

B. Misconduct at meetings.]—COHEN v. HAZEN AVENUE SYNAGOGUE CORPN. (1920), 47 N. B. R. 400.—CAN.

office. If the person so appointed continue to exercise the office of alderman:—*Held*: an information in the nature of a *quo warranto* would be granted against him.—*R. v. PATEMAN* (1788), 2 Term Rep. 777; 100 E. R. 419.

Annotations:—*Distd. R. v. Jones* (1831), 1 B. & Ad. 677. *Expld. R. v. Cheshire JJ.* (1840), 4 Jur. 484. *Refd. R. v. Patteson* (1832), 4 B. & Ad. 9.

532. —.] — The ground upon which it has been held, that the acceptance of a second office, incompatible with one already held, vacates the first, is an implied surrender on the part of the appointee, & an acceptance, by the person or body appointing, of such surrender. An officer, therefore, cannot avoid his office, by accepting another incompatible with it, unless his office be such as he could determine by his own acts simply; or, if the concurrence of another is required, unless that authority which had the power to accept the surrender or remove from the old office, concur in the new appointment.—*R. v. PATTESON* (1832), 4 B. & Ad. 9; 1 Nev. & M. K. B. 612; 1 Nev. & M. M. C. 488; 2 L. J. K. B. 33; 110 E. R. 358.

Annotations:—*Consd. Arkwright v. Cantrell* (1837), 7 Ad. & El. 565; *R. v. Cheshire JJ.* (1840), 4 J. P. 122; *Worth v. Newton* (1854), 24 L. T. O. S. 78, 157. *Refd. Davis v. Pembrokeshire JJ.* (1881), 7 Q. B. D. 513; *R. v. Douglas* (1897), 46 W. R. 377.

533. — Though second office inferior to first.]—Where two offices are incompatible, the acceptance of the second, though an inferior office, will vacate the former.—*MILWARD v. THATCHER* (1787), 2 Term Rep. 81; 100 E. R. 45.

Annotations:—*Distd. R. v. Jones* (1831), 1 B. & Ad. 677. *Consd. R. v. Patteson* (1832), 4 B. & Ad. 9. *Mentd. R. v. Bristol Corp.* (1822), 1 Dow. & Ry. K. B. 389; *R. v. Poole* (1837), 1 Jur. 942.

534. — Though election to second office void.]—A corporator accepting a new office incompatible with the old one, thereby absolutely vacates & surrenders the latter.

If the corporator is ousted of his new appointment by *quo warranto* he is not remitted to his original character, nor can a vote given at a corporate meeting whilst he filled the higher office *de facto*, be referred to his original office of an inferior degree.—*R. v. HUGHES* (1826), 5 B. & C. 886; 8 Dow. & Ry. K. B. 708; 4 Dow. & Ry. M. C. 169; 5 L. J. O. S. M. C. 20; 108 E. R. 329; *subsequent proceedings* (1828), 7 B. & C. 708.

Annotations:—*Folld. R. v. Hubball* (1826), 6 B. & C. 139. *Consd. R. v. Patteson* (1832), 4 B. & Ad. 9.

SUB-SECT. 3.—OTHER CASES.

535. Mere non-residence insufficient — Without removal.]—Not dwelling within a borough, is a good cause to remove a man, but it does not determine his office.—*VAUGHAN v. LEWIS* (1692), Carth. 227; 90 E. R. 736.

Annotations:—*Consd. R. v. Heaven* (1788), 2 Term Rep. 772. *Refd. R. v. Ponsonby* (1753), 1 Keny. 1. *Mentd. R. v. Nance* (1740), 7 Mod. Rep. 337.

536. Resignation — By parol.] — (1) An officer constituted by election may resign by parol. (2) To a mandamus to restore an officer a return generally "that he had resigned" shall be intended to mean that he had made a complete resignation. (3) A mandamus directed to a corp. by a wrong name is bad, (4) but if the members make a return thereto, & it is false, an action will lie against them.—*R. v. RIPPON CORPN.* (1700), 1 Ld. Raym. 563; 2 Salk. 433; 91 E. R. 1276.

Annotations:—*As to* (1) *Refd. R. v. Payne* (1818), 2 Chit. 367; *R. v. Hughes* (1826), 5 B. & C. 886; *R. v. Patteson* (1832), 4 B. & Ad. 9. *As to* (4) *Refd. Ferguson v. Kinnoull*

(1842), 4 State Tr. N. S. 786; *Mill v. Hawker* (1874), L. R. 9, Exch. 309.

537. — Not to select body.] — A resignation of a corporate interest cannot be made to a select body.—*R. v. POWELL* (1755), cited 2 Burr. 742; Say. 239; 97 E. R. 543.

538. Removal of sergeant of mace—Mandamus to compel delivery up of mace refused.]—A sergeant of mace being discharged from his office, refused to deliver up the Mace to his successor:—*Held*: no mandamus would lie to compel him to do so.—*R. v. TODD* (1838), 2 Jur. 565.

Effect of new charter.]—See No. 318, *ante*.

SECT. 5.—RESTORATION TO OFFICE.

SUB-SECT. 1.—POWER TO RESTORE.

539. Power of corporation to restore—Incident to power of election.]—*HOLT v. MEDLICOTT*, No. 515, *ante*.

540. How enforced — Not by attachment.] — M. had a mandamus to restore him to the place of one of the approved men of G. & upon the return appeared just cause of restitution, & upon that the parties submitted by rule of this ct. to O. & W., who made an award that M. should be restored, & the approved men refused to restore him. Upon this a motion was made for an attachment against the approved men.

An attachment doth not lie against a corp.: but if it be granted *nisi*, & the corp. will not restore him, the ct. will grant a restitution (*per CUR.*).—*ANON.* (1666), T. Raym. 152; 83 E. R. 81.

See, generally, No. 164, *ante*; Nos. 1490–1493, 1495–1497, *post*.

541. When court will interfere.] — *OSGOOD v. NELSON*, No. 507, *ante*.

SUB-SECT. 2.—BY MANDAMUS.

A. In General.

See, generally, CROWN PRACTICE.

542. Who may apply — Not several jointly.] — Several councillors cannot join in a mandamus to restore.—*ANDOVER CASE* (1700), 2 Salk. 433 91 E. R. 377; *subsequent proceedings, sub nom. R. v. ANDOVER (VILLAGE)* (1702), 1 Ld. Raym. 710.

543. — —.] — Several councillors ought not to join in a writ to be restored.—*ANON.* (1707), 2 Salk. 436; 91 E. R. 379.

544. Form of mandamus — Description of corporation.]—*HOLT v. MEDLICOTT*, No. 515, *ante*.

545. — —.] — On a mandamus to restore A. to his place of alderman of the city of G., the return made by the mayor & bailiffs, was that T. was removed by thirty of the common councilmen in the council-chamber assembled, for that he was a common drunkard.

This return was adjudged ill, because it did not appear, that the thirty common council-men were then & there assembled as a common council, for they might be there to feast, or to other purposes. Though the removal was by the mayor & thirty of the common council-men, yet the writ ought not to be directed to them, but to the corp. by its proper name, as it was in this case to the mayor & bailiffs (*per CUR.*).

But the return being ill for the reason before mentioned, a writ of restitution was granted, & on the question whether the corp. might proceed against A. *de novo* for his drunkenness:—*Held*:

Sect. 5.—Restoration to office: Sub-sect. 2, A., B. & C.]

they might.—*R. v. TAYLOR* (1694), 3 Salk. 231; 91 E. R. 795.

546. Return to mandamus — How officer elected & removed sufficient.]—On mandamus to restore H. to the place of Steward of the corpn. of T., it was excepted against the return that the corpn. of T. were a corpn. according to a charter granted long ago, & it was not shown what manner of corpn. they were, or what authority they had.

They are admitted to be a corpn. by the bringing of the writ, which the ct. agreed; & it is enough for them to set forth how H. was chosen & removed; & upon a return, an action upon the case lies against them by the name in the writ (*TWISDEN, J.*).—*R. v. HALSE* (1661), 1 Keb. 20; 83 E. R. 786.

547. — Officer removable at will — Cause of removal need not be shown.]—A return to a mandamus for restoration to the office of steward of a corpn. that the corpn. by reason of their charter appoint & remove a steward at their will & pleasure:—*Held*: good.

The case differs from an appointment for a certain number of years, in which case the steward could not be ousted within the period.

Will & pleasure should be construed as a reasonable will & pleasure qualified by common law.—*BLAGRAVE'S CASE* (1658), 2 Sid. 72; 82 E. R. 1264.

Annotations:—*Consd.* *Hurst's Case* (1662), 1 Keb. 387. *Refd.* *Pepis's Case* (1679), 1 Vent. 342; *R. v. Cambridge Corpn.* (1679), 2 Show. 69; *R. v. Coventry Corpn.* (1698), 1 Ld. Raym. 391. *Mentd.* *Robarts v. London Corpn.* (1882), 46 L. T. 623.

548. — — — — —.]—Upon a mandamus to restore a steward to office, a corpn. returned that by their letters patent they were empowered to elect a steward to hold office during pleasure:—*Held*: a good return & it was not necessary to set forth any cause of removal.—*DIGHTON v. STRATFORD-ON-AVON CORPN.* (1670), 1 Sid. 461; 2 Keb. 641; 82 E. R. 1217; *sub nom.* *DIGHTON'S CASE*, 1 Vent. 77, 82; *sub nom.* *R. v. DEIGHTON*, 2 Keb. 656; *sub nom.* *R. v. STRATFORD-UPON-AVON CORPN.*, 1 Lev. 291; *sub nom.* *ANON.*, T. Raym. 188.

Annotation:—*Refd.* *R. v. Darlington School Governors* (1844), 6 Q. B. 682.

549. — — — — —.]—To a mandamus to restore, a return that the party was removable *ad libitum*, without stating any other cause, is good, if warranted by custom or charter.—*R. v. CAMBRIDGE CORPN.* (1679), 2 Show. 69; 89 E. R. 799.

Annotations:—*Consd.* *Robarts v. London Corpn.* (1882), 46 L. T. 623. *Refd.* *R. v. Coventry Corpn.* (1698), 1 Ld. Raym. 391.

550. — — — — —.]—On a mandamus to restore an officer who is in at pleasure only, it is a good return to say it was their pleasure to remove him, & in such case a summons is not necessary.—*R. v. THAME (CHURCHWARDENS)* (1718), 1 Stra. 115; 93 E. R. 419.

Annotation:—*Refd.* *R. v. Dymock*, [1915] 1 K. B. 147.

PART IV. SECT. 5, SUB-SECT. 2.—A.

a. Return to mandamus — Officer removable at will—Sufficient to state meeting was held & officer was then removed.]—When a corpn. has the power of removing an officer at pleasure, it is sufficient in their return to a writ of mandamus to restore him to the office, to state, that a meeting of the corpn. was duly held on etc., & that the officer was then removed by the corpn., without stating that the person removed or the members of the corpn. were summoned to attend the meeting.

—*R. v. GUILD OF MERCHANTS* (1829), 2 Hud. & B. 481; 2 Ir. L. Rec., 1st Ser. 485.—*IR.*

PART IV. SECT. 5, SUB-SECT. 2.—B.

557 i. Wrongful removal—Officer not heard—Mandamus lies.]—An application was made for a mandamus to compel the Governors of King's College Windsor, to restore a professor of the college, to offices from which he had been dismissed without having been given notice of the proceedings which terminated in the sentence of

551. — — — — — Insufficient cause of removal alleged—Peremptory mandamus lies.]—Where an officer at will is removed, & the corpn. does not rely upon their power, but return a misdemeanor, & that is insufficient, peremptory mandamus shall issue.—*R. v. OXFORD CORPN.* (1696), 2 Salk. 428; 91 E. R. 372.

552. — — — — — That officer resigned — Complete resignation presumed.]—*R. v. RIPPON CORPN.*, No. 536, *ante*.

553. — — — — — Cause of removal must be shown.]—The particular cause of being removed from an office in a corpn. must be shown in the return to a mandamus for restoring to the office.—*R. v. DONCASTER CORPN.* (1752), Say. 37; 96 E. R. 795. *Annotation*:—*Mentd.* *R. v. London Corpn.* (1785), 4 Doug. K. B. 360.

554. — — — — — That corporation duly assembled to remove.]—A return to a mandamus to restore to the office of common council-men stated generally that the body was duly assembled to remove, etc.:—*Held*: the return was sufficient.—*R. v. DONCASTER CORPN.* (1759), 2 Keny. 391; 2 Burr. 738; 96 E. R. 1220.

Annotation:—*Mentd.* *R. v. Langhorne* (1836), 6 Nev. & M. K. B. 203.

See, also, No. 563, *post*.

Restoration of members.]—*See* Part III., Sect. 6, *ante*.

B. Grounds for granting.

See, generally, CROWN PRACTICE.

555. Wrongful removal — Appointment to second office incompatible with first—Mandamus lies.]—*BOSTON'S (TOWN CLERK) CASE* (prior to 1624), cited in Noy, 78; Poph. 176; 74 E. R. 1045. *Annotation*:—*Apprvd.* *Awdley's Case* (1625), Noy, 78.

556. — — — — — Sword bearer — For absence or non-attendance—Mandamus lies.]—A mandamus lies to restore a person to the office of sword bearer, removed for absence & non-attendance.

A person outlawed cannot be restored to an office by mandamus, without showing the outlawry reversed.—*R. v. BRISTOL CORPN.* (1690), 1 Show. 288; 89 E. R. 579; *sub nom.* *R. v. ROWE*, Carth. 199; *sub nom.* *ROE'S CASE*, Comb. 145.

557. — — — — — Officer not heard—Peremptory mandamus lies.]—*R. v. SADDLERS' CO.*, No. 597, *post*. *See, also*, No. 507, *ante*.

558. Wrongful exclusion of grantee of reversion — On death of original officer—Mandamus lies.]—A. had the grant of townclerkship in reversion, & B. in possession dies, & J. was admitted to that office, & A. had a restitution: & it was said that the K. B. had jurisdiction of all such causes.—*AWDLEY'S CASE* (1625), Noy, 78; 74 E. R. 1045; *sub nom.* *AWDLEY v. JOY*, Poph. 176.

Annotation:—*Refd.* *R. v. Patteson* (1832), 2 L. J. K. B. 33.

559. Removal informal—Though office terminable at will—Mandamus lies.]—On a motion for a mandamus to be directed to the Conservators of B. L. to restore a receiver, it was stated that they were incorporated by statute 15 Car. 2, & were required to appoint a collector & receiver. It was further said that they were only officers at will;

removal:—*Held*: (1) the mandamus should issue; (2) the professor was entitled to notice.—*Re WILSON* (1885), 6 R. & G. 180.—*CAN.*

r. — — — — — Mandamus lies.]—*O'GRADY v. MERCERS' HOSPITAL (GOVERNORS)* (1887), 19 L. R. Ir. 350.—*IR.*

s. Breach of contract to employ.]—The proper remedy against a municipal corpn. for breach of contract to employ during good behaviour is by mandamus & not by action.—*MILLAR v. WANGANNI BOROUGH*, 1 J. R. N. S. 84.—*N.Z.*

but the foundation upon which the motion was made, was that the receiver was not turned out by the body:—*Held*: the motion would be granted.—ANON. (1720), 1 Barn. K. B. 195; 94 E. R. 131.

See, also, Nos. 561, 562, *post*.

560. Sufficient cause for removal—Outlawry—Reversal must be proved.]—*R. v. BRISTOL CORPN.*, No. 556, *ante*.

561. — Though removal irregular — Officer not heard—Mandamus refused.]—The ct. will not grant a mandamus to restore a person, where it is confessed he was rightly removed, though he had no notice at the time, to appear & defend himself.—*R. v. AXBRIDGE CORPN.* (1777), 2 Cowp. 523; 98 E. R. 1220.

Annotations:—*Fold*. *R. v. London Corpn.* (1787), 2 Term Rep. 177; *R. v. Griffiths* (1822), 5 B. & Ald. 731. *Refd.* *R. v. Bristol Corpn.* (1822), 1 Dow. & Ry. K. B. 389.

562. — — — Mandamus refused.]—Mandamus refused to restore to the office of clerk of the Bridge House Estates in London, though the party was irregularly suspended, it appearing on his own showing that there was good ground for the suspension, if the proceedings had been regular.—*R. v. LONDON CORPN.* (1787), 2 Term Rep. 177; 100 E. R. 96.

Annotations:—*Consd.* *R. v. Griffiths* (1822), 5 B. & Ald. 731; *R. v. Saddlers' Co.* (1863), 10 H. L. Cas. 404.

See, also, No. 559, *ante*.

563. — Return to mandamus defective—Peremptory mandamus refused.]—Where a return to a mandamus to restore a party to a corporate office is defective in form, but, on the whole, it appears that there is good ground for a motion, the ct. will not award a peremptory mandamus; the only effect of which would be to compel the corpn. to remove in a more formal manner.—*R. v. GRIFFITHS* (1822), 5 B. & Ald. 731; 106 E. R. 1358.

Annotations:—*Consd.* *R. v. Saddlers' Co.* (1863), 10 H. L. Cas. 404. *Refd.* *R. v. Smith* (1844), 5 Q. B. 614.

564. Validity of appointment doubtful — Refused.]—*R. v. CORYE* (1648), Sty. 86; 82 E. R. 551.

565. Appointment void ab initio—Mandamus refused.]—*R. v. TANCRED'S CHARITY*, No. 415, *ante*.

566. Not suspension from perception of profits—Applicant still an officer.]—*R. v. WHITSTABLE FREE FISHERS, ETC.*, No. 372, *ante*.

567. Restoration in obedience to mandamus—Subsequent suspension—Peremptory mandamus refused.]—After judgment on a writ of mandamus to restore the prosecutor to the office of Assistant of The Saddlers' Co., he served several members of the Co. with a paper writing, purporting to be a peremptory mandamus; & at a meeting of the Ct. of Assistants, at which he was present, the paper writing was read as a copy of the peremptory mandamus, & defts. restored him & paid him fees for attending the Ct., & the costs & damages recovered by the judgment. The paper writing was a fictitious document. The prosecutor was afterwards suspended for offensive conduct at

meetings of the Ct. He then issued a peremptory writ:—*Held*: this writ was unnecessary, & it was quashed.—*R. v. SADDLERS' Co.* (1863), 4 B. & S. 570; 33 L. J. Q. B. 68; 122 E. R. 573.

C. In respect of what Offices.

See, generally, CROWN PRACTICE.

568. Treasurer of New River Corporation — Granted.]—Mandamus granted in the case of one who had been chosen treasurer to the N. River Corpn. *Semble*: all the judges doubted whether restitution would ever be granted.—*R. & MIDDLETON v. NEW-RIVER WATER CORPN.* (1663), 1 Keb. 629; 83 E. R. 1152.

569. Serjeant at mace—Appointment for life—Granted.]—Saunders prayed a mandamus to the Mayor of B. to restore a serjeant at mace, which is there an office for life, & no voluntary employment:—*Held*: mandamus would be granted.—*R. v. BARNARD* (1668), 2 Keb. 402; 84 E. R. 252.

570. — — — Granted.]—A mandamus directed to the mayor of the city of C. to restore D. to the office of one of the four serjeants at mace of the city was granted.—*R. v. CHESTER CORPN., DYASON'S CASE* (1694), Comb. 287; 90 E. R. 482.

571. Assistant of Bermuda Company—Granted.]—O. prayed a mandamus to restore him to be a member & assistant to the Co. of Traders to the Bermudas:—*Held*: it would be granted.—*TROTT'S CASE* (1670), 2 Keb. 693; 84 E. R. 436.

Assistant of Saddlers Company.]—*See* No. 567, *ante*.

572. Fellow of college—Granted.]—Where T. showed cause against a mandamus to restore to a fellowship in New College, Oxford, because he had appealed to the Bishop of W., the local visitor, & thereof produced the bishop's certificate:—*Held*: a mandamus would be granted.—*APPLEFORD'S CASE* (1671), 2 Keb. 799; 1 Mod. Rep. 82; 84 E. R. 505; *sub nom.* *R. v. NEW COLLEGE, OXFORD*, 2 Lev. 13.

Annotations:—*Consd.* *R. v. Chester* (1850), 15 Q. B. 513. *Refd.* *R. v. All Souls College, Oxford* (1681), T. Jo. 174; *R. v. Alsop* (1681), 2 Show. 170; *Parkinson's Case* (1688), Comb. 143; *Phillips v. Bury* (1692), 4 Mod. Rep. 106; *Snapo v. Lincoln* (1728), 1 Barn. K. B. 122; *R. v. Chester* (1748), 1 Wm. Bl. 22.

573. Approver of guns — Refused.]—A mandamus does not lie to the Gun-Makers' Co. to restore a member to the office of approver of guns.—*VAUGHAN v. GUNMAKERS' Co.* (1703), 6 Mod. Rep. 82; 87 E. R. 839.

574. Clerk of trading fraternity — Whether granted.]—*Semble*: a mandamus does not lie to restore a man to the clerkship of a trading fraternity.—*WHITE'S CASE* (1703), Ld. Raym. 1004; 6 Mod. Rep. 18; 3 Salk. 232; 92 E. R. 168.

Chorister.]—*See* CHARITIES, Vol. VIII., p. 368, No. 1741.

Sword bearer.]—*See* No. 556, *ante*.

Receiver to Bedford Level Conservators.]—*See* No. 559, *ante*.

Clerk of Bridge House Estates, London.]—*See* No. 562, *ante*.

PART IV. SECT. 5, SUB-SECT. 2.—C.

t. *Professor of College—Granted.]—**Re WILSON* (1885), 6 R. & G. 180.—CAN.

Part V.—Election to Corporate Office.

See NOTE on p. 270, *ante*.

SECT. 1.—IN GENERAL.

Election of mayor, aldermen, councillors.]—See LOCAL GOVERNMENT.

Election of urban, district, parish councillors.]—See LOCAL GOVERNMENT.

Election of guardians of the poor.]—See POOR LAW.

575. Member must serve.]—Payment of a fine, imposed by the bye-laws of a corp., for refusing to accept a corporate office, does not exempt the party elected from serving the office, & he may be compelled so to do by mandamus.

It is an offence at Common Law for a member of a corp. to refuse to take upon him a corporate office to which he has been appointed (*per CUR.*).—*R. v. BOWER* (1823), 1 B. & C. 585; 2 Dow. & Ry. K. B. 842; 107 E. R. 215.

Incompatible offices.]—See Part IV., Sect. 4, sub-sect. 2.

SECT. 2.—POWER AND DUTY TO ELECT.

576. Election must not be colourable—Mandamus for fresh election.]—Mandamus will be granted after a colourable & void election.—*R. v. CAMBRIDGE CORPN.* (1767), 4 Burr. 2008; 98 E. R. 46.

Annotations:—Distd. R. v. Godwin (1780), 1 Doug. K. B. 397. *Consd. R. v. Bridgewater Corp.* (1784), 3 Doug. K. B. 379. *Refd. R. v. Hertford College* (1878), 3 Q. B. D. 693.

577. Power of election—Limited to vacancies arising in way specified in charter.]—*PAGE v. R.*, No. 789, *post*.

578. Duty to elect—To vacancies in definite body—Enforceable by mandamus.]—Where by charter or prescription the corporate body ought to consist of a definite number & they neglect to fill up the vacancies as they happen, the ct. will grant a mandamus.—*NOTTINGHAM TOWN CASE* (1749), Bull. N. P. 201; *subsequent proceedings, sub nom. R. v. NOTTINGHAM* (1750), 1 Wm. Bl. 59. *Annotation:—Refd. R. v. Fowey Corp.* (1824), 2 B. & C. 584.

579. — To indefinite body—Not enforceable by mandamus.]—Mandamus will not lie to compel a corp. to elect members of an indefinite body; therefore, where a charter authorised the mayor & recorder, or their respective deputies, & the rest of the aldermen of a borough for the time being, or the greater part of them, from time to time, & at all times thereafter, as often & when to them should seem fit & necessary, to nominate, choose, & prefer so many, & such persons to be free burgesses of the borough, as they pleased, & to those free burgesses, so to be chosen, to administer an oath for their fidelity to the borough, the ct. refused to grant a mandamus to compel the mayor & aldermen to proceed to the election of free burgesses, or to hold a meeting for the purpose of considering the propriety of proceeding to such an election, in order to fill up vacancies in the aldermanic body, & the then existing body of free burgesses respectively.—*R. v. FOWEY CORPN.* (1824), 2 B. & C. 584; 4 Dow. & Ry. K. B. 132; 2 L. J. O. S. K. B. 86; 107 E. R. 501.

PART V. SECT. 2.

a. Election must not be colourable.]
—Where an Act of Parliament directs

a corp. to elect three persons to be members of a select body, who are to elect to an office, & a compact is entered into by certain corporators as to whom

they should select as electors, the election of the persons so chosen is void.—*GRATTAN v. LENDRICK* (1829), 2 Hud. & B. 409.—*IR.*

Bribery.]—See CRIMINAL LAW & PROCEDURE; ELECTIONS.

Right of corporation to enforce membership—On persons exercising particular trade.]—See No. 104, *ante*.

SECT. 3.—WHO MAY ELECT.

580. Mere right to admission to corporation—Gives no right to vote in election.]—The licentiatees can have no pretence, under the circumstances in which they now stand, to object to the election of the censors, for want of the admission of their votes. For, whatever right they may claim, or whatever right they may really have, to their admission into the fellowship of the college or corp.; yet, as they never have been admitted into it, no mere right of admission (be it ever so clear & indisputable) can give them a right to vote in corporate elections, before they shall have been admitted into the corp. (*WILLIS, J.*).—*R. v. ASKEW* (1768), 4 Burr. 2186; 98 E. R. 139.

Annotations:—Refd. R. v. College of Physicians (1797), 7 Term Rep. 282. *Mentd. Rutter v. Chapman* (1841), 8 M. & W. 1.

581. Disqualification of class by custom—Disqualification of another class by charter—Both operative.]—*R. v. ABELL*, No. 251, *ante*.

582. Prescriptive corporation subsequently incorporated by charter—Right vested in body at large—Cannot be sustained in select body—Though continually exercised since incorporation.]—Where a power of creating freemen is shown to have been once vested in the body at large of a prescriptive corp., the exercise of it cannot be sustained in a select part of the same corp. continued by charters under other names of incorporation; there being no express grant of such a power to the select body by any such charters, nor even any bye-law to that effect, even supposing such a power could be transferred by a bye-law from the whole to a part of the same corp.; although the same power which was immemorially exercised by the whole body down to the period of the granting & acceptance of the charters of James I. & Charles II. had been since those charters, etc., continually exercised by the select body in question, & although such charters contained a confirmation of all former privileges, etc., under whatever names of incorporation theretofore enjoyed.—*R. v. HOLLAND* (1801), 2 East, 70; 102 E. R. 295.

Annotation:—Refd. R. v. Westwood (1830), 7 Bing. 1.

Validity of bye-laws as to qualification of electors.]—See Part VI., Sect. 3, sub-sect. 3, A. (a), *post*.

Right to vote at meetings.]—See Part VII., Sect. 4, sub-sect. 1, *post*.

583. How tested—Not by mandamus directed against person elected.]—On an information in the nature of a *quo warranto* for usurping the office of Mayor of M. the plea was that deft. was duly elected according to the governing charter of the borough. Replication that there were two candidates; that 50 good votes, tendered for the losing candidate, were improperly rejected; & that 38 persons, who had been unduly elected, & admitted as burgesses, were received as voters for deft., & that a majority of the legal votes tendered

were in favour of the other candidate. On demurrer:—*Held*: the replication was bad, for it was only an argumentative & not a direct denial of the validity of deft.'s election, & also it attempted to put in issue the title of the electors, corporators *de facto*, which could not be done in an information against the elected.—*R. v. HUGHES* (1825), 4 B. & C. 368; 6 Dow. & Ry. K. B. 443; 3 Dow. & Ry. M. C. 250; 107 E. R. 1096.

Annotations:—*Distd. R. v. Chetwynd* (1828), 1 Man. & Ry. K. B. 534. *Refd. R. v. Tugwell* (1868), 9 B. & S. 367.

584. General Medical Council—Construction of charter.—21 & 22 Vic. c. 90, s. 3, enacted that a Council, to be styled, "The General Council of Medical Education & Registration of the United Kingdom," should be established. By sect. 4 this Council was to "consist of one person chosen from time to time by each of" several "bodies," including the University of London:—*Held*: under the existing charter of that University, the right to elect its member of the General Medical Council is vested in its Senate, consisting of the Chancellor, Vice-Chancellor & Fellows for the time being; not in the whole body incorporated as the University by the charter, namely, the Chancellor, Vice-Chancellor, Fellows & Graduates.—*R. v. STORRAR* (1859), 2 E. & E. 133; 28 L. J. Q. B. 326; 33 L. T. O. S. 256; 5 Jur. N. S. 1304; 7 W. R. 612; 121 E. R. 51.

Members & fellows of colleges.—*See* CHARITIES, Vol. VIII., p. 366, Nos. 1705–1710.

SECT. 4.—THE ELECTION.

SUB-SECT. 1.—CANDIDATES.

585. Usage for nomination of candidates—Good.—The charter provided that the capital burgesses should be chosen out of the capital burgesses. A usage there was, & only for fifty years, that the common burgesses should nominate four of the capital burgesses, & such usage was held good.—*BARBER v. POPER* (1720), cited in 1 Barn. K. B. 415; 94 E. R. 279.

586. Usage enlarging selection under charter—Bad.—*R. v. SALWAY*, No. 260, *ante*.

587. — Not supported by general words in charter of restoration.—*R. v. SALWAY*, No. 260, *ante*.

Bye-law enlarging or restricting selection.—*See* Part VI., Sect. 3, sub-sect. 3, A., *post*.

Qualification of candidates—Officers & members of colleges.—*See* CHARITIES, Vol. VIII., p. 366, Nos. 1711 *et seq*.

SUB-SECT. 2.—VOTING FOR DISQUALIFIED PERSONS.

588. Votes of electors with knowledge of disqualification—Of no effect—Minority candidate elected.—(1) One who has not taken the sacrament according to the rites of the Church of England within a year before his election in fact to a corporate office, is disqualified by 13 Car. 2, stat. 2, c. 1, s. 12, from being elected, & if such disqualification be notified to the electors at the time of election, votes afterwards given to such person are then thrown away, & any candidate having the most legal votes, though in fact inferior in number to the first, is duly elected & entitled to be sworn in.

(2) Until he be sworn in the office is not legally filled up & enjoyed by him within 50 Geo. 3, c. 4, & therefore if the disqualified person who had the greatest number of votes be sworn into the office,

& afterwards qualify himself by taking the sacrament, etc. within the time allowed by 50 Geo. 3, c. 4, he is thereby recapacitated & freed from all disability, & his title to the office thereby protected, such office not having been then already vacated by judgment, or legally filled up & enjoyed by another person.—*R. v. PARRY*, *R. v. PHILLIPS* (1811), 14 East, 549; 104 E. R. 712.

Annotations:—*As to* (1) *Expld. Gosling v. Veley* (1847), 7 Q. B. 406. *Consd. Drinkwater v. Deakin* (1874), L. R. 9 C. P. 626. *Refd. Gosling v. Veley* (1853), 4 H. L. Cas. 679; Galway County Election Petn., Trench v. Nolan (1872), 27 L. T. 69. *As to* (2) *Consd. Drinkwater v. Deakin* (1874), L. R. 9 C. P. 626.

589. — — — — —.—At a meeting duly held for the election of an alderman for the borough of S. H. & S. were candidates. Two votes were given for each, when they were interrogated whether they had qualified by taking the sacrament within a year before the election, as required by 13 Car. 2, stat. 2, cap. 1, s. 12. H. admitted he had not but S. answered that he had. Public notice was then given of H.'s disqualification, but the poll proceeded, & after the notice, 20 votes were given for H. & 16 for S. The mayor swore in H., & two of the aldermen, as they might do by the constitution of the borough, swore in S. H. took the sacrament within the time limited by 47 Geo. 3, Sess. 2, c. 35, s. 6:—*Held*: (1) though notice of the disqualification of H. was not given till after the commencement of the election all the votes for him after that notice were thrown away; (2) S. having the greatest number of legal votes was duly elected; (3) S. having been sworn in the office was legally filled up by him so as to exclude the operation of 47 Geo. 3, Sess. 2, c. 35, in favour of H., that Act not curing the want of qualification in cases of offices legally filled up at the time of its passing.—*HAWKINS v. R.* (1813), 2 Dow. 124; 3 E. R. 810, H. L.; *affg. S. C. sub nom. R. v. HAWKINS* (1808), 10 East, 211.

Annotations:—*As to* (1) *Expld. Gosling v. Veley* (1847), 7 Q. B. 406. *Consd. Gosling v. Veley* (1853), 4 H. L. Cas. 679; *R. v. Tewkesbury Corp.* (1868), L. R. 3 Q. B. 629; Galway County Election Petn., Trench v. Nolan (1872), 27 L. T. 69. *Expld. & Distd. Drinkwater v. Deakin* (1874), L. R. 9 C. P. 626. *Refd. R. v. Bjornsen* (1865), 13 W. R. 664; *Hobbs v. Morey* (1903), 89 L. T. 531. *As to* (2) & (3) *Expld. & Distd. R. v. Twynning* (1819), 2 B. & Ald. 386. *Consd. Gosling v. Veley* (1850), 12 Q. B. 328. *Refd. R. v. Parry, R. v. Phillips* (1811), 14 East, 549.

590. Votes of electors without knowledge of disqualification—Not thrown away—Minority candidate not elected.—Upon the nomination of two aldermen of a borough, in order that one of them might be afterwards elected mayor pursuant to charter:—*Held*: votes which were given before notice of the inelegibility of one of the candidates, on account of his not having received the sacrament within one year were not thrown away so as to authorise the returning officer to return another candidate, who was in a minority.—*R. v. BRIDGE* (1813), 1 M. & S. 76; 105 E. R. 29.

591. Electors voting for disqualified candidates—Without notice of disqualification—May vote again.—*HAWKINS v. R.*, No. 589, *ante*.

May act as relator.—*See* No. 422, *ante*.

SUB-SECT. 3.—TIME OF ELECTION.

592. Clause fixing—Construed as directory.—By an Act of 8 Geo. 4, it was enacted, "that the mayor, sheriffs, citizens, & commonalty of the city of N. at an assembly to be held within three calendar months before May 4 in each succeeding year should elect twenty persons to be guardians of the poor of the city; & that on the Monday in Easter week in every succeeding year, there should

Sect. 4.—The election: Sub-sects. 3, 4 & 5. Sects. 5 & 6. Part VI. Sect. 1.]

be elected for each parish, hamlet, etc., of the city & county, an additional number of persons to be guardians of the poor, amounting in the whole to forty-eight, & that the several persons so elected should enter upon the office of guardians on May 4 next ensuing their election." There was then a proviso, "That in case default should be made in the election of a guardian or guardians, the other guardians might proceed in the execution of the Act as fully & effectually as if the elections of all the guardians had actually taken place":—

Held: the clause fixing the time of election was directory; & the mayor, sheriffs, citizens, & commonalty having neglected to elect twenty persons to be guardians within three calendar months next before May 4, 1830, a mandamus should be granted to compel them so to do.—*R. v. NORWICH CORPN.* (1830), 1 B. & Ad. 310; 8 L. J. O. S. K. B. 359; 109 E. R. 802.

Annotations:—*Consd.* *Rochester Corpn. v. R., Re St. Nicholas* (1858), E. B. & E. 1024. *Reid.* *R. v. Hanley Revising Barrister, R. v. Stoke-on-Trent Town Clerk*, [1912] 3 K. B. 518. *Mentd.* *Bowdon v. Hall* (1843), 4 Q. B. 840; *R. v. St. Mary, Newington Grdns.* (1851), 17 L. T. O. S. 163.

593. — Power to hold over—Corporations held on day fixed.]—Previous to 11 Geo. 1, c. 4, s. 1, if a particular day was appointed by the charter of a corpn. for the election of a mayor or other corporate officer with a power of holding over they could not proceed to such election on any other day in the year except on the death or removal of the mayor for the time being.—*R. v. TREGONY CORPN.* (1723), 8 Mod. Rep. 127; 88 E. R. 98.

Annotations:—*Consd.* *R. v. Pasmore* (1789), 3 Term Rep. 199. *Reid.* *R. v. Sparrow* (1739), Sess. Cas. K. B. 177.

594. Insufficient time between nomination & election—Not ground for quo warranto—Where mode of election disputed.]—*R. v. OSBOURNE*, No. 300, *ante*.

SUB-SECT. 4.—PROCEEDINGS AT ELECTION.

595. Election regulated by usage—Charter inconsistent with usage—Charter alone governs.]—*POWELL v. R.*, No. 242, *ante*.

Right to vote.]—*See Sect. 3, ante.*

Voting for disqualified persons.]—*See Sect. 4, sub-sect. 2, ante.*

Admission of proxies.]—*See Nos. 856, 860, post.*

Presiding officer.]—*See Nos. 812, 814, post.*

Necessity for presence of head or other particular members.]—*See Part VII., Sect. 2, sub-sect. 3, post.*

Adjournment.]—*See Part VII., Sect. 3, sub-sect. 4, post.*

SUB-SECT. 5.—VALIDITY OF ELECTION.

596. Member elected by one part of corporation—May be admitted or rejected by another part—By custom.]—A custom for a particular body of a corpn. to examine & determine the fitness of a party elected by another part of the corpn. to fill the office to which he is elected, & to admit or reject him, according to their discretion & sound consciences, is a good & valid custom.

To a mandamus to the Lord Mayor, etc. of London to admit a party who, at a wardmote, had been elected alderman, the return alleged such a custom by the ct. of aldermen, & that they had adjudged the party an unfit & an improper person, according to their discretion & sound consciences:

—**Held:** the return was good.—*R. v. LONDON CORPN.* (1832), 3 B. & Ad. 255; 1 L. J. K. B. 79; 1 L. J. M. C. 10; 110 E. R. 96; *subsequent proceedings* (1833), 5 B. & Ad. 233.

Annotations:—*Consd.* *A.-G. v. Powis* (1853), Kay, 186; *Re Ashlin, Ex p. Glyn* (1854), 23 L. T. O. S. 15. *Reid.* *R. v. Johnson* (1836), 6 Nev. & M. K. B. 870; *R. v. Darlington School* (1844), 9 Jur. 21. *Mentd.* *R. v. Oundle* (1834), 1 Ad. & El. 283; *R. v. Saddlers' Co.* (1861), 7 Jur. N. S. 138.

597. Disqualification by bye-law for bankruptcy—False representation as to solvency.]—A bye-law of a corporate co. declared that no person who had become bkpt., or otherwise insolvent, should thereafter be admitted a member of the ct., unless it was proved that such person after his bkpcy. or insolvency had paid his debts, or should have established a fair & honourable character for seven years subsequent to his bkpcy. or insolvency:—**Held:** these words must be taken to mean not mere inability to pay debts in full, but inability proved by some outward act, a notorious or avowed insolvency, such as a public stoppage in business, or the calling together of his creditors, & obtaining time, or terms of indulgence, or entering into a deed of composition, so as to make, as a distinct fact, a period of time from which the insolvency like bkpcy. might be computed.

This interpretation alone could make the bye-law good (LORD CRANWORTH).

Where, therefore, a person, duly qualified as a freeman, was elected a member of the ct., being at that time in insolvent circumstances, & was admitted to office, & was afterwards declared bkpt.:—**Held:** he did not come within the meaning of the bye-law.

After election, but before being admitted, A. who was elected was asked by the clerk of the co., though it was not averred in the return, & did not appear in evidence, that the question was put by the authority of the ct., whether he was solvent, to which he answered that he was as solvent as any member of the ct., & could pay 20s. in the pound. This representation was false, & was afterwards made the ground of a resolution of the ct., passed without notice to him, to remove him from office. Upon A. having obtained a mandamus to restore himself:—**Held:** the insolvency here was not within the meaning of the bye-law; the false representation was not one which affected his eligibility, & consequently that having been duly elected & admitted to the office, his removal without being heard in his defence was erroneous, & he was entitled to a peremptory mandamus.

A person validly elected to an office & admitted to it, cannot be removed from it without notice.

The charter of the co. gave the wardens & assistants thereof power to make such bye-laws as, according to their sound discretion, should be for the good government of the general body.

Under this charter a bye-law made by them would be valid, though it might have the effect of limiting the number of persons eligible to office by superintending new qualifications, as to which the charter was silent (LORD WENSLEYDALE).

In order to show a valid objection to the admittance, after election, the return should have stated an insolvency within the true meaning of the bye-law (LORD WENSLEYDALE).—*R. v. SADDLERS' Co.* (1863), 10 H. L. Cas. 404; 32 L. J. Q. B. 337; 9 L. T. 60; 28 J. P. 36; 9 Jur. N. S. 1081; 11 W. R. 1004; 11 E. R. 1083, H. L.; *subsequent proceedings*, 4 B. & S. 570.

Annotations:—*Apld.* *Sissons v. Sissons* (1910), 54 Sol. Jo. 802. *Mentd.* *James v. Rockwood Colliery Co.* (1912), 106 L. T. 128; *London & Counties Assets Co. v. Brighton Grand Concert Hall & Picture Palace*, [1915] 2 K. B. 493.

598. Limitation of proceedings to test—Six

years' tenure of office.]—*R. v. JOHN* (1723), 8 Mod. Rep. 132; cited 4 Burr. 2261; 88 E. R. 101. *Annotations*.—*Appld. R. v. Breton* (1768), 4 Burr. 2260. *Refd. R. v. Dicken* (1791), 4 Term Rep. 282.

599. —.]—32 Geo. 3, c. 58, which enables a person to plead that he held or executed an office six years before exhibiting a *quo warranto* information, means six years before making the rule absolute for the information, & not six years before obtaining the rule *nisi*; & therefore the ct. will refuse to make the rule absolute where the six years have then elapsed, though they had not elapsed before the rule *nisi*.

A title to one office which is a qualification to hold another office is not within sect. 3 of the stat., which deals with derivative titles, & therefore although a party has exercised the first for six years the ct. will make the rule absolute for an information for exercising the second office upon a defect of title to the first.

This is a title not derived under the former title but built upon it (*LE BLANC, J.*).—*R. v. STOKES* (1813), 2 M. & S. 71; 105 E. R. 308.

Annotation.—*Consd. R. v. Preece* (1843), 5 Q. B. 94.

See, also, Nos. 429, 430, ante.

Incompatible offices.]—*See Part IV., Sect. 4, sub-sect. 2, ante.*

SECT. 5.—REMOVAL FROM OFFICE.

See Part IV., Sect. 4, sub-sect. 1, ante.

SECT. 6.—RESTORATION TO OFFICE.

600. What operates as—Not ouster from second office through voidance of election.]—*R. v. HUGHES*, No. 534, *ante*.

601. —.]—*R. v. HUBBALL* (1826), 6 B. & C. 139; 9 Dow. & Ry. K. B. 143; 4 Dow. & Ry. M. C. 254; 5 L. J. O. S. M. C. 24; 108 E. R. 404.

How enforced.]—*See Part IV., Sect. 5, sub-sect. 2, A., & No. 540, ante.*

Right of restored member—To sue members responsible for removal.]—*See No. 384, ante.*

Mayor.]—*See LOCAL GOVERNMENT.*

Alderman.]—*See LOCAL GOVERNMENT.*

Councillor.]—*See LOCAL GOVERNMENT.*

Burgess.]—*See LOCAL GOVERNMENT.*

Freeman.]—*See LOCAL GOVERNMENT.*

Fellow.]—*See CHARITIES, Vol. VIII., p. 390, Nos. 2102, 2107, 2108.*

Part VI.—Regulations and Bye-Laws.

See NOTE on p. 270, ante.

SECT. 1.—NATURE AND CHARACTERISTICS.

Bye-laws of local administrative bodies under statutory powers, *see LOCAL GOVERNMENT; PUBLIC HEALTH & LOCAL ADMINISTRATION.*

602. **Bye-laws defined.**]—A bye-law, within the limits to which it is applicable, bears some resemblance to an Act of Parliament. Any rule or ordinance which the corpn. were empowered to make is a bye-law (*LORD ABINGER, C.B.*).—*HOPKINS v. SWANSEA CORPN.* (1839), 4 M. & W. 621; 1 Horn. & H. 432; 8 L. J. Ex. 121; 3 J. P. 532; 150 E. R. 1569; *affd. S. C. sub nom. SWANSEA CORPN. v. HOPKINS* (1841), 8 M. & W. 901, Ex. Ch. *Annotations*.—*Refd. Addison v. Preston Corpn.* (1852), 12 C. B. 108; *Prostney v. Colchester Corpn. & A.-G.* (1882), 21 Ch. D. 111. *Mentd. Braithwaite v. Skinner* (1839), 5 M. & W. 313; *Hutchinson v. Gillespie* (1856), 11 Exch. 798; *Goodman v. Saltash Corpn.* (1882), 7 App. Cas. 633.

603. —.]—The power of making bye-laws differs from the power which every owner of property has of making agreements with those persons who desire to use it.

A bye-law is not an agreement, but a law binding on all persons to whom it applies, whether they agree to be bound by it or not. All regulations made by a corporate body, & intended to bind not only themselves & their officers & servants, but members of the public who come within the sphere of their operation, may be properly called bye-laws whether they be valid or invalid in point of law, for the term bye-law is not restricted to that which is valid in point of law.—*LONDON ASSOCN. OF SHIPOWNERS & BROKERS v. LONDON & INDIA DOCKS JOINT COMMITTEE*, [1892] 3 Ch. 242; 62 L. J. Ch. 294; 67 L. T. 238; 8 T. L. R. 717; 7 Asp. M. L. C. 195; 2 R. 23, C. A.

Annotations.—*Mentd. Barraclough v. Brown*, [1897] A. C. 615; *Guaranty Trust Co. of New York v. Hannay*, [1915] 2 K. B. 536; *Re Clay, Clay v. Booth, Re A Deed of Indemnity*, [1919] 1 Ch. 66.

604. **Nature of bye-laws—Resemblance to Acts of Parliament—Persons within jurisdiction.**]—

(1) Every bye-law is of equal validity as an Act of Parliament to persons within the jurisdiction. (2) All corpn., as such, have power to make bye-laws. (3) Penalty of bye-laws may go to the corpn.

If corpn. have power to make laws, they must have a power to inflict a penalty for the enforcing of that law; & here in England it must be a pecuniary one, for a corporal one it cannot be by the law of England, it being against Magna Carta, without a special custom, & this pecuniary penalty must be levied by distress or action of debt, for there can be no other remedy & surely it can be no exception, that this penalty goes to the use of the body politic, whose laws are broken & despised & therefore it is fit that they should have the penalty (*HOLT, C.J.*).—*LONDON (CITY OF) v. WOOD* (1701), 12 Mod. Rep. 669; 88 E. R. 1592; *sub nom. WOOD v. LONDON CORPN.*, Holt, K. B. 396; 1 Salk. 397.

Annotations.—*As to (2) Refd. R. v. Rogers* (1702), 2 Ld. Raym. 777; *Dimes v. Grand Junction Canal Proprietors* (1852), 3 H. L. Cas. 759. *Generally, Refd. London City v. Vanacker* (1698), 1 Ld. Raym. 496; *Kynaston v. Shrewsbury Corpn.* (1737), Andr. 85; *Hesketh v. Brad-dock* (1766), 3 Burr. 1847; *Piper v. Chappell* (1845), 14 M. & W. 624; *R. v. Rochester* (1851), 17 Q. B. 1. *Mentd. Ex p. Medwin* (1853), 1 E. & B. 609; *Daimler Co. v. Continental Tyre & Rubber Co. (Great Britain)*, [1916] 2 A. C. 307.

605. —.]—Within limits to which applicable.]—*HOPKINS v. SWANSEA CORPN.*, No. 602, *ante*.

606. —.]—Distinguished from provisions for particular occasions.]—*GOSLING v. VELEY*, No. 186, *ante*.

607. —.]—Distinguished from power to grant leases.]—*LONDON ASSOCN. OF SHIPOWNERS & BROKERS v. LONDON & INDIA DOCKS JOINT COMMITTEE*, No. 603, *ante*.

608. **Cannot explain doubtful charter.**]—*TUCKER v. R.*, No. 250, *ante*.

SECT. 2.—POWER TO MAKE.

SUB-SECT. 1.—IN GENERAL.

Bye-laws of local administration bodies under statutory powers, *see* LOCAL GOVERNMENT ; PUBLIC HEALTH & LOCAL ADMINISTRATION.

609. Power incident to corporations.]—SUTTON'S HOSPITAL CASE, No. 3, *ante*.

610. —.]—NORRIS *v.* STAPES, No. 634, *post*.

611. —.]—LONDON (CITY OF) *v.* WOOD, No. 604, *ante*.

612. —.]—CHILD *v.* HUDSON'S BAY CO., No. 656, *post*.

613. —.]—EVANS *v.* HARRISON, No. 404, *ante*.

614. —.]—R. *v.* WESTWOOD, No. 240, *ante*.

615. — To impose penalties.]—LONDON (CITY OF) *v.* WOOD, No. 604, *ante*.

616. Usage as evidence of power.]—THOMPSON *v.* DANIEL, No. 410, *ante*.

Usage as evidence of bye-laws.]—*See* Sect. 5, *post*.

SUB-SECT. 2.—EXTENT OF POWER.

A. As to Persons sought to be bound.

617. To compel members to serve in office.]—LONDON (CITY OF) *v.* VANACKER, No. 623, *post*.

618. Whether empowered to bind persons other than members—Not without statutory authority—Or express prescription.]—Without Act of Parliament, or express prescription, a corp'n. cannot make a bye-law to bind those which are not of the body.—DODWELL *v.* OXFORD UNIVERSITY (1680), 2 Vent. 33 ; 86 E. R. 292.

*Annotations:—*Consd. Butchers' Co. *v.* Morey (1790), 1 Hy. Bl. 370. *Mentd.* Pitts *v.* Evans (1738), 7 Mod. Rep. 254.

619. —.]—TONE RIVER CONSERVATORS *v.* ASH, No. 265, *ante*.

620. — Power to make bye-laws for government of all persons exercising particular trade.]—A power granted by charter to a co. exercising a particular trade in a certain place to make bye-laws for the govt. of all persons exercising that trade in that place, enables it to make bye-laws binding on persons so exercising the trade, who are not members of the co. as well as those who are.—BUTCHERS' CO. *v.* MOREY (1790), 1 Hy. Bl. 370 ; 126 E. R. 217.

621. — Public convenience.]—CUDDON *v.* EASTWICK, No. 1605, *post*.

As to validity of bye-laws.]—*See* Part VI., Sect. 3, *post*.

B. As to Subject-matter.

As to whether bye-laws ultra vires—As being contrary to terms of charter, custom, or statute.]—*See* Part VI., Sect. 3, sub-sect. 2, D., *post*.

622. Franchises of corporation—Though bye-laws to be executed out of local limits.]—LONDON (CITY OF) *v.* VANACKER, No. 623, *post*.

623. Government of corporation.]—(1) Every corp'n. can of common right make bye-laws concerning its franchises, though they are to be executed out of the local limits of the corp'n., (2) or for the govt. of the corp'n., (3) or to compel their members to serve an office into which they have elected them, though the neglect be punishable by indictment.—LONDON (CITY OF) *v.* VANACKER (1699), 1 Ld. Raym. 496 ; Carth. 480 ;

other than members.]—A corp'n., empowered to make bye-laws regulating the navigation of vessels granted A. certain rights in a harbour, there-after passed a bye-law which affected A.'s rights :—*Held* : the bye-law bound A.—WALKER *v.* ST. JOHN'S CORPN. (1872), 1 Pug. 143.—CAN.

PART VI. SECT. 2, SUB-SECT. 1.
609 l. Power incident to corporations.]—BURRITT *v.* HATFIELD (1857), 2 Thom. 161.—CAN.

PART VI. SECT. 2, SUB-SECT. 2.
b. Whether empowered to bind persons

Holt, K. B. 431 ; 5 Mod. Rep. 438 ; 12 Mod. Rep. 269 ; 1 Salk. 142 ; 91 E. R. 1231.

*Annotations:—*As to (1) Consd. R. *v.* Westwood (1830), 7 Bing. 1. *Refd.* London City *v.* Wood (1701), 12 Mod. Rep. 869. *Generally, Mentd.* Bosworth *v.* Herne (1738), Lee temp. Hard. 405 ; Vintners' Co. *v.* Passey (1757), 1 Burr. 235 ; Hesketh *v.* Braddock (1766), 3 Burr. 1847 ; Eastern Archipelago Co. *v.* R. (1853), 2 E. & B. 856 ; R. *v.* Saddlers' Co. (1863), 10 H. L. Cas. 404 ; London Joint Stock Bank *v.* London Corp'n. (1875), 1 C. P. D. 1 ; Mercer *v.* Denne, [1905] 2 Ch. 538.

SUB-SECT. 3.—EXERCISE OF POWER.

624. By whom exercisable—Power vested in select body—Use of name of corporation.]—R. *v.* DURHAM CORPN., No. 636, *post*.

625. — Whole body of corporation—Right not affected by power in charter to select body—In respect of specified matters.]—R. *v.* WESTWOOD, No. 240, *ante*.

626. — Delegation of powers to select body.]—R. *v.* SPENCER, No. 675, *post*.

627. — Corporation with two governing bodies—Division of duties.]—HILLS *v.* HUNT, No. 749, *post*.

628. Time for—Power to make ordinances in charter—Not affected by lapse of time.]—R. *v.* DULWICH COLLEGE, No. 223, *ante*.

SECT. 3.—VALIDITY.

SUB-SECT. 1.—IN GENERAL.

629. Test of validity.]—R. *v.* SPENCER, No. 675, *post*.

630. Equal validity as Act of Parliament.]—LONDON (CITY OF) *v.* WOOD, No. 604, *ante*.

Jurisdiction to inquire into.]—*See* Part XIV., *post*.

Validity of bye-laws imposing penalties.]—*See* Part VI., Sect. 6, sub-sect. 2, B., *post*.

Validity of bye-laws of railway companies & other carriers—As to carriage of persons.]—*See* CARRIERS, Vol. VIII., p. 111, Nos. 748–759.

— As to carriage of passengers' luggage.]—*See* CARRIERS, Vol. VIII., p. 126, No. 847.

Validity of bye-laws of local administrative bodies.]—*See, generally,* LOCAL GOVERNMENT ; PUBLIC HEALTH & LOCAL ADMINISTRATION.

SUB-SECT. 2.—GENERAL CONDITIONS OF VALIDITY.

A. Must be Reasonable.

631. Test of reasonableness—General rule.]—In determining the validity of bye-laws made by public representative bodies, such as county councils, the ct. ought to be slow to hold that a bye-law is void for unreasonableness. A bye-law so made ought to be supported unless it is manifestly partial & unequal in its operation between different classes, or unjust or made in bad faith, or clearly involving an unjustifiable interference, with the liberty of these subject to it.

A bye-law to be valid must, among other conditions have two properties—it must be certain, that is, it must contain adequate information as to the duties of those who are to obey & it must be reasonable (MATHEW, J.).—KRUSE *v.* JOHNSON,

(1872), 1 Pug. 143.—CAN.

PART VI. SECT. 3, SUB-SECT. 1.

c. Must be published before passing.]—*Re* BRYANT & PITTSBURG MUNICIPALITY (1856), 13 U. C. R. 347.—CAN.

[1898] 2 Q. B. 91; 67 L. J. Q. B. 782; 78 L. T. 647; 62 J. P. 469; 46 W. R. 630; 14 T. L. R. 416; 42 Sol. Jo. 509; 19 Cox, C. C. 103, D. C.

Annotations:—*Consd.* White v. Morley, [1899] 2 Q. B. 34; Thomas v. Sutters, [1900] 1 Ch. 10. *Appld.* Nash v. Finlay (1901), 85 L. T. 682. *Consd.* Gentel v. Rapps, [1902] 1 K. B. 160; *Appld.* Metropolitan Industrial Dwellings Co. v. Long (1903), 68 J. P. 113. *Consd.* Pomeroy v. Malvern U. D. C. (1903), 67 J. P. 375; Clayton v. Peirse, [1904] 1 K. B. 424; Williams v. Weston-super-Mare U. D. C. (1910), 103 L. T. 9; Mitcham Common Conservators v. Cox, Same v. Cole, [1911] 2 K. B. 854. *Appld.* Dunning v. Maher (1912), 106 L. T. 846. *Consd.* Friend v. Brehout (1914), 111 L. T. 832; A.-G. v. Hodgson, [1922] 2 Ch. 429. *Appld.* Dodd v. Venner (1922), 86 J. P. 130. *Refd.* Kitson v. Ashe, [1899] 1 Q. B. 425; Scott v. Pilliner (1904), 91 L. T. 658; Stiles v. Galinski, Nokes v. Islington Corp., [1904] 1 K. B. 615; Leyton U. C. v. Chew (1907), 76 L. J. K. B. 781; Moorman v. Tordoff (1908), 98 L. T. 416; L. C. C. v. Bernondsey Bioscope Co., [1911] 1 K. B. 445; Russon v. Dutton (1911), 104 L. T. 601; Slee v. Meadows (1911), 105 L. T. 127; R. v. Broad, [1915] A. C. 1110; Repton School v. Repton R. C., [1918] 2 K. B. 133; Sutton Harbour Improvement Co. v. Foster (1920), 89 L. J. K. B. 829; Roberts v. Williams (1922), 127 L. T. 363.

632. — Jurisdiction of court.—The jurisdiction of testing bye-laws by their reasonableness was originally applied in such cases as those of manorial bodies, towns or corps. having inherent powers or general powers conferred by charter of making such laws. As new corps. or local administrative bodies have arisen, the same jurisdiction has been exercised over them. But in determining whether or no a bye-law is reasonable, it is material to consider the relation of its framers to the locality affected by it & the authority by which it is sanctioned (LORD HOBHOUSE).—SLATTERY v. NAYLOR (1888), 13 App. Cas. 446; 57 L. J. P. C. 73; 59 L. T. 41; 36 W. R. 897; 4 T. L. R. 426, P. C.

Annotations:—*Consd.* Brownscombe v. Johnson (1898), 78 L. T. 265; Kruse v. Johnson, [1898] 2 Q. B. 91. *Refd.* Roberts v. Richards (1890), 54 J. P. 693; A.-G. v. Hodgson, [1922] 2 Ch. 429.

633. — Probable inconvenience.—R. v. ASHWELL, No. 770, *post*.

634. Whether unreasonable — Limiting trading to persons apprenticed before bye-law made.—A bye-law made by a corp. of weavers that none should use the trade of weaver or have any loom in the town, unless he had served, *inter alia*, before the making of the bye-law:—*Held*: would be unreasonable as excluding all apprentices who serve after, unless expressly admitted.

Though power to make bye-laws is given by special clause in all corps., yet it is needless; for it is included by law in the very act of incorporating, as is also the power to sue, to purchase & the like. Such bye-laws whether made by the corp. or by the King in his letters patent of incorporation are subject to the general law of the realm as subordinate to it (HOBART, O.J.).—NORRIS v. STAPES (1616), Hut. 5; Hob. 210; 123 E. R. 1060.

Annotations:—*Consd.* London City v. Vanacker (1698), 1 Ld. Raym. 496. *Refd.* Winton Corp. v. Wilks (1705), 2 Ld. Raym. 1129; Parry v. Berry (1717), 1 Com. 269; R. v. Westwood (1825), 4 B. & C. 781; R. v. Darlington School (1846), 6 Q. B. 682. *Mentd.* Mitchel v. Reynolds (1711), 1 P. Wms. 181; Gosling v. Velej (1847), 7 Q. B. 406.

See, also, Sub-sect. 3, C., *post*.

635. — Excluding interested members from voting.—R. v. CHARITABLE CORPN., No. 851, *post*.

636. — As to imposition of qualifications—Admission to freedom limited—To persons previously called & approved at three meetings.—A power being vested by charter in a select number of a corporate body, to make bye-laws, for & in the name of the whole, they may be allowed to use the general name of the corp. in their ordinances: & a bye-law established by them to prohibit the admission to freedom of persons who

had not been previously called & approved of at three meetings of the corp. is held reasonable, & valid. Such approbation, & examination, being additional qualifications, requisite besides election, that, & admission, found by a jury, without these, cannot entitle a claimant to exemption from the restraint of the bye-law.—R. v. DURHAM CORPN. (1757), 1 Keny. 512; 1 Burr. 127; 96 E. R. 1074.

Annotation:—*Refd.* R. v. Saddlers' Co. (1863), 32 L. J. Q. B. 337.

637. — Making understanding of Latin previous qualification—To apprenticeship to surgeon.—Understanding Latin is a previous qualification to being even put apprentice to a London surgeon. Bye-law made by Surgeons Co. that all members should understand Latin:—*Held*: reasonable.—R. v. SURGEONS' CO. (MASTER) (1759), 2 Burr. 892; 97 E. R. 621.

Annotation:—*Refd.* R. v. Saddlers' Co. (1863), 10 H. L. Cas. 404.

638. — Obtaining degrees previous to membership.—A doctor of physic, who has been licensed by the College of Physicians to practice physic in L. & within seven miles, cannot claim as a matter of right to be examined by the college in order to his being admitted a fellow of the college.

The college, having power by their charter, confirmed by Act of Parliament, to make bye-laws, made bye-laws that no person should be admitted into the class of candidates for admission into the college, unless he had taken a degree of M.D. at Oxford, Cambridge, or Dublin; except (1) the president might propose, one in every other year, a doctor of physic of a certain standing, & if he was approved by the college he might be admitted a fellow; (2) any fellow might propose a doctor of physic of a certain age & standing, & if approved at certain meetings he might be admitted a fellow:—*Held*: these were reasonable bye-laws.—R. v. COLLEGE OF PHYSICIANS (1797), 7 Term Rep. 282; 101 E. R. 976.

Annotation:—*Refd.* R. v. Saddlers' Co. (1863), 10 H. L. Cas. 404.

639. — Disqualifying bankrupts & persons "otherwise insolvent."—R. v. SADDLERS' CO., No. 597, *ante*.

As to election of officers—Limiting right of election to select body.—*See* Part VI., Sect. 3, sub-sect. 3, A., *post*.

640. — Imposition of charges on officers—Must be for general good of corporation—Or in aid of custom.—A corp. cannot by a bye-law impose a charge upon any of their officers, except for the general good of the corp., but a bye-law in aid of a custom imposing such a charge, is good.—FRAMEWORK-KNITTERS' CO. v. GREEN (1696), 1 Ld. Raym. 113; 91 E. R. 972.

Annotations:—*Consd.* Carter v. Sanderson (1828), 5 Bing. 79; Scriveners' Co. v. Brooking (1842), 3 Q. B. 95. *Refd.* Kruse v. Johnson, [1898] 2 Q. B. 91.

641. — Imposition of charges on members—Payment of annual sum—Necessity of contribution.—LONDON TOBACCO PIPE MAKERS' CO. v. WOODROFFE, No. 721, *post*.

642. — Providing for dinner by corporate company—Imposing liability on steward—With allowance.—In a co. constituted by letters patent, with power to make reasonable bye-laws a bye-law for the steward to provide a dinner for certain members of the co. on Lord Mayor's day, with an allowance for doing so, or to pay a fine of £20, or excuse himself by swearing he is not worth £300, is a bad bye-law.—CARTER v. SANDERSON (1828), 5 Bing. 79; 2 Moo. & P. 164; 6 L. J. O. S. C. P. 232; 130 E. R. 990.

Annotation:—*Refd.* Scriveners' Co. v. Brooking (1842), 3 Q. B. 95.

Sect. 3.—Validity: Sub-sect. 2, A., B., C. & D.]

643. — Beyond specified contribution.]—A bye-law for a dinner by a corporate co. may be good, if in aid of a custom, or if it be for some beneficial public purpose, or in furtherance of some general corporate interest. But in the latter case, to support a bye-law compelling members of the co. to take upon themselves the office of stewards of such a dinner, & become answerable for the expenses beyond the specified contribution, it must appear that such members had themselves an interest in the object.

Where a co. was governed by a master & wardens, & these were annually elected by & out of a select body, styled the masters, wardens, & assistants:—*Held*: a bye-law imposing the office of steward of a dinner held annually on the day of election, on members of the general body of freemen, to be chosen by the master, wardens, & assistants, was unreasonable; & a steward elect was justified in refusing to serve, it not appearing that he had any other duties to perform.—*SCRIVENERS' CO. v. BROOKING* (1842), 3 Q. B. 95; 2 Gal. & Dav. 419; 11 L. J. Q. B. 169; 6 Jur. 835; 114 E. R. 443.

644. — Limiting number of attorneys practising in sheriff's court—Ancient usage.]—In the city of Y., which was incorporated before the time of memory, there had been a ct. from very ancient times, held first before the mayor & bailiffs, & after a charter of Richard II. before the mayor & sheriffs. By a bye-law made in 1557, by a select body of the corpn. who had immemorially made rules & regulations as to the practice of the ct., & who had at their discretion selected the persons admitted to practice as attorneys there, it was ordered, that from thenceforth there should be no more than four persons admitted to be attorneys in the sheriffs' ct.; & from that time it did not appear that any more than that number had ever been allowed to practice:—*Held*: the bye-law was reasonable, & the usage limiting the number of attorneys to four was sufficiently ancient to satisfy 2 Geo. 2, c. 23, s. 11.—*R. v. YORK (SHERIFFS)* (1832), 3 B. & Ad 770; 1 L. J. K. B. 211; 110 E. R. 282.

645. — Prohibiting erection of booths for public entertainments—Without licence from mayor or consent of householders.]—The council of a borough made the following bye-law, by virtue of a charter empowering them to make bye-laws, & of Municipal Corpns. Act, 1835 (c. 76), s. 90, that no person should erect any booth for any show or public entertainment in any public place within the borough without licence from the mayor, which licence should not be given at or for any other time than during the annual fairs if three inhabitant householders, residing within 100 yards of the place intended to be used, should have previously memorialised the mayor in writing to withhold such licence: & that any such licence given at or for any other time than during the fairs should be revoked by the mayor & become void, if & so soon as three inhabitant householders residing within 100 yards, etc., should memorialise the mayor in writing to revoke it; the last-mentioned memorial to be presented within 48 hours after the building of such booth should have been commenced, & the revocation to be notified forthwith to the party employed or interested in the building: & any person erecting or continuing a booth in contravention of the bye-law to forfeit a sum not exceeding £5:—*Held*: an unreasonable bye-law, & wholly void, though duly published & notified to a Secretary of State & not disallowed.—*ELWOOD v. BULLOCK* (1844),

6 Q. B. 388; 13 L. J. Q. B. 330; 8 J. P. 473; 8 Jur. 1044; 115 E. R. 147.

Annotations:—*Consd. Simpson v. Wells* (1872), L. R. 7 Q. B. 214. *Mentd. Dawes v. Hawkins* (1860), 7 Jur. N. S. 262; *Gerring v. Barfield* (1864), 16 C. B. N. S. 597; *Arnold v. Blaker* (1871), L. R. 6 Q. B. 433; *Neeld v. Hendon* U. D. C. (1899), 81 L. T. 405; *A.-G. v. Horner*, [1913] 2 Ch. 140.

646. — Prohibiting fishing at certain distances above & below weir.]—Where justices refused to convict for breach of a bye-law prohibiting fishing at certain distances above & below a weir on the ground that such bye-law was unjust & unreasonable, but did not set out the finding of fact upon which they arrived at this conclusion in the case stated by them for the opinion of the ct.:—*Held*: as *prima facie* the bye-law was valid, & there was nothing to show what was the finding of fact by the justices on which they decided the bye-law to be unreasonable, the case must be sent back for the justices to convict.—*ONIONS v. CLARKE* (1917), 86 L. J. K. B. 740; 116 L. T. 335; 81 J. P. 77.

— **As to penalties.]**—See Part VI., Sect. 6, sub-sect. 2, B., *post*.

See, further, LOCAL GOVERNMENT; PUBLIC HEALTH & LOCAL ADMINISTRATION.

B. Must be Certain.

647. General rule.]—*LEATHLEY v. WEBSTER*, No. 654, *post*.

648. —.]—*KRUSE v. JOHNSON*, No. 631, *ante*.

649. Qualification of person to be elected doubtful—Invalid.]—Bye-law, that if any be duly elected chamberlain & refuse, he shall forfeit, etc.:—*Held*: void, for it ought to have been if any citizen, etc., should be elected.—*OXFORD CORPN. v. WILDGOOSE* (1889), 3 Lev. 293; 83 E. R. 696. *Annotations*:—*Refd. Workingham Corpn. v. Johnson* (1735), *Lee temp. Hard.* 284; *London Tobacco Pipe Makers' Co. v. Woodroffe* (1828), 7 B. & C. 838; *Poulters' Co. v. Phillips* (1840), 6 Bing. N. C. 314.

650. Levy on enrolment of apprentices—Uncertainty as to distribution of money.]—A bye-law, which directed, that a sum of money should be paid for the use of a corpn., on enrolling indentures of an apprenticeship to one of its members, is bad.—*NEVESLEY v. WEBSTER* (1755), 1 Keny. 243; 96 E. R. 980.

Uncertainty in penalty.]—See Part VI., Sect. 6, sub-sect. 2, B., *post*.

C. Must be in Conformity with General Law.

651. General rule.]—*NORRIS v. STAPES*, No. 634, *ante*.

652. —.]—Bye-laws must not only be reasonable, but must not be repugnant to the general law.—*WHITE v. MORLEY*, [1899] 2 Q. B. 34; 68 L. J. Q. B. 702; 80 L. T. 761; 63 J. P. 550; 47 W. R. 583; 15 T. L. R. 360; 43 Sol. Jo. 511; 19 Cox, C. C. 345.

Annotations:—*Apprvd. Thomas v. Sutters*, [1900] 1 Ch. 10. *Refd. Scott v. Pilliner* (1904), 68 J. P. 518; *Sutton Harbour Improvement Co. v. Foster* (1920), 123 L. T. 549.

653. —.]—A bye-law is not repugnant to the general law merely because it creates a new offence, & says that something shall be unlawful which the law does not say is unlawful. It is repugnant if it makes unlawful that which the general law says is lawful. It is repugnant if it expressly or by necessary implication professes to alter the general law of the land. Again, a bye-law is repugnant if it adds something inconsistent with the provisions of a statute creating the same offence; but if it adds something not inconsistent, that is not sufficient to make the bye-law bad as repugnant (*CHANNELL, J.*).—*GENTEL v. RAPPS*, [1902] 1 K. B. 160; 71 L. J. K. B.

105; 85 L. T. 683; *sub nom.* GEUTEL v. RAPPS, 66 J. P. 117; 50 W. R. 216; 18 T. L. R. 72; 46 Sol. Jo. 69; 20 Cox, C. C. 104.

Annotations:—*Consd.* Brabham v. Wookey (1901), 18 T. L. R. 99. *Refd.* Moorman v. Tordoff (1908), 98 L. T. 416.

654. Contrary to statute.]—A bye-law which is uncertain, or contrary to a statute, is void.—LEATHLEY v. WEBSTER (1755), Say. 251; 96 E. R. 870.

655. Bye-law creating monopoly.]—(1) In an action for recovering distress, it was shown that pltf. was a member of a certain co. One of the bye-laws of the co. was that every member of the co. who had cloth dressing to be done, should give half the work to members of the public & if he did not, he should forfeit 10s. for every cloth put forth to dressing contrary to the bye-law for the use of the poor of the co., such penalty to be paid by distress, or otherwise. Pltf. refused to pay the forfeiture, & the master & warden made a warrant of distress:—*Held*: the object of the bye-law was to make a monopoly & a claim by prescription of such a nature to induce the sole trade or profit to one co. or to one person & to exclude all others was contrary to law.

(2) In the last name of a corpn. everything shall be enjoyed which was gained by prescription or granted in the preceding name (*per CUR.*).—DAVENANT v. HURDIS (1598), Moore, K. B. 576; cited in 11 Co. Rep. 86 a; 72 E. R. 769.

Annotations:—*As to* (1) *Consd.* Case of Monopolies (1602), 11 Co. Rep. 84 b; Davies v. Morgan (1831), 1 Cr. & J. 587. *Refd.* Mitchel v. Reynolds (1711), 1 P. Wms. 181; North Western Salt Co. v. Electrolytic Alkali Co. (1912), 107 L. T. 439.

D. Must be Intra vires.

656. General rule.]—Hudson's Bay Co. may by their bye-laws make restrictions upon their stock, viz. that it shall first be liable to pay the debts due to themselves from their own members, or to answer the calls of the co. upon the stock. So a bye-law of a co. to seize a member's stock for a debt due from a member to the co., is good; but if the debt be not due to the co. but to their trustees, then the bye-law will not extend to it. A co. without any power by their charter may of course make bye-laws; but if they have a particular power to make bye-laws for the management of their trade, they cannot make bye-laws for carrying on projects foreign to the affairs of the co.—CHILD v. HUDSON'S BAY CO. (1723), 2 P. Wms. 207; 24 E. R. 702, L. C.

Annotations:—*Consd.* Kinder v. Taylor (1825), 3 L. J. O. S. Ch. 68. *Consd. & Apld.* R. v. Westwood (1830), 7 Bing. 1. *Consd.* Chilton v. London & Croydon Ry. (1847), 16 M. & W. 213.

657. —.]—R. v. CUTBUSH, No. 668, *post*.

658. —.]—Where the power of electing burgesses & freemen of a borough is by charter expressly given to the mayor & commonalty, together with the aldermen; a subsequent bye-law, giving this power to the mayor & aldermen only, is illegal, & void in its creation. All the bye-laws made by corpn., must be consistent with, & subordinate to their constitution by their charter; for if they could make laws to alter their own constitution, the King's prerogative would be taken away, & transferred to the subject.—HOBLYN v. R. (1772), 2 Bro. Parl. Cas. 329; 1 E. R. 976, H. L.

Annotation:—*Consd.* R. v. Westwood (1830), 7 Bing. 1.

659. —.]—R. v. SPENCER, No. 675, *post*.

660. Whether bye-law ultra vires—Bye-law operating outside jurisdiction.]—A bye-law made by the co. of Horners of L., that none of the co. shall buy horns within 24 miles of L., except two

persons appointed by the co., is void; for they have not jurisdiction to that extent.—HORNERS CO. v. BARLOW (1688), 3 Mod. Rep. 158; 87 E. R. 103.

661. —.]—LONDON (CITY OF) v. VAN-ACKER, No. 623, *ante*.

662. — As being contrary to charter—Authorising admission to freedom of any person—On payment of money & fees.]—Bye-law that any person may be admitted on payment of money & fees bad.

This bye-law was an alteration of the constitution given by the Crown & void (*per CUR.*).—R. v. BRETON (1768), 4 Burr. 2260; 98 E. R. 179.

— As to election of officers.]—See Part VI., Sect. 3, sub-sect. 3, A., *post*.

663. — As being contrary to custom—Prescriptive right to regulate number of apprentices—Bye-law altering qualification of apprentices.]—A bye-law altering the qualification of persons to be taken as apprentices by the members of a corpn., in order to acquire their freedom by a certain servitude, is not warranted by a custom in such body, which claimed by prescription to make bye-laws regulating the number of persons to be taken as apprentices.—R. v. TAPPENDEN (1802), 3 East, 186; 102 E. R. 569.

664. — As being contrary to powers conferred by statute—Prohibiting employment of non-freemen.]—By 7 & 8 Geo. 4, c. 75, s. 57, power was given to the Ct. of Mayor & Aldermen of the city of L. to make such rules & bye-laws as they should think proper for the govt. & regulation of the freemen of the Co. of Watermen & Lightermen, & the boats, vessels, etc., rowed or worked within the limits of the Act, & to annex reasonable penalties & forfeitures, not exceeding £5, provided the same rules & bye-laws were not inconsistent with any of the laws of this Kingdom or the provisions & directions contained in the Act. Under this Act a bye-law was made, which imposed a penalty upon any freemen of the co. who should set at work to row, or permit or suffer to be set at work to row, or in any manner navigate any lighter, barge, etc., within the aforesaid limits, any other person not being a freeman of the co., etc. The applt., a freeman of the co., employed a non-freeman, & permitted him to be set at work to row & navigate a barge within the limits of the Act, & was convicted of an offence against the bye-law:—*Held*: although there were no sections in the Act which went to the extent of the bye-law in prohibiting the employment of non-freemen in rowing & navigating barges within the limits of the Act, still the bye-law was good under the power conferred by s. 57, there being nothing in its prohibition inconsistent with law or the provisions & directions of the Act; & the conviction therefore was valid.—EDMONDS v. WATERMEN & LIGHTERMEN CO. (MASTER & SENIOR WARDEN) (1855), 24 L. J. M. C. 124; 1 Jur. N. S. 727.

Annotations:—*Refd.* R. v. Rose (1855), 24 L. J. M. C. 130; Kruse v. Johnson, [1898] 2 Q. B. 91; White v. Morley (1899), 80 L. T. 761.

Validity of bye-laws in restraint & regulation of trade.]—See Part VI., Sect. 3, sub-sect. 3, C., *post*.

Whether bye-laws of local administrative bodies ultra vires—Under particular statutes.]—See LOCAL GOVERNMENT; PUBLIC HEALTH & LOCAL ADMINISTRATION.

Restraint of burial grounds by bye-law.]—See BURIALS & CREMATION, Vol. VII., p. 549, No. 277.

Bye-laws of voluntary association—Rendering member liable to expulsion.]—See CLUBS & OTHER VOLUNTARY ASSOCIATIONS, Vol. VIII., p. 507, No. 15.

Sect. 3.—Validity: Sub-sect. 3, A. (a), (b) & (c), B. & C.]

SUB-SECT. 3.—VALIDITY IN PARTICULAR INSTANCES.

A. Election of Officers and Members.

(a) As to Electors.

665. Bye-law restraining right of election to select number—Charter authorising election by body at large—Necessity of consent of persons excluded.]—If there be a popular election of the mayor & aldermen in corp'n. towns, & this happens to breed confusion amongst them; this may be altered by their agreement, & by the common assent of all, to have their elections made by a fewer number, but not otherwise; but if by their charter they are to be elected by them all, then this is not to be altered, but by & with the general assent of the whole town, & so by this means to take away confusion (*per* CUR.).—COLCHESTER CORPN. CASE (1616), 3 Bulst. 71; 81 E. R. 61.
Annotation :—*Consd.* R. v. Westwood (1830), 7 Bing. 1.

666. ———.]—Elections to be made by the body at large, may be restrained by bye-law to a select number.—BUTLER v. PALMER (1698), 1 Salk. 190; 91 E. R. 172; *sub nom.* BULLY v. PALMER, 12 Mod. Rep. 247.
Annotation :—*Distd.* R. v. Tunwell (1783), 3 Doug. K. B. 207.

667. ———.]—R. v. SPENCER, No. 675, *post.*

668. ———.]—Corpn's. cannot make bye-laws inconsistent with their charter.

Where a bye-law made by a part of the corp'n., to deprive the rest of their right to elect, without their consent & the charter gave this right to the whole body of the commonalty; the bye-law confining it to a narrow compass of the sixty seniors only:—*Held*: the bye-law was bad & was manifestly contrary to the intention of the charter.—R. v. CUTBUSH (1768), 4 Burr. 2204; 98 E. R. 149.

Annotation :—*Consd.* R. v. Westwood (1830), 7 Bing. 1.

669. ———.]—Corpn. cannot exclude an integral part of men, who by charter have the right of election.—R. v. HEAD (1770), 4 Burr. 2515; 98 E. R. 320.

Annotation :—*Consd.* R. v. Westwood (1830), 7 Bing. 1.

670. ———.]—R. v. ASHWELL, No. 770, *post.*

671. ———.]—R. v. BIRD, No. 1309, *post.*

672. ———.]—R. v. WESTWOOD, No. 240, *ante.*

673. ———.]—R. v. ATTWOOD, No. 726, *post.*

674. ———.]—M. Co. was one of the ancient guilds of the city of L., & by a charter of 1394 the commonalty of the co. were empowered to elect annually four wardens out of the commonalty. From 1391 to 1463 the practice was for the outgoing wardens to appoint their successors. From 1463 to the present time a select body had existed under the name of the ct. of assistants, who held their offices for life & supplied vacancies in their own body by self-election out of the whole commonalty. The ct. of assistants had, since 1463, always elected the wardens from the commonalty of the co., & of late years exclusively from among the members of their own ct. No instance was to be found of wardens having ever been elected by the commonalty at large:—*Held*: this usage was sufficient to warrant the inference

of a bye-law delegating to the ct. of assistants the power of electing wardens; & such a bye-law was valid, notwithstanding that it limited the right of election to a select & self-elected portion of the whole body.—R. v. POWELL (1854), 3 E. & B. 377; 23 L. J. Q. B. 199; 18 J. P. 662; 18 Jur. 771; 118 E. R. 1183.

675. Bye-law imposing new qualifications on electors—Right of election transferred to different persons.]—Where the power of making bye-laws is by charter given to a select body, they do not represent the whole community; & therefore cannot assume to themselves what belongs to the body at large; but where the power of making bye-laws is in the body at large they may delegate their rights to a select body, who become the representative of the whole community (LORD MANSFIELD, C.J.).

The true test of all bye-laws is the intention of the Crown in granting the charter & the apparent good of the corp'n.; & upon the principle stands the power of controlling by a bye-law the words of a charter, as far as relates to the distinction between narrowing the number of electors, & narrowing the number of those out of whom the election is to be made. A bye-law may restrain the number of the electors, but it cannot narrow the objects of election (WILMOT, J.).

This bye-law not only restrains the number of electors, but imposes qualifications contrary to the intention of the charter (WILMOT, J.).

Corpn's. cannot make bye-laws contrary to their constitution. If they do they act without authority (YATES, J.).—R. v. SPENCER (1766), 3 Burr. 1827; 97 E. R. 1121.

Annotations :—*Consd.* R. v. Tunwell (1783), 3 Doug. K. B. 207; R. v. Knight (1791), 4 Term Rep. 419; R. v. Ginever (1796), 6 Term Rep. 732; R. v. Westwood (1830), 7 Bing. 1. *Refd.* R. v. Ashwell (1810), 12 East, 22; R. v. Greet (1828), 7 L. J. O. S. K. B. 92; R. v. Attwood (1833), 4 B. & Ad. 481.

(b) As to Candidates.

676. Bye-law narrowing number of persons eligible.]—Where the charter appoints the election of a mayor to be out of the body at large, it may be restrained by a bye-law to a select number.—BARBER v. BOULTON (1720), 1 Stra. 314; 93 E. R. 542.

677. ———.]—Where the charter of a corp'n. directed the mayor to be annually chosen out of four of the burgesses or inhabitants; but by a bye-law it was ordained, that these four burgesses or inhabitants should all of them be aldermen:—*Held*: the bye-law was void, as being repugnant to the charter; & judgment of ouster should be given against a mayor elected in consequence of such bye-law.—TUCKER v. R. (1742), 2 Bro. Parl. Cas. 304; 1 E. R. 960, H. L.; *affg.* S. C. *sub nom.* R. v. WEYMOUTH CORPN. (1741), 7 Mod. Rep. 373.

Annotations :—*Consd.* Lee v. Wallis (1756), Say. 262. *Refd.* R. v. Spencer (1766), 3 Burr. 1827.

678. ———.]—A bye-law restraining the number of persons, out of whom an election is to be made, is not good.—LEE v. WALLIS (1756), Say. 262; 1 Keny. 292; 96 E. R. 874.

Annotations :—*Consd.* R. v. Tunwell (1783), 3 Doug. K. B. 207. *Refd.* R. v. Westwood (1830), 7 Bing. 1.

679. ———.]—A corp'n. cannot by a bye-law narrow the number of persons eligible to corporate offices.—R. v. TUNWELL (1783), 3 Doug. K. B. 207; 99 E. R. 615.

PART VI. SECT. 3, SUB-SECT. 3.—A. (a).

675 i. Bye-law imposing new qualifications on electors—Right of election trans-

ferred to different persons.]—In the absence of a specific provision in its charter, a corp'n. has no power by bye-law or ordinance to authorise persons who are not members of the corp'n.

to take part in the election of its officers.—MURPHY v. MONOTON HOSPITAL (1917), 44 N. B. R. 585; 36 D. L. R. 792.—CAN.

680. —.]—*R. v. ATTWOOD*, No. 726, *post*.

681. —.]—*R. v. FISHER*, No. 444, *ante*.

682. — By superimposing new qualifications.]—*R. v. SADDLERS' CO.*, No. 597, *ante*.

683. Bye-law extending number of persons eligible.]—By charter, the Co. of Patten Makers were made a corp., having a master, two wardens, & twelve assistants, & the co. were to elect yearly one of the two wardens to be master. By a bye-law afterwards made & agreed to by the whole co., the master was from thenceforth to be elected by the master, wardens, & assistants for the time being, in a particular mode, not prescribed by the charter, out of two or three meet & sufficient persons, being of the number of the master, wardens, & assistants, & selected by the master & wardens. In case of an equality of voices the master was to have a double vote:—*Held*: the bye-law was bad, because it extended the number of persons eligible by the charter to the office of master. *Semble*: it was also bad because the election was required to be in a particular mode not prescribed or sanctioned by the charter.—*R. v. BUMSTEAD* (1831), 2 B. & Ad. 699; 109 E. R. 1303; *sub nom.* *R. v. BARNSTEAD*, 9 L. J. O. S. K. B. 321.

Usage limiting or extending selection.]—See Part V., Sect. 4, sub-sect. 1, *ante*.

(c) *As to Mode of Election.*

684. May prescribe mode—Where not regulated by charter or prescription.]—The proclamation of James II., in 1687, for restoring corpns. to their ancient charters, etc., operates, when accepted, as a grant of revival to such of the old corpns. as had surrendered their corporate franchises, which surrenders were not enrolled, to Charles II., who had granted new charters; & overturns such new charters.

When the mode of electing officers is not regulated by charter or prescription, the corp. may make bye-laws to regulate the election.—*NEWLING v. FRANCIS* (1789), 3 Term Rep. 189; 100 E. R. 525.

Annotations:—*Consd. R. v. Westwood* (1830), 7 Bing. 1. *Refd. R. v. Fisher* (1862), 4 B. & S. 575.

685. Charter directing election by majority—Bye-law giving casting vote to presiding officer.]—Where a charter directed the election of senior bailiff to be made by a majority of a select body:—*Held*: a bye-law, which gave a casting voice to the presiding officer in case of an equality of votes, was bad.—*R. v. GINEVER* (1796), 6 Term Rep. 732; 101 E. R. 797.

Annotation:—*Mentd. R. v. Westwood* (1830), 7 Bing. 1.

686. Bye-law prescribing mode not sanctioned by charter.]—*R. v. BUMSTEAD*, No. 683, *ante*.

B. Removal of Officers and Members.

687. Bye-law giving power of amotion for just cause.]—*R. v. RICHARDSON*, No. 523, *ante*.

C. Restraint and Regulation of Trade.

688. General rule.]—A municipal bye-law in restraint of trade is void.—*BEDFORD CORPN. v. FOX* (1697), 1 Lut. 562; 125 E. R. 295.

Annotation:—*Mentd. Graves v. Colby* (1838), 9 Ad. & El. 356.

689. — Void unless supported by custom.]—Bye-law in restraint of trade bad.

If corpns. were to try their own suits against strangers upon a bye-law for excluding all traders but themselves, there would be an end of the

distinction which has long been established, that a bye-law which lays this restraint upon trade is void, unless there be a custom to support it (*LORD MANSFIELD, C.J.*).—*HESKETH v. BRADDOCK* (1766), 3 Burr. 1847; 97 E. R. 1130.

Annotations:—*Refd. Martin v. R.* (1848), 3 Cox, C. C. 318. *Mentd. R. v. Edmonds* (1821), 4 B. & Ald. 471; *Graves v. Colby* (1838), 9 Ad. & El. 356.

690. — Restraint for no adequate reason—Without consideration—Void.]—A bye-law was made by the Gunmakers Co. that no member should sell the barrel of any handgun, etc., ready proved to any person of the trade, not a member, in London or within four miles; & that no member should strike his stamp or mark on the barrel of any person not a member of the co., etc., under a penalty of 10s. for each offence. The penalty was to go half to the use of the poor of the co., & half to the use of the discoverer, without saying who was to sue for it:—*Held*: the bye-law was bad as being in restraint of trade, it not appearing from anything set forth in the declaration that there was any adequate reason for these restraints or any consideration to the persons restrained. *Qu.*: whether the co. may not sue for the penalty.—*GUNMAKERS, ETC. (MASTERS) v. FELL* (1742), Willes, 384; 125 E. R. 1227.

Annotations:—*Mentd. Ward v. Byrne* (1839), 5 M. & W. 548; *Mallan v. May* (1843), 11 M. & W. 653; *Rousillon v. Rousillon* (1880), 14 Ch. D. 351; *Mineral Water Bottle Exchange & Trade Protection Soc. v. Bood* (1887), 36 W. R. 274; *Nordenfelt v. Maxim Nordenfelt Guns & Ammunition Co.*, [1894] A. C. 535.

691. Whether void as being in restraint—Trading restricted to persons apprenticed for seven years.]—Pltfs. brought debt for forfeitures against deft. & declared that by letters patent they were a corp. & empowered to make bye-laws provided they were legal & that they had made a bye-law that no person or persons should carry on the trade of a tailor within the liberties of I., which were not allocated by legal warrant or authority given by the corporation or three of their masters & wardens, or should set up a tailor's shop until such persons had been apprenticed for seven years under penalty & that deft. had broken this bye-law. Deft. pleaded that he was a servant of P., a gentleman, & had made apparel for his master & family. Demurrer that this making was within the bye-law:—*Held*: (1) it was not; (2) the bye-law was bad because in restraint of trade.—*IPSWICH TAYLORS v. SHERRING* (1614), 1 Roll. Rep. 4; 81 E. R. 285; *sub nom. IPSWICH TAILORS' CASE*, 11 Co. Rep. 53 a; *sub nom. IPSWICH CLOTHWORKERS' CASE*, Godb. 252.

Annotations:—*As to* (1) *Refd. Norris v. Staps* (1616), Hob. 210. *As to* (2) *Distd. Green v. Durham* (1757), 1 Burr. 127. *Refd. French v. Adams* (1763), 2 Wils. 168; *Kruse v. Johnson*, [1898] 2 Q. B. 91. *Generally, Refd. Rogers v. Rajendro Dutt* (1860), 13 Moo. P. C. C. 209. *Mentd. Jolliffe v. Brode* (1621), W. Jo. 13; *Thomas v. Sorrel* (1673), 3 Keb. 223; *Hacket v. Tilly* (1706), 11 Mod. Rep. 93; *Boulton v. Bull* (1795), 2 Hy. Bl. 463; *Beard v. Egerton* (1846), 3 C. B. 97; *Jefferys v. Boosey* (1854), 4 H. L. Cas. 815; *Marsden v. Saville Street Co.* (1878), 3 Ex. D. 203; *Davies v. Davies* (1887), 36 Ch. D. 359.

692. — Restraining number of apprentices to be taken by members.]—A bye-law that a cutler shall only take one apprentice at a time is good.—*CUTLERS' CO. (MASTER, ETC.) v. BUSKIN* (1693), 12 Mod. Rep. 46; 88 E. R. 1156.

693. — —.]—A bye-law made by a co. in a corp. to restrain the number of apprentices to be taken by any of the members is void.—*R. v. COOPERS' CO., NEWCASTLE* (1798), 7 Term Rep. 543; 101 E. R. 1123.

PART VI. § SECT. 3, SUB-SECT. 3.—A. (c).

686 i. Bye-law prescribing mode not sanctioned by charter.]—*GRAY v. SMITH* (1836), 14 Sh. (Ct. of Sess.) 1062; 32 Fac. Coll. 876.—*SCOT*.

Sect. 3.—Validity: Sub-sect. 3, C. & D.; sub-sect. 4. Sect. 4.]

694. — Trading restricted to freemen—Of borough.]—A bye-law to restrain persons from exercising a trade, not being free of a borough:—*Held: void.*—*PARRY v. BERRY* (1717), 1 Com. 269; 92 E. R. 1066.

695. — Of company.]—Bye-law to oblige a joiner in L. to be free of the Joiners Co., good, & if it enacts that he shall take up his freedom there under a penalty, a mandamus will lie to admit him to prevent a forfeiture.—*WANNEL v. LONDON (CITY CHAMBERLAIN)* (1725), 1 Stra. 675; 93 E. R. 775; *sub nom. R. v. LUDLAM (LONDON CHAMBERLAIN)*, 8 Mod. Rep. 267.

Annotations:—Consd. Harrison v. Godman (1756), 1 Burr. 12; *R. v. Harrison* (1762), 3 Burr. 1322. *Mentd. Maxim Nordenfelt Guns & Ammunition Co. v. Nordenfelt*, [1893] 1 Ch. 630.

696. —]—Bye-law that a butcher in L. shall be free of the Butchers' Co.:—*Held: good.*—*R. v. HARRISON (LONDON CHAMBERLAIN)* (1762), 1 Wm. Bl. 372; 3 Burr. 1322; 96 E. R. 209.

Annotations:—Consd. Clark v. Le Cren (1829), 9 B. & C. 52. *Mentd. Maxim Nordenfelt Guns & Ammunition Co. v. Nordenfelt*, [1893] 1 Ch. 630.

697. — Custom in support.]—A custom to exclude foreigners in a corpn. to the effect that no one had a right to keep a shop or follow any trade in the town of D. unless admitted to one of the guilds or fraternities there, & a bye-law made to support it are good, but the penalty given by the bye-law cannot be to a stranger.

Although a body politic has power to make a bye-law to enforce a penalty for breach of a custom yet they cannot give an action to recover that penalty to a stranger, but the corpn. themselves, or somebody for them, as the chamberlain in the case of the City of London, must sue for it (*LEE, C.J.*).—*BODWIC v. FENNELL* (1748), 1 Wils. 233; 95 E. R. 592.

Annotations:—Distd. Davies v. Morgan (1831), 1 Tyr. 457. *Consd. Graves v. Colby* (1838), 9 Ad. & El. 356.

698. — Void unless supported by custom.]—A bye-law, that no person not being free of the Pewterers' Co. shall exercise the trade of a pewterer within the city of L., is a bye-law in restraint of trade, & is void, without proof of a special custom to support it.—*LONDON (CHAMBERLAIN) v. COMPTON* (1826), 7 Dow. & Ry. K. B. 597; 3 Dow. & Ry. M. C. 503; 4 L. J. O. S. K. B. 49.

Annotation:—Apld. Clark v. Le Cren (1829), 9 B. & C. 52.

699. —]—A bye-law, that no person shall exercise the art of a painter within the City of L., not being free of the Co. of Painters, is a bye-law in restraint of trade, & void, unless there be a special custom to warrant it.—*CLARK v. LE CREN* (1829), 9 B. & C. 52; 7 L. J. O. S. K. B. 186; 109 E. R. 20.

700. — Of city—Custom to support.]—A custom of the city of L., that no person not being free may sell or put to sale any wares within the city or liberties by retail; or keep any shop or other place for the sale, or putting to sale of wares by retail, or for use of any art, trade, etc., within the city, liberties, or suburbs:—*Held: it was sufficient ground for a bye-law forbidding any non-freeman to show, sell, or put to sale wares by retail within the city, liberties, or suburbs; or to use any art, trade, etc., within the same.*

To use an art, trade, etc., signifies here, to use as a master or principal.—*CLARK v. DENTON* (1830), 1 B. & Ad. 92; 8 L. J. O. S. K. B. 333; 109 E. R. 721.

Annotations:—Refd. Shaw v. Poynter (1834), 2 Ad. & El.

312. *Mentd. Hall v. Nixon* (1875), L. R. 10 Q. B. 152; *Reay v. Gateshead Corpn.* (1886), 55 L. T. 92.

701. —]—On return to *habeas corpus*, it appeared that an action was commenced in the Lord Mayor's Ct. in L., for penalties under a bye-law, which bye-law was founded on a custom, that no artificers or handicraftsmen, or other shopkeepers or traders by retail, being free of the city, should be permitted to employ, hire, or set on work in any such handicraft or manual occupation within the city or liberties, any person not being free of the city or apprentice to a freeman. The bye-law after stating that the custom had been infringed, to the prejudice of many poor handicraftsmen & others, being freemen, prohibited under a penalty the employment of any person contrary to the custom; & it added several provisos, exempting certain cases from the operation of the clause. The provisos immediately followed the enacting part, but formed distinct sentences, & were not incorporated with it by reference. The declaration in the suit was founded on the bye-law, & charged deft., a freeman, with setting W. on work in the manual occupation of a butcher, within the liberties of the city, such person being a foreigner from the liberties, contrary to the bye-law:—*Held: (1) the custom, as set out, was good; (2) the bye-law was good, though it gave no exemption from the penalty in case freemen should not be found to undertake the employment.*—*SHAW v. POYNTER* (1834), 2 Ad. & El. 312; 4 Nev. & M. K. B. 290; 4 L. J. K. B. 16; 111 E. R. 121.

702. — Compelling person entitled to be free of city—To take up freedom in company.]—Bye-law to oblige a person who has a right to be free of the city, to take up his freedom in some particular co. is in restraint of trade, & bad.—*HARRISON v. GODMAN* (1756), 1 Burr. 12; 97 E. R. 161.

Annotations:—Folld. London Chamberlain v. Compton (1826), 7 Dow. & Ry. K. B. 597; *Clark v. Le Cren* (1829), 9 B. & C. 52. *Mentd. Maxim Nordenfelt Guns & Ammunition Co. v. Nordenfelt*, [1893] 1 Ch. 630.

703. — Preventing member carrying on separate trade on own account—Company carrying on trade in partnership.]—*R. v. FAVERSHAM FISHERMEN'S CO.*, No. 378, *ante*.

704. — Not when merely regulating trade—Limitation of output.]—A bye-law, that no silk-throwster shall make more than so many spindles a week good.—*FREEMANTLE v. SILK THROWSTERS' CO.* (1668), 1 Lev. 229; 83 E. R. 382; *sub nom. SILK THROUSTERS (MASTER, ETC.) v. FREMANTEE*, 2 Keb. 309.

Annotations:—Mentd. Mitchel v. Reynolds (1711), 1 P. Wms. 181; *Maxim Nordenfelt Guns & Ammunition Co. v. Nordenfelt*, [1893] 1 Ch. 630.

705. — Restraint on number of carts.]—The bye-law in L., whereby the number of carts was restrained:—*Held: was a good bye-law.*—*PLAYER v. JONES* (1669), 1 Vent. 21; 2 Keb. 501; 86 E. R. 15.

Annotation:—Refd. Jones v. Waters (1835), 5 Tyr. 361.

706. —]—*PLAYER v. GARDNER* (1672), 2 Keb. 873; 84 E. R. 552.

Annotation:—Refd. Mitchel v. Reynolds (1711), 1 P. Wms. 181.

707. —]—*PLAYER v. JENKINS* (1666), 1 Sid. 284; 2 Keb. 27; 82 E. R. 1108.

Annotations:—Refd. London City v. Vanacre (1699), 5 Mod. Rep. 438; *Mitchel v. Reynolds* (1711), 1 P. Wms. 181; *Bosworth v. Herne* (1737), *Lee temp. Hard.* 405.

708. — Regulating mode of exercise of trade—Prevention of nuisance.]—Upon a demurrer to a declaration in debt, brought by plff., as chamberlain of the city of E., against deft. for

slaughtering two oxen within the city of E., contrary to a bye-law made by the mayor & common council of E., under a general power given them by charter, to make bye-laws. The terms of the bye-law were that no butcher or other person should within the walls of the city slaughter any beast, upon pain to forfeit certain sums of money, & that no butcher or other person should keep any swine within the walls of the city, nor any stinking filth, garbage, etc., within his house, etc., upon pain to pay a certain fine:—*Held*: the bye-law was good & the demurrer must be overruled.

The bye-law in question is not a restraint of trade, but only a regulation of it in this particular city: & it is made in confirmation of 4 Hen. 7, c. 3 (LORD MANSFIELD, C.J.).—*PIERCE v. BARTRUM* (1775), 1 Cowp. 269; 98 E. R. 1080.

Annotation:—*Consd. Butchers' Co. v. Morey* (1790), 1 Hy. Bl. 370.

Restraining number of apprentices.]

See Nos. 692, 693, *ante*.

D. Livery Companies, Trade Guilds, etc.

Livery companies generally, see Part XVII., *post*.

General conditions of validity.]—See Sect. 3, sub-sect. 2, *ante*.

As to election of officers.]—See Sect. 3, sub-sect. 3, A., *ante*.

As to restriction & regulation of trade.]—See Sect. 3, sub-sect. 3, C., *ante*.

Construction of bye-laws.]—See Sect. 4, *post*.

709. Imposing amount payable by persons elected into livery—Whether amount reasonable immaterial.]—A bye-law provided that every liveryman elected into the livery of the Co. of Vintners should pay the sum of £31 13s. 4d.:—*Held*: the bye-law was good whether the amount was reasonable or unreasonable for it only bound the members of the corp.

When a man will agree to be of a co. he doth thereby submit himself to the laws thereof & we are not to take notice of the extravagancy of charges they lay upon themselves (*per CUR.*).—*TAVERNER'S CASE* (1681), T. Raym. 446; 83 E. R. 233.

Annotation:—*Refd. Tobacco Pipe Makers' Co. v. Loder* (1851), 15 Jur. 1194.

710. Compelling member of profession to take up freedom in company.]—A bye-law made by the City of London that every person using the occupation of music & dancing within the city & who should be entitled to the freedom of patrimony or servitude should at the next ct., after notice, take up his freedom in the Co. of Musicians on pain of forfeiting £10 for every offence is a void bye-law.—*ROBINSON v. GROSCOURT* (1695), 5 Mod. Rep. 104; 87 E. R. 547.

Annotation:—*Distd. R. v. Ludlam* (1725), 8 Mod. Rep. 267.

711. Compelling person to accept livery—Necessity to show that company have livery.]—A bye-law, compelling a person to accept the livery of a co., must show that the co. has a livery.—*INNOLDERS' SOCIETY (MASTER & WARDENS) v. GLEDHILL* (1756), Say. 274; 96 E. R. 878.

Annotations:—*Consd. Poulterers' Co. v. Phillips* (1840), 6 Bing. N. C. 314; *Piper v. Chappell* (1845), 14 M. & W. 624.

712. Authorising admission into livery of any freeman of company—Omission to state that freedom of city essential.]—*POULTERS' Co. v. PHILLIPS*, No. 722, *post*.

SUB-SECT. 4.—PARTIAL VALIDITY.

713. Whether bye-law void in toto.]—*Held*: a bye-law, though not good by reason of the fine & rent, was in all things else very good.—*PLAYER v. VERE* (1679), T. Raym. 288, 324; 83 E. R. 149, 168.

Annotations:—*Mentd. Mitchel v. Reynolds* (1711), 1 P. Wms. 181; *Gunmakers, etc. v. Fell* (1742), Willes, 384; *Harrison v. Godman* (1756), 1 Burr. 12.

714. —.]—*CLARKE v. TUCKET*, No. 760, *post*.

715. — When divisible into distinct parts.]—*R. v. FAVERSHAM FISHERMEN'S Co.*, No. 378, *ante*.

716. — —.]—Under the provisions of 6 & 7 Will 4, c. lxx., certain persons were empowered to make bye-laws for the regulation of the common pastures within the borough of B. They made a bye-law to the effect that if any person should stock or depasture or attempt to stock or depasture any bull or entire or vicious horse on any part of the common pastures the person or persons so offending, & the owner or owners of the stock or cattle, should forfeit & pay for every such offence the sum of £5:—*Held*: this bye-law was divisible, & although the latter part, as to the owners of the animal, was bad, the former part was good, & a person who depastured a vicious horse upon the common pasture might be ordered to pay the £5 penalty.—*R. v. LUNDIE* (1862), 31 L. J. M. C. 157; 5 L. T. 830; 26 J. P. 646; 8 Jur. N. S. 640; 10 W. R. 267.

Annotation:—*Refd. R. v. Saddlers' Co.* (1863), 10 H. L. Cas. 404.

SECT. 4.—CONSTRUCTION.

717. General rule—May be explained & supported by other bye-laws.]—*LONDON TOBACCO PIPE MAKERS' Co. v. WOODROFFE*, No. 721, *post*.

718. — Words "shall be lawful"—Not to be construed as obligatory.]—The words "shall be lawful," when found in the bye-law of a corp., are not to be construed as obligatory to do what the law ordains. Therefore where a bye-law of the borough of E. ordained that upon the happening of any vacancy in the number of 24 common councilmen, such vacancies should be filled by the freemen inhabiting the town, & that a great ct. should be held once every quarter, at which "it should be lawful" for the bailiffs to admit to the freedom of the town such persons as had been resident therein for one whole year:—*Held*: this bye-law was only optional, & could not be enforced by mandamus to compel the admission of qualified inhabitants to the freedom of the borough.—*R. v. EYE CORPN.* (1822), 1 B. & C. 85; 2 Dow. & Ry. K. B. 172; 1 Dow. & Ry. M. C. 201; 1 L. J. O. S. K. B. 41; 107 E. R. 32.

Annotation:—*Refd. Gimbert v. Coyney* (1825), M'Cle. & Yo. 469.

719. Prohibiting carrying on of particular trade by persons not apprenticed—Private exercise of trade by servant not included.]—*IPSWICH TAYLORS v. SHERRING*, No. 691, *ante*.

720. Imposing penalty on refusal of office—By burgesses—Whether inhabitant liable.]—*WORKINGHAM CORPN. v. JOHNSON*, No. 732, *post*.

721. — By "any person" chosen to office—Persons eligible by charter only included.]—Where a person has been admitted a member of a corporate co., & has acted as such, it is not competent to him in an action for infringing the bye-laws to

Sect. 4.—Construction. *Sects. 5 & 6: Sub-sects. 1 & (b).]*

dispute the acceptance of the charter by a majority of those whom it intended to incorporate.

A bye-law may be explained & supported by reference to other bye-laws.

A charter by which the King incorporated the Tobacco Pipe Makers provided for the future election of officers & the transaction of other corporate business at meetings to be holden in a hall in L., or within three miles thereof, & authorised the master, wardens, & assistants to make bye-laws for the govt. of the society, & every member thereof, & every person using the art or mystery of making tobacco pipes, in L. & W., & any other parts of England or Wales:—*Held*: (1) the charter, by fixing the place of meetings to L. or W., or within three miles thereof, sufficiently established local limits for the corpns.; (2) a bye-law, that if any person chosen to be warden should refuse to accept the office of warden, he should forfeit to the co. a pecuniary penalty, was good, the words any person, applying to persons eligible by the terms of the charter to the office of warden; (3) a bye-law, that every freeman & journeyman using or not using the said art, mystery, or trade, should pay a yearly sum to the co. in quarterly instalments, & every person refusing should forfeit twice the sum, was bad, as it did not appear that the necessities of the co. required such a contribution.—*LONDON TOBACCO PIPE MAKERS' CO. v. WOODROFFE* (1825), 7 B. & C. 835; 108 E. R. 935; *sub nom.* *TOBACCO PIPE MAKERS' CO. v. WOODROFFE*, 8 Dow. & Ry. K. B. 530; 4 L. J. O. S. K. B. 301.

Annotations:—As to (1) *Consd.* *Tobacco Pipe Makers' Co. v. Loder* (1851), 16 Q. B. 765. As to (2) *Apld.* *Poulters' Co. v. Phillips* (1840), 6 Bing. N. C. 314.

722. Authorising admission into livery of "freemen of company"—Freeman of city & company only eligible.]—The Co. of Poulters comprises all poulters in London & within seven miles thereof, & no one can be of the livery of a co. unless he be a freeman of the City of London:—*Held*: a bye-law authorising the co. to admit into the livery of the co. any freeman of the co., was a valid bye-law, & must be intended to imply any freeman of the co. who was also free of the city.—*POULTERS' CO. v. PHILLIPS* (1840), 6 Bing. N. C. 314; 8 Scott, 593; 9 L. J. C. P. 190; 4 Jur. 124; 133 E. R. 124.

Annotations:—*Consd.* *Piper v. Chappell* (1845), 14 M. & W. 624; *Moore v. Rawlins* (1859), 6 C. B. N. S. 289. *Reid.* *R. v. Saddlers' Co.* (1863), 10 H. L. Cas. 404.

723. Disqualifying bankrupts & persons "becoming otherwise insolvent"—Notorious or avowed insolvency essential—Not mere inability to pay debts in full.]—*R. v. SADDLERS' CO.*, No. 597, *ante*.

Livery Companies generally, *see* Part XVII., *post*.

SECT. 5.—EFFECT OF USAGE.

See, generally, CUSTOM & USAGES.

Usage as evidence in construction of charters.]—*See* Part II., Sect. 3, sub-sect. 3, D. (b), *ante*.

Usage regulating election of members & officers.]—*See* No. 251, *ante*.

724. Usage as evidence of bye-laws.]—In a case relating to the mayor of the town of M. it appeared there was a particular usage relating to his election:—*Held*: a bye-law to this effect would be presumed.—*R. v. HORNER* (1712), cited in 1 Barn. K. B. 414; 94 E. R. 279.

725. — Sufficiency of.]—*PERKINS v. CUT-*

TERS' CO. (MASTER, WARDENS, ETC.) (circa 1810), 2 Selwyn's N. P. 13th ed., 1133.

726. — — —.]—Where a charter of incorporation authorises the corporators to elect a master *de seipsis*, a bye-law narrowing the body of electors is valid.

The existence of such a bye-law may, without the intervention of a jury, be judicially inferred from an ancient usage for the election to be so conducted.

Though the bye-law would be void if it also lessened the number of persons eligible to the office, such a vice in the presumed bye-law will not be inferred from the circumstance of the election, by the limited body having almost uniformly fallen upon members of the limited body.

Nor will the ct., on that ground, give leave to file an information in the nature of a *quo warranto*, for the purpose of investigating the title of a master elected agreeably to such usage.

By charter in 1391, Richard II. granted to the tailors & linen armourers, to elect one master & four wardens, from among themselves. By long usage the master & wardens, & ct. of assistants, who were past masters, had been accustomed to elect the master, & it appeared from the records of the co., that the master had been generally elected from the ct. of assistants, but there had been instances of his being elected from the liverymen of the fraternity:—*Held*: the only ground upon which the ct. would have granted a *quo warranto*, would have been upon the question, whether the usage had been such as to limit the number of the eligible, by confining the right to the ct. of assistants; but there was not necessarily an inference, that the two parts of the usage were one entire usage, & therefore, there was not sufficient doubt to induce the ct. to grant the rule.

I do not go so far as to say that this charter has the force of an Act of Parliament, because it has the assent of the Lords, Spiritual & Temporal; but that assent shows that it was more considered, & is a more solemn instrument than a charter granted *Ex mero motu* (TAUNTON, J.).—*R. v. ATTWOOD* (1833), 4 B. & Ad. 481; 1 Nev. & M. K. B. 286; 2 L. J. K. B. 57; 110 E. R. 536.

Annotation:—*Consd.* *R. v. Powell* (1854), 3 E. & B. 377.

727. — — —.]—*R. v. POWELL*, No. 674, *ante*.

728. — — —.]—*R. v. FISHER*, No. 444, *ante*.

729. Proof of usage on which bye-laws founded—Corporation participating in penalty on breach—Declarations of deceased corporators.]—(1) The masters of a co. under a bye-law issued to the wardens their warrant to distrain for a penalty. This warrant was put in as evidence by pltf., the party distrained upon, in an action for the seizure, to establish his case against the masters as co-defts. with the wardens. The warrant recited a demand of the penalty previous to the seizure:—*Held*: such demand was not established by the putting in of the warrant by pltf., but defts. ought to have proved it.

(2) Although a bye-law inflicting a penalty does not in its terms require that it shall be demanded previously to distress being made, yet such demand is necessarily to be implied & must be proved. The practice on such bye-laws has accordingly been, to aver a demand & refusal in the pleadings. Unless such be a necessary implication the bye-law would be unreasonable in inflicting a penalty against a stranger without such demand & refusal, & therefore bad.

(3) In order to introduce in evidence an entry in the co.'s book of an acknowledgment by a

stranger that he had infringed the bye-law evidence *aliunde* must be previously given to establish who the party was who made the entry & in what situation he stood, & those circumstances are not to be gathered from the entry itself.

(4) Such an entry being ancient lapse of time dispenses with the necessity of proving the handwriting of the person who made it.

(5) *Semble*: without such implication it would be unreasonable & bad in not requiring, in terms, notices of the bye-law to be given to a stranger previous to infliction of the penalty.

(6) *Semble*: in support of a bye-law in favour of a co. in a corporate town to exclude strangers from free trade, where the corpn. participates in the penalty for infraction of the bye-law, the declarations of a deceased corporator as to reputation of the custom so to exclude strangers would be admissible.—*DAVIES v. MORGAN* (1831), 1 Cr. & J. 587; 1 Tyr. 457; 9 L. J. O. S. Ex. 153; 148 E. R. 1557.

730. Evidence of usage in contravention of bye-laws—Inadmissible.]—Evidence of a practice in contravention of a bye-law is not receivable.—*SILLS v. BROWN* (1840), 9 C. & P. 601, N. P.

Annotation:—*Mentd. The Margaret* (1880), 5 P. D. 238.

See, further, CUSTOM & USAGES; EVIDENCE.

Proof of bye-laws—Inspection of corporation books—By members.]—*See Nos. 336–341, ante.*

By strangers.]—See Nos. 1424, 1459,

SECT. 6.—BREACH OF.

SUB-SECT. 1.—IN GENERAL.

731. Not indictable offence—Exercising trade contrary to bye-laws of boroughs.]—It is not an indictable offence to exercise a trade in a borough contrary to the bye-laws of that borough.—*R. v. SHARPLES* (1792), 4 Term Rep. 777; 100 E. R. 1297.

Action for—Only maintainable when penalty inflicted.]—*See No. 732, post.*

Breach of bye-laws of railway companies & other carriers—As to carriage of passengers.]—*See CARRIERS, Vol. VIII., pp. 110, 113, Nos. 741–747, 760–763.*

SUB-SECT. 2.—PENALTIES FOR.

A. Infliction of.

(a) In General.

732. Necessity for—To found action for breach.]—If no penalty is annexed to the breach of a bye-law there is no right of action upon it.

A charter expressed that if the capital burgesses died they were to be chosen out of secondary

burgesses, & if they die they were to be chosen out of the inhabitants. A bye-law, annexed a forfeiture to the refusal of an inhabitant chosen a burgess to serve:—*Held*: the bye-law could not be enforced against a secondary burgess who had been elected to be a capital burgess but had refused to serve, such bye-law, though good, being construed to restrain the penalty to an inhabitant chosen to be a burgess refusing to serve.—*WORKINGHAM CORPN. v. JOHNSON* (1736), *Lee temp. Hard.* 284; 95 E. R. 183.

Annotation:—*Reid. Goodman v. Saltash Corpn.* (1882), 7 App. Cas. 633.

733. Power to inflict—Incident to corporations.]—*LONDON (CITY OF) v. WOOD*, No. 604, *ante.*

Power to make bye-laws—Incident to corporations.]—*See Sect. 2, sub-sect. 1, ante.*

(b) What Penalties may be inflicted.

734. General rule—Must be pecuniary.]—*LONDON (CITY OF) v. WOOD*, No. 604, *ante.*

735. Not invalidating bonds & covenants—On taking of alien apprentices—Fine.]—A bye-law of the common council of the City of London provided that if any freeman took the son of an alien as apprentice the bonds & covenants should be void. In an action of covenant:—*Held*: the council could not make covenants & bonds void but could fine or punish a master for taking such an apprentice.—*DOGGERELL v. POKES* (1594), *Moore, K. B.* 411; 72 E. R. 663; *sub nom. DOGRELL v. PERKS*, *Owen*, 66.

736. Not imprisonment.]—A borough, having authority by charter to make bye-laws, made one to the effect that any burgess who used opprobrious words towards the mayor might be imprisoned by the mayor during his pleasure. A burgess sent word to the mayor in answer to a summons “let him come to me if he will for I will not come to him” & thereupon the mayor imprisoned him:—*Held*: (1) this was a false imprisonment, & the bye-law was not proper; (2) a bye-law to disenfranchise the offender would be good.—*BAB v. CLERK* (1595), *Moore, K. B.* 411; 72 E. R. 663.

737. —.]—The fourmakers of London were a corpn. by royal grant having power to make ordinances, & they made an ordinance that none should use the trade till he was free of the corpn., & that if any who was not free used it, he should forfeit 40s. for every week which he used it, & be committed for it. They committed S. for using the trade & not paying 40s. contrary to the ordinance. Upon a habeas corpus:—*Held*: it was not lawful to imprison him.—*HARDCASTLE'S CASE* (1639), cited in 4 Vin. Abr. 303.

738. Disenfranchisement.]—*BAB v. CLERK*, No. 736, *ante.*

739. Reasonable fine—For refusal of corporate office.]—*EVANS v. HARRISON*, No. 404, *ante.*

See, also, No. 735, ante.

PART VI. SECT. 6, SUB-SECT. 1.

e. Judicial powers of corporation—In respect of breach.]—When a corpn., having agreed on its constitution, has constituted a tribunal to try its members for breaches of its rules & to impose penalties for such breaches, the decisions of such tribunal will be binding on the members, provided that such tribunal act within the scope of its authority & observe such forms as the rules require, if any, or otherwise proceed in a manner consonant with the principles of justice. Tribunals, so constituted, are not cts. & have no power of their own to enforce their sentences, but for that purpose they must apply to the cts. established by law, which will give effect to the

decisions of the tribunals in a similar manner to that in which they give effect to the decisions of arbitrators whose jurisdiction rests entirely upon the agreement of the parties.—*LONG v. CAPE TOWN (Bp.)* (1863), 4 S. 162.—S. AF.

f. —.]—*KOTZE v. MURRAY* (1864), 5 S. 39.—S. AF.

g. —.]—*BURGERS v. MURRAY* (1865), 1 R. 258.—S. AF.

h. Remedy for—Where bye-law made under statutory authority—Restricted to that specifically described by statute.]—For breach of a duty imposed by a bye-law made under authority of a statute, the only remedy is that specifically prescribed by statute.—

NORTON v. KEARON (1871), 1 R. 6 C. L. 126.—IR.

PART VI. SECT. 6, SUB-SECT. 2.—A. (a).

k. Necessity for proof of bye-law.]—In a prosecution for a penalty under a bye-law of a corpn., the bye-law must be proved.—*R. v. WORTMAN* (1858), 4 All. 73.—CAN.

PART VI. SECT. 6, SUB-SECT. 2.—A. (b).

736 l. Not imprisonment.]—A corpn. cannot enact a bye-law subjecting a party to imprisonment in default of payment of a penalty, without express authority from the Legislature.—*Ex p. TRASK* (1877), 1 P. & B. 277.—CAN.

Sect. 6.—Breach of: Sub-sect. 2, A. (b) & (c), B. & C.

740. Not forfeiture of goods—Unless expressly authorised by letters patent or statute.]—A corp'n. created by letters patent, with a power of making bye-laws, cannot make any laws to incur a forfeiture, neither can a corp'n. created by Act of Parliament, unless such a power be expressly given.—*KIRK v. NOWILL* (1786), 1 Term Rep. 118; 99 E. R. 1006.

Annotations:—Mentd. *Da Costa v. Clarke* (1801), 2 Bos. & P. 376; *Le Bret v. Papillon* (1804), 4 East, 502; *Clement v. Lewis* (1822), 3 Brod. & Bing. 297.

(c) *To Whom payable.*

741. To corporation—Not to strangers—Breach of bye-law restricting trading to freemen.]—The guild of shoemakers of B. was a corp'n. by prescription & had a bye-law that if any person should follow that trade not being free of the guild he should forfeit a certain penalty to be recovered by the master. In an action by the master to recover the penalty:—*Held*: a custom to exclude foreigners was good & a bye-law providing a reasonable penalty in support of such custom was good when the penalty was given to the corp'n. or guild.—*ELLINGTON v. CHENEY* (1735), cited in 1 Wils. 235; 95 E. R. 593.

Annotations:—Consd. *Graves v. Colby* (1838), 9 Ad. & El. 356. *Refd.* *Bodwic v. Fennell* (1748), 1 Wils. 233.

742. ———.]—*BODWIC v. FENNELL*, No. 697, *ante*.

743. ———.]—Where there is a custom to exclude foreigners from exercising a trade in a corp'n., & a bye-law to support the custom gives a penalty to any but the corp'n. it is bad.—*TOTTERDELL & HARRIS v. GLAZBY* (1765), 2 Wils. 266; 95 E. R. 802.

Annotations:—Refd. *Davies v. Morgan* (1831), 1 Tyr. 457; *Graves v. Colby* (1838), 9 Ad. & El. 356.

744. ——— Penalty reserved to officers for time being.]—The master wardens & assistants of the co. of turners in London were empowered by charter to make bye-laws, & impose fines & penalties, which were to be for the use of the master wardens & commonalty of the co. A bye-law was made that any liveryman of the co., who should refuse to take upon himself the office of steward when elected, should forfeit & pay to the master & wardens for the time being, or one of them, for the use of the company, the sum of £15:—*Held*: (1) the bye-law was valid, & was not to be considered as reserving the penalty to a stranger; (2) the master & wardens at the time when the penalty was incurred, having gone out of office at the time when the action was commenced, were not entitled to sue for the penalty.—*GRAVES v. COLBY* (1838), 9 Ad. & El. 356; 1 Per. & Dav. 235; 1 Will. Woll. & H. 705; 8 L. J. Q. B. 57; 112 E. R. 1247.

B. Validity of Bye-laws imposing Penalties.

Validity of bye-laws generally, see Part VI., Sect. 3, *ante*.

745. Penalty inflicted must be certain.]—To an action of trespass for taking hides to the value of £10 defts. pleaded a bye-law of the Cordwainers Society of E. giving members of the Society the sole right of making & selling boots & shoes in that city & that pltf., not being a member of the Society, & selling shoes contrary to the bye-law, the master & wardens of the Society imposed penalties on him on divers dates to the sum of £6 13s. 4d. of which pltf. paid only 19s., & thereupon the master & wardens took hides appraised at £7, which they sold for £7, & offered the balance of 25s. 8d. to pltf., after satisfying the penalties,

which he refused to accept:—*Held*: this was a bad plea.

The penalty imposed by this bye-law is not warranted by the law nor by their custom for that ought to be reasonable & ought to be expressed, to the end that the ct. may judge whether it be reasonable or not. Here no certain penalty is set down, but left to the discretion of any of the shoemakers of E., & that is against the course of all laws, for when a law is made it is necessary that the penalty thereof should be known to the end men might not offend (*BRIDGMAN, J.*).—*WOOD v. SEARL* (1618), J. Bridg. 139; 123 E. R. 1257.

Annotation:—Consd. *Piper v. Chappell* (1845), 14 M. & W. 624.

746. ——— Whether bye-law void for uncertainty in penalty.]—*PIPER v. CHAPPELL*, No. 766, *post*.

747. Must be reasonable.]—*WOOD v. SEARL*, No. 745, *ante*.

748. ——— Notice of terms—To strangers affected—Must be provided for.]—*DAVIES v. MORGAN*, No. 729, *ante*.

749. ——— To members deprived of advantage on breach—Must be given.]—The free fishermen or dredgermen of the manor & hundred of F. are a co. in the nature of a prescriptive corp'n.

When in any trading corp'n. by prescription there is one governing body which has been used to make general orders, & another which has been used to regulate the business of the corp'n., but which does not appear to have exercised the power of making general orders, it is questionable whether the latter body has power to make a general order for regulating the business of the corp'n., imposing on their members such conditions under which they are to hold advantages secured to them by general orders made by the other governing body:—*Seemle*: the one has rather a legislative, & the other an executive province; the latter having only power to regulate in particular cases, not to make a general regulation.

But if such a general order or regulation be made laying down a condition on which the members are to enjoy an advantage they possess under general rules of the corp'n., & on breach of which they are no longer to enjoy it, although it may be doubtful whether such a case be governed by all the principles of law which apply to bye-laws imposing penalties or forfeiture, the order or rule will be invalid, because unreasonable & unjust, unless distinct notice of its terms be given by the governing body, which issues it, to all the members of the corp'n. who are affected by it; & at all events cannot be enforced against one who had not such notice of its terms.—*HILLS v. HUNT* (1854), 15 C. B. 1; 23 L. T. O. S. 176; 2 C. L. R. 1781; 139 E. R. 316.

750. Bye-law declared void—Right of corporator injured by bye-law to account.]—A bye-law of the corp'n. of the Co. of Whitstable fishermen that any freeman engaging in any other oyster fishery on the coast of K., should forfeit £10 & until payment should be excluded from all share of the profits, which should in the mean time be divided, as if he had wholly ceased to be a freeman, being in an action held void, an account was decreed, with a declaration that pltf., having been unduly prevented by the bye-law from working in any manner as freeman, & participating, is to be considered, though he did not work or tender himself or any one for him to work, as *prima facie* entitled in the most beneficial manner, without prejudice to deft.'s establishing that at any particular periods he could not have entitled himself to earnings or not as beneficially as claimed in case no such

bye-law had been made.—**ADLEY v. WHITSTABLE Co.** (1815), 19 Ves. 304; 1 Mer. 107; 34 E. R. 530, L. C.

Annotations :—**Consd.** *Evan v. Avon Corpn.* (1860), 29 Beav. 144. **Refd.** *Pearce v. Creswick* (1843), 2 Hare, 286. **Mentd.** *Shepard v. Brown* (1862), 4 Giff. 208.

C. Enforcement.

(a) Modes of Enforcement.

Legal proceedings by & against corporations, their members, & officers.]—See Part XV., post.

751. Distress.]—In an action of false imprisonment deft. justified the imprisonment, because the King had incorporated the town of S. A. by the name of mayor etc. & granted to them to make ordinances, & he showed that they, with the assent of pltf. & other burgesses, assessed a sum on every inhabitant for the charges in erecting cts. there, & ordained that if any should refuse to pay he should be imprisoned, & because the pltf. being a burgess, refused to pay, he as Mayor justified :—**Held** : this was no plea, for they might have inflicted a reasonable penalty, but not imprisonment, which penalty they might limit to be levied by distress, or for which an action of debt lay.—**CLARK'S CASE** (1596), 5 Co. Rep. 64, a; 77 E. R. 152.

Annotations :—**Mentd.** *City of London's Case* (1610), 8 Co. Rep. 121 b; *R. v. Hampden* (1637), 3 State Tr. 826; *Langham's Case* (1642), March, 179; *Hutchins v. Player* (1663), O. Bridg. 272; *Webb v. Taylor* (1843), 13 L. J. Q. B. 24; *Barker v. St. Quintin* (1844), 13 L. J. Ex. 144.

752. —.]—**AURIS v. BRADSHAW** (1664), 1 Keb. 733; 83 E. R. 1213.

Annotation :—**Refd.** *R. v. Speed* (1702), 1 Salk. 379.

753. —.]—**LONDON (CITY OF) v. WOOD**, No. 604, *ante*.

754. — Necessity for demand & refusal.]—**GEE v. WILDEN** (1685), 2 Lut. 1320; 125 E. R. 729.

Annotations :—**Refd.** *Davies v. Morgan* (1831), 1 Cr. & J. 587. **Mentd.** *Scriveners' Co. v. Brooking* (1842), 3 Q. B. 95.

755. —.]—**DAVIES v. MORGAN**, No. 729, *ante*.

756. Action.]—**CLARK'S CASE**, No. 751, *ante*.

757. —.]—If the steward of a city neglect to take the oaths appointed by 25 Car. 2, c. 2, debt will lie against him on a bye-law imposing a fine on such as shall refuse to take upon them such office, for it is a refusal of that without which the office is void & cannot be held.—**EXETER CORPN. v. STARRE** (1681), 2 Show. 158; 89 E. R. 859; *affd. sub nom.* **STARR v. EXETER CORPN.** (1683), 3 Lev. 116, Ex. Ch.

Annotation :—**Refd.** *Evans v. Harrison* (1762), Wilm. 130.

758. —.]—**LONDON (CITY OF) v. WOOD**, No. 604, *ante*.

759. —.]—An action lies by a corpn. to recover money forfeited by a member under a bye-law made by the corpn.—**LONDON (BARBER SURGEONS) v. PELSON** (1679), 2 Lev. 252; 83 E. R. 543.

760. Not by sale of goods.]—In an action of trespass for entering his house & taking four dishes of pltf.'s, deft. pleaded the letters patent of Edward IV. whereby the Co. of Taylors in the city of E. were incorporated & that by the letters patent they were to keep a feast every year & there to make orders & bye-laws etc.; that the corpn. made a bye-law that if any person should revile the master wardens or any of the council, he should forfeit 3s. 4d., the fines to be levied by distress upon a warrant under the corpn. seal & by sale of the offenders goods after four days notice given of the fine so set forth; that pltf. being a member of the corpn. & having notice of the bye-law an assembly said of the master & wardens they were all a company of pick pocket

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rogues, whereby pltf. forfeited 3s. 4d. by the bye-law, which was demanded of him & which he neglected to pay by the space of six days; & that the master made his warrant directed to deft. commanding him to levy the 3s. 4d. by distress & sale of the goods of pltf.; & deft. entered into pltf.'s house & took the goods mentioned in the declaration. To this plea pltf. demurred :—**Held** : judgment would be given for pltf., for a corpn. could not make a bye-law to have a forfeiture levied by the sale of goods, & though deft. only distrained yet the bye-law, being void as to the selling, was void *in toto* & there could be no justification upon it.—**CLARKE v. TUCKET** (1690), 2 Vent. 182; 86 E. R. 381; *sub nom.* **CLERK v. TUCKET & STAPLEDON**, 3 Lev. 281.

Annotations :—**Refd.** *Lee v. Wallis* (1756), 1 Keny. 292; *Davies v. Morgan* (1831), 1 Cr. & J. 587.

761. Not by withholding of profits till fine paid.]—A bye-law made by the freemen of a co. of oyster fishermen prohibiting any freeman from being engaged in the trade of sending oysters to market from any other ground on the shore of K. than the oyster ground of the co. under a penalty of £10 & in case of refusal to pay the same that such freeman shall, until the fine be paid, be excluded from all share of the profits to be made thereafter by the joint trade of the co., is a void bye-law, there being no usage stated to that extent, but only a usage for the freeman to make orders for regulating the co. & fishery with fines & penalties for the breach of such orders, & for prohibiting the freemen from being engaged in other oyster grounds under penalties to be stopped out of the money arising by the sale of the stint of oysters of such freemen.—**ADLEY v. REEVES** (1813), 2 M. & S. 53; 105 E. R. 302; *subsequent proceedings, sub nom.* **ADLEY v. WHITSTABLE CO.** (1815), 1 Mer. 107, L. C.

Annotation :—**Refd.** *Hills v. Hunt* (1854), 15 C. B. 1.

(b) Recovery by Action.

Legal proceedings by & against corporations, their members, & officers.]—See Part XV., post.

Proof of breach—Entry of acknowledgment in books of corporation.]—See No. 729, ante.

762. Who may sue for—Chamberlain of corporation—Suing for benefit of corporation.]—**HOLLINGS v. HUNGERFORD**, No. 476, *ante*.

763. — Whether master, wardens & commonalty of livery company—Penalty inflicted to use of poor of company & discoverer—Without stating in whom right of action vested.]—**GUN-MAKERS, ETC. (MASTERS) v. FELL**, No. 690, *ante*.

764. — — — Penalty forfeited to master & wardens—To use of master, wardens & company.]—The master, wardens & commonalty of a co., cannot sue for a penalty forfeited to the master & wardens to the use of the master, wardens, & co.—**FELTMAKERS' CO. v. DAVIS** (1797), 1 Bos. & P. 98; 126 E. R. 799.

Annotations :—**Consd.** *Graves v. Colby* (1838), 9 Ad. & El. 356; *Tobacco Pipe Makers' Co. v. Loder* (1851), 16 Q. B. 765. **Refd.** *Radenhurst v. Bates* (1826), 11 Moore, C. P. 421. **Mentd.** *R. v. Westwood* (1830), 7 Bing. 1; *Hybart v. Parker* (1858), 4 C. B. N. S. 209.

765. — Whether master & wardens of livery company—Penalty reserved to "master & wardens" for time being—Not if out of office when action brought.]—**GRAVES v. COLBY**, No. 744, *ante*.

766. — — — Penalty reserved to company generally.]—Plumbers' Co. of London were incorporated by a charter of James I. & empowered thereby to make bye-laws. They made a bye-law that the master & wardens might call, choose, elect & admit into the livery of the co. such person

Sect. 6.—Breach of: Sub-sect. 2, C. (b). Sect. 7. Part VII. Sect. 1: Sub-sect. 1, A.]

free of the art of mystery of plumbing as they should think fit; & that every person so chosen should, immediately upon notice thereof, prepare himself to serve the same place at the then next meeting of the master & wardens, in such seemly & decent manner as formerly had been used; & that every person so called & chosen into the livery, & accepting it, should use wear & keep the livery, according to the usage & warning given him for that purpose; & that the person so called & chosen into the livery, & accepting it, should bring in & pay at the next meeting to the master & wardens, to the use maintenance & relief of the co. & to the officers of the co. for entering the same & for the warning given, such fees as formerly had been paid in like cases; & that whoever so called & chosen into the livery, refused to pay the fees should forfeit & pay to the master & wardens for the time being for every such default the sum of £5 or less, at the discretion & pleasure of the master & wardens, but not less than 40s. In a declaration in debt on this bye-law against a person who had been elected into the co. & taken the oath to obey the bye-laws:—*Held*: (1) the bye-law was not bad for uncertainty in the amount of the penalty; (2) the declaration was not bad for not showing that the co. was a co. that had a livery, a livery being mentioned in the charter & bye-law; (3) it was not bad for not showing that deft. was a freeman of the City of London, for the ct. could not take notice that none but freemen of the City were admissible into the livery of a co. unless it had been certified to the ct. by the Recorder of London; (4) the master & wardens alone might sue for the penalty though it was reserved to the use of the co. generally.—*PIPER v. CHAPPELL* (1845), 14 M. & W. 624; 5 L. T. O. S. 456; 9 Jur. 601; 153 E. R. 625.

Livery companies generally, see Part XVII., *post*.

767. Proof of previous demand—Whether necessary—Averment of demand in declaration—Bye-law making offender liable to action of debt.]—A penalty of 20s. was imposed by one of the bye-laws of Butchers' Co. on all persons selling meat on a Sunday within their jurisdiction, & it was declared by a subsequent clause that if any offender should deny, refuse, or neglect to pay the penalty he should be liable to an action of debt:—*Held*: it was not necessary to prove a previous demand in order to maintain such action, although averred in the declaration.—*BUTCHERS' Co. (MASTER, ETC.) v. BULLOCK* (1803), 3 Bos. & P. 434; 127 E. R. 236.

768. — Sufficiency of—Recital of demand in warrant to distrain.]—*DAVIES v. MORGAN*, No. 729, *ante*.

769. Limitation of action—Action of debt for penalty incurred under bye-law made by virtue of Royal Charter—Whether "action of debt grounded upon contract without specialty"—Statute of Limitations, s. 3.]—An action of debt for a penalty due under a bye-law made by virtue of a charter is an action of debt grounded upon a contract without specialty & is barred by sect. 3 of the above stat. if not commenced within six years

after the penalty becomes due.—*TOBACCO PIPE MAKERS' Co. v. LODER* (1851), 16 Q. B. 765; 20 L. J. Q. B. 414; 18 L. T. O. S. 34; 15 J. P. 723; 15 Jur. 1194; 117 E. R. 1074.

Annotation:—*Mentd. Re Manchester & Milford Ry.*, [1897] 1 Ch. 276.

SECT. 7.—REPEAL AND ABROGATION.

770. General rule.]—Where a charter gave the right of electing an alderman to the mayor & burgesses at large from themselves, & a bye-law stated to be made in 1577 by the then mayor & burgesses, but not now extant in writing, restrained the right of electing to the mayor & certain of the burgesses of the town, viz. the recorder, aldermen, coroners, common councilmen, & such of the burgesses of the town as had served, or did serve the office of chamberlain or sheriff of the town, & called the livery or clothing burgesses for the time being, or so many of them as should be duly assembled together for that purpose, whereof the mayor to be one, or the mayor part of them:—*Held*: the bye-law was reasonable & valid, but every bye-law might be repealed by the same body which made it, & the office of chamberlain of the town, as stated in such by-law, was taken to be a corporate office as well as the other offices, the serving of which was made the qualification of the electing burgesses.

In order to avoid a bye-law upon the ground of its being unreasonable, because of some inconvenience that may result from it, it should appear to be a probable inconvenience; for one can hardly predicate of any law, that some possible inconvenience may not result from it; but is it likely to happen? . . . The long continuance of a bye-law though it would not legalise it, if it were in itself illegal is fair evidence to show that there is no intrinsic inconvenience in it (*ELLENBOROUGH, C.J.*).—*R. v. ASHWELL* (1810), 12 East, 22; 104 E. R. 9.

Annotations:—*Consd. R. v. Westwood* (1830), 7 Bing. 1; *Goodman v. Saltash Corpn.* (1882), 7 App. Cas. 633.

771. Mandamus to compel repeal—By proposing resolution to body assembled—Refused—Though body empowered to make bye-laws.]—In the absence of any precedent the ct. refused a rule *nisi* for a mandamus calling on the mayor of a town to propose a resolution to the burgesses in guild assembled for repealing certain bye-laws, though it was alleged that bye-laws & ordinances might, by charter be made & had formerly been made at such guilds.—*Ex p. GARRETT & CLARK v. NEWCASTLE CORPN.* (1832), 3 B. & Ad. 252; 110 E. R. 95.

772. Bye-laws made under statute—Abrogated by repeal of statute.]—When a bye-law is made under an Act of Parliament the repeal of the Act abrogates the bye-law, unless the bye-law is preserved by the repealing Act by means of a saving clause or otherwise.—*WATSON v. WINCH*, [1916] 1 K. B. 688; 85 L. J. K. B. 537; 114 L. T. 1209; 80 J. P. 149; 32 T. L. R. 244; 14 L. G. R. 486.

— **By local administrative bodies.]—**See LOCAL GOVERNMENT; PUBLIC HEALTH & LOCAL ADMINISTRATION.

PART VI. SECT. 7.

1. Right to repeal—Even if repeal

*prejudices persons who have obtained rights under repealed bye-law.]—**WRIGHT v. HURON DIOCESE INCORPORATED*

SYNOD (1884), 9 A. R. 411; 29 Gr. 348; 11 S. C. R. 95.—*CAN.*

Part VII.—Meetings.

See NOTE on p. 270, *ante*.

SECT. 1.—CONVENTION OF.

SUB-SECT. 1.—NECESSITY FOR NOTICE.

A. *In General.*

773. Every member must receive notice—Omission to summon one member renders act void.]

—If one member be omitted to be summoned to a corporate assembly, the act is void.—*KYNASTON v. SHREWSBURY CORPN.* (1736), 2 Stra. 1051; 93 E. R. 1027; *sub nom.* *R. v. SHREWSBURY CORPN.*, Lee temp. Hard. 147; *subsequent proceedings, sub nom.* *KINASTON v. SHREWSBURY CORPN.*, Lee temp. Hard. 295; *sub nom.* *SHREWSBURY (TOWN) v. KYNASTON* (1737), 7 Bro. Parl. Cas. 396, H. L.

Annotations:—*Refd.* *R. v. Liverpool Corpn.* (1759), 2 Burr. 723; *R. v. May, R. v. Little* (1770), 5 Burr. 2681; *R. v. Theodorick* (1807), 8 East, 543; *R. v. Langhorne* (1836), 6 Nev. & M. K. B. 203. *Mentd.* *Clement v. Lewis* (1822), 10 Price, 181; *R. v. London Corpn.* (1832), 3 B. & Ad. 255; *Fall v. It.* (1842), 2 Gal. & Dav. 803; *Re Portuguese Consolidated Copper Mining Co.*, Steele's Case (1889), 1 Meg. 246.

774. ———.]—Where certain acts of a corpn. are to be performed at a special meeting of the members of that corpn., all the persons entitled to be present thereat must be summoned, if they are within a reasonable summoning distance. The omission to summon any one so entitled, renders the acts done at such meeting, in his absence, invalid.

The election of treasurer for the county of the city of Dublin was vested by 49 Geo. III., c. xx. in the "board of magistrates of the county of the city," & was directed to take place at the Sessions Ct. of the city, by vote of the magistrates there present:—*Held*: the recorder of Dublin was a member of that board, & ought to have been summoned to a meeting of the magistrates summoned for that election, & the omission to summon him rendered the election which took place in his absence invalid.—*SMYTH v. DARLEY* (1849), 2 H. L. Cas. 789; 9 E. R. 1293, H. L.

Annotations:—*Consd.* *Young v. Ladies' Imperial Club*, [1920] 2 K. B. 523; *Refd.* *Merchants, etc. of Staple of England v. Bank of England* (1887), 21 Q. B. D. 160.

775. ——— Alleged custom that accidental omission disregarded bad.]—To a *quo warranto* for exercising the office of mayor of a borough, deft. pleaded that by charter the corpn. had power to elect a burgess for mayor, & that by custom, there was an indefinite number of free burgesses, & the mayor, bailiffs, & burgesses, being duly assembled, might elect whom they would for burgess; that he was elected burgess at a meeting duly assembled, according to the custom of the borough, & was afterwards duly elected mayor according to the charter. The Crown traversed the fact that the meeting at which he was made a burgess was duly assembled. It appeared, at the trial, that the meeting was not held on a day appropriated to the purpose of electing burgesses; & the jury found that the custom was to elect burgesses by the burgesses for the time being, who were indefinite in number; & that every resident burgess was to be served with a personal notice of the meeting, & if he required it, of its object; but that the custom must be taken with the qualification that an accidental omission to serve a resident burgess was not a violation of it. It also appeared that R., a resident burgess, had told

the officer whose duty it was to serve the notices, that he need not serve him, as he was frequently absent, & could hear tell of what was going on. The officer did not serve R., who was in fact in the borough at the time of the meeting. The jury found expressly that the omission to serve R. was accidental:—*Held*: the qualification of the custom, as to accidental omissions, was bad in law; & the omission to serve R. was not accidental.—*R. v. LANGHORN* (1836), 4 Ad. & El. 538; 6 Nev. & M. K. B. 203; 111 E. R. 889.

Annotation:—*Consd.* *Roberts v. Price* (1847), 4 C. B. 231.

776. ——— Though dispensed with by particular member.]—*R. v. LANGHORN*, No. 775, *ante*.

777. ——— Notice must give opportunity to attend.]—There appears to me to be no reason in principle why a deed sealed with the seal of the corpn. fraudulently fixed by a corporator should have any more efficacy than one to which the seal has been fraudulently affixed by any one else. I have been unable to find any authority for such a proposition, & none was shown at the bar. The acts of a corpn. are those of the major part of the corporation, corporately assembled. By "corporately assembled" it is meant that the meeting shall be one held upon notice which gives every corporator the opportunity of being present. . . . The notice need not necessarily be special, but there must be such knowledge, or such means of knowledge, as to give each corporator the opportunity of attending (WILLS, J.).—*STAPLE OF ENGLAND (MAYOR, ETC. OF MERCHANTS OF) v. BANK OF ENGLAND (GOVERNOR & CO.)* (1887), 21 Q. B. D. 160; 57 L. J. Q. B. 418; 56 L. T. 665, D. C.; *affd.* on other grounds, 21 Q. B. D. 170, C. A.

Annotations:—*Mentd.* *Crapp v. East Stonehouse L. B.* (1889), 5 T. L. R. 501; *Bank of England v. Vagliano*, [1891] A. C. 107; *Brocklesby v. Temperance Building Soc.* (1893), 2 R. 594; *Scholfield v. Londesborough*, [1895] B. 536; *Ruben v. Great Fingall Consolidated*, [1904] B. 712; *Kepitigalla Rubber Estates v. National Bank of India*, [1909] 2 K. B. 1010; *London Joint Stock Bank v. Macmillan & Arthur*, [1918] A. C. 777.

778. When notice dispensed with—Election at casual meeting—Concurred in by all electors.]—The election of an alderman of a corpn. upon a casual meeting of the electors is void, unless all the electors concur in it.—*MUSGRAVE v. NEVINSON* (1724), 2 Ld. Raym. 1358; 1 Stra. 584; 92 E. R.

Annotations:—*Consd.* *R. v. Theodorick* (1807), 8 East, 543.

Mentd. *Smith d. Dormer v. Parkhurst* (1739), 2 Stra. 1105.

779. ——— Non-resident corporator — Where majority at meeting.]—When the major part of the electors of a borough are met, they may proceed to election, & notice to non-residents is not necessary.—*R. v. GRIMES* (1770), 5 Burr. 2598; 98 E. R. 366.

Annotation:—*Refd.* *R. v. Bellringer* (1792), 4 Term Rep. 810

780. ——— Out of reach of presiding officer.]—A non-resident corporator is out of the reach of the summons of the presiding corporate officer, to attend a corporate meeting for the purpose of an election, & need not be summoned.—*NIXON v. BURT* (1817), 7 Taunt. 682; 1 Moore, C. P. 413; 129 E. R. 271.

781. ——— Meeting held on charter day.]—*R. v. HILL*, No. 788, *post*.

782. ——— Meeting bona fide adjourned—From meeting properly called.]—A bridge Act provided that sixteen persons therein named, "and all other parties" who possessed a certain property qualification, "shall be, and they are hereby

Sect. 1.—Convention of: Sub-sect. 1, A. & B.; sub-sects. 2 & 3. Sect. 2: Sub-sect. 1.]

appointed, the trustees for carrying this Act into execution." It also provided for the holding & calling of meetings, but contained no express power of adjournment. It gave "the trustees" power to assess at meetings called for the purpose, but no assessment was to be valid unless notice of the intention of making it, & of the time at which it was intended to be made, should be given to all persons to be charged therewith. The word "trustees" was defined in the interpretation clause, "the trustees acting by virtue of this Act." The trustees named in the Act were alone summoned to the meetings. K., who by his qualification was a trustee, but had never acted, & whose name was not inserted in the Act, brought an action to set aside the assessment & proceedings, on the ground that the meetings had not been duly called, & that one of the assessments was made at an adjourned meeting, without any fresh notice to the parties to be charged:—*Held*: (1) K., never having acted as a trustee, was not entitled to require the statutable notice; (2) where notice of a meeting had been properly given, there was no necessity for notice of its *bonâ fide* adjournment.—*KERR v. WILKIE* (1860), 1 L. T. 501; 24 J. P. 211; 6 Jur. N. S. 383; 8 W. R. 286, H. L.

783. Notice given of particular business—Other business cannot be transacted—Without consent of whole body.]—Wherever notice is given for one particular business only, the body cannot go on to other business unless the whole body is met, & it is done by consent.—*R. v. WAKE* (1728), 1 Barn. K. B. 80; 94 E. R. 55.

Annotation:—*Consd. R. v. Theodorick* (1807), 8 East, 543.

B. Select Bodies.

784. Special summons necessary—Cannot act on general summons of whole body.]—Where particular powers are lodged in a select number, they cannot separate & act upon a general summons of the whole body, but there ought to be a particular summons for that purpose.—*R. v. CARLISLE CORPN.* (1720), 1 Stra. 385; 93 E. R. 583.

Annotations:—*Consd. R. v. Richardson* (1758), 1 Burr. 517. *Distd. R. v. Theodorick* (1807), 8 East, 543. *Refd. Machell v. Nevinson* (1724), 2 Ld. Raym. 1355; *R. v. Parkyns* (1820), 3 B. & Ald. 668.

785. When special summons dispensed with—Select body all present & consenting—On general summons of whole body—Unless charter requires summons.]—Where the whole corpn. are summoned for a particular purpose, a select body, who are all present & consenting, may, at the same meeting, without any particular summons to them for that purpose in their select capacity, proceed to an election of a common councilman in the place of the other resigned; the power of election being in such select body, & the charter not requiring any previous summons.—*R. v. THEODORICK* (1807), 8 East, 543; 103 E. R. 451.

Annotation:—*Mentd. Re Portuguese Consolidated Copper Mining Co., Steele's Case* (1889), 1 Meg. 246.

786. ———.]—Information for usurping the office of burgess of the borough of S. Plea, that the burgesses were a body corporate by prescription as well as by charter, & that the common council, or the major part of them, being duly assembled as such common council for such purpose within the borough, from time to time, & as

often as it had seemed fit & convenient to them, had elected so many persons to be burgesses as to them seemed fit. Replication, that notice of the purpose for which the supposed assembly of the common council was to be held was not at any time before the said assembly was held given to the aldermen or capital burgesses of the borough, or any or either of them:—*Held*: the replication was bad, because it assumed, as a general proposition of law, that there could not be any lawful assembly for the purpose of electing a burgess without previous notice of the purpose of the meeting having been given to every member of each select body of the common council; whereas, if all the members of such select body were present at, & concurred in the election, such notice would have been unnecessary.—*R. v. CHETWYND* (1828), 7 B. & C. 695; 1 Man. & Ry. K. B. 534; 1 Man. & Ry. M. C. 200; 6 L. J. O. S. M. C. 49; 108 E. R. 883.

SUB-SECT. 2.—SUFFICIENCY OF NOTICE.

787. How given—Usual method.]—Where there is a usual method of notice of an election in a corpn. it cannot be dispensed with.—*R. v. MAY*, *R. v. LITTLE* (1770), 5 Burr. 2681; 98 E. R. 408.

788. ——— Reasonable method—Ring bell unreasonable.]—Information for usurping the office of burgess of the borough of M. The plea stated (*inter alia*) that M. was an ancient borough, & the burgesses a corpn. by prescription, consisted of an indefinite number; that from time immemorial a ct. had from time to time been held amongst other things for the election of burgesses, & notice of holding the ct. had been immemorially given by ringing a certain bell within the town & borough, & that the burgesses, or so many of them as chose, had a right to attend that ct.; & being present & attending there, had elected & had a right to elect at their discretion such persons to be burgesses as they thought fit; that notice of holding the ct. was given by ringing the bell; that the ct. was held; & deft. elected a burgess:—*Held*: all the pleas were bad; the notice by the ringing of the bell of holding the cts. or meetings was not a reasonable notice of the cts. or meetings, or of the purposes for which they were held, & was therefore insufficient.

Where a meeting is held on a charter-day it is not necessary to give notice of it; but at any other time notice of a meeting & of the purposes for which it is held must be given (*LITTLEDALE, J.*).—*R. v. HILL* (1825), 4 B. & C. 426; 6 Dow. & Ry. K. B. 593; 3 Dow. & Ry. M. C. 219; 107 E. R. 1118.

Annotations:—*Consd. R. v. Chetwynd* (1828), 7 B. & C. 695. *Distd. R. v. Pulsford* (1828), 8 B. & C. 350. *Mentd. La Compagnie de Mayville v. Whitley*, [1896] 1 Ch. 788.

789. Time for giving—Full notice necessary—Corporation election.]—A corpn. having accepted a charter empowering the body thereafter to elect persons in the room of such members as should die, or be disfranchised, cannot elect any persons except there be vacancies by such events. Full notice should be given of corpn. elections, particularly when held upon bye-days, & anything like surprise vitiates the election.—*PAGE v. R.* (1792), 2 Ridg. Parl. Rep. 445, H. L.

790. ——— Notice by advertisement dated too late—Though printed & partly circulated in time.]

PART VII. SECT. 1, SUB-SECT. 1.—B.

m. Special summons necessary.]—*ABAJI SITARAM v. TRIMBAK MUNICIPALITY* (1904), 1 L. R. 28 Bom.

66.—IND.

PART VII. SECT. 1, SUB-SECT. 2.

n. How given—By publication in

newspaper for certain number of consecutive weeks.]—*PORTLAND & LANCASTER STEAM FERRY CO. v. PRATT* (1850), 2 All. 17.—CAN.

—By a canal Act, no meeting of comrs. was to held unless previous notice should be given in some newspaper, published or circulated in the county of G. at least sixteen days before such meeting. Notice of the meeting of the comrs. to be held on Feb. 12, was inserted in a newspaper, dated Jan. 27, on which day the notice itself also bore date; but it was proved that the newspaper was printed & partly circulated on Jan. 26 :—*Held*: the notice was insufficient, as not being given “at least sixteen days before such meeting.”—*R. v. ABERDARE CANAL CO.* (1850), 14 Q. B. 854; 4 New Mag. Cas. 123; 19 L. J. Q. B. 251; 15 L. T. O. S. 453; 14 J. P. 497; 14 Jur. 735; 117 E. R. 328.

Annotations:—*Mentd.* *R. v. Salford* (1852), 16 Jur. 907; *Wildes v. Russell* (1866), Har. & Ruth. 689; *R. v. Woodhouse*, [1906] 2 K. B. 501.

791. Contents of notice—Must state purpose—Unless held on charter day.]—*R. v. HILL*, No. 788, *ante*.

792. — — — Unless to select body only.]—Where an election to an office in a corpn. was to be made by a select body appointed by the charter to be aiding the mayor :—*Held*: the mayor was not bound to give to the members of such select body a specific notice of a meeting to be held for the purpose of such election; but that a reasonable & usual notice requiring them to attend at a meeting of the corpn. at a time specified, without stating for what purpose the meeting was called was sufficient.—*R. v. PULSFORD* (1828), 8 B. & C. 350; 2 Man. & Ry. K. B. 384; 1 Man. & Ry. M. C. 419; 6 L. J. O. S. K. B. 336; 108 E. R. 1073.

Annotation:—*Refd.* *La Compagnie de Mayville v. Whitley*, [1896] 1 Ch. 788.

793. — — — Adjourned meeting—From meeting which all corporators must attend—Notice of purpose unnecessary.]—*R. v. HARRIS*, No. 511, *ante*.

794. — — — Notice of purpose unnecessary—Vestry.]—Where notice of the purpose of a vestry meeting has been duly given, & that meeting has begun but not completed a certain business, & the meeting is regularly adjourned, such business may lawfully be completed at the adjourned meeting, though the notice for summoning such adjourned meeting does not state the purpose for which it is summoned.—*SCADDING v. LORANT* (1851), 3 H. L. Cas. 418; 17 L. T. O. S. 225; 15 Jur. 955; 10 E. R. 164, H. L.; *affg.* S. C. *sub nom.* *LORANT v. SCADDING* (1849), 13 Q. B. 706, Ex. Ch.

Annotations:—*Folld.* *Kerr v. Wilkie* (1860), 1 L. T. 501. *Refd.* *Wills v. Murray* (1850), 4 Exch. 843; *McLaren v. Thomson*, [1917] 2 Ch. 261. *Mentd.* *Dimes v. Grand Junction Canal* (1852), 3 H. L. Cas. 759; *Waterloo Bridge Co. v. Cull* (1859), 1 E. & E. 245; *Ainsworth v. Creeke* (1868), L. R. 4 C. P. 476; *Iron Ship Coating Co. v. Blunt* (1868), L. R. 3 C. P. 484.

SUB-SECT. 3.—ENFORCEMENT.

795. By mandamus—For public business only.]
The ct. said they never knew a mandamus go

*o. Contents of notice—Must state purpose distinctly.]—*The bye-laws of Toronto Corn Exchange provided that notice of a meeting for the expulsion of a member must be given :—*Held*: notice of “a meeting to take into consideration the conduct of a member” was not a compliance with such provision; it should have stated distinctly what the object of the meeting was.—*CANNON v. TORONTO CORN EXCHANGE* (1879), 27 Gr. 23; 5 A. R. 268.—*CAN.*

*p. — — —.]—*Pltf. had attended a meeting which had been illegally called, inasmuch as the notice did not

state the purpose for which it was called, & had entered upon a defence before the council :—*Held*: pltf. not precluded from afterwards filing a bill impeaching the proceedings as irregular & invalid.—*MARSH v. HURON COLLEGE* (1880), 27 Gr. 605.—*CAN.*

*q. — — —.]—*A resolution passed by deft. corpn. at a special meeting, suspending for life pltf. from membership in it on account of his misconduct at its meetings, was set aside as the notice calling the meeting did not set out the charges against pltf. & afford him an opportunity to reply thereto, but merely stated that

to require a corpn. to assemble themselves unless there were shown to the ct. some matters necessary to be done in the corpn. relating to the public.—*R. v. LIVERPOOL BOROUGH* (1728), 1 Barn. K. B. 82; 94 E. R. 57.

796. — — — For removal of disqualified members—Refused.]—Mandamus refused to compel a corpn. to meet for the purpose of considering the propriety of removing non-resident members, where the charter in terms required residence.—*R. v. TOTNESS CORPN.* (1825), 5 Dow. & Ry. K. B. 481; 2 Dow. & Ry. M. C. 507.

For election of members.]—See Nos. 578, 579, *ante*.

For putting particular resolution.]—See No. 771, *ante*.

SECT. 2.—THE QUORUM.

SUB-SECT. 1.—NECESSITY FOR.

797. Major part of corporators must be present—Unless otherwise provided by constitution—Or usage.]—Acts of the majority are binding in a corpn. But the major number of the whole ought to be present, unless it be otherwise provided by the original constitution or ancient usage. *Semble*: leases sealed by the majority of the chapter, resident at the time, are generally good by usage.—*HASCARD v. SOMANY* (1693), 1 Freem. K. B. 504; 89 E. R. 380.

Annotations:—*Refd.* *R. v. Hoyte* (1795), 6 Term Rep. 430; *Merchants, etc. of Staple of England v. Bank of England* (1887), 21 Q. B. D. 160.

798. — — — Corporation falling below requisite majority cannot act.]—Where a charter required that the mayor & common clerk for the time being, & the common council for the time being, or the major part of them, should elect; & the common council was a definite body, consisting of 36 :—*Held*: a majority of the whole number must meet to form an elective assembly; & if the corpn. be so reduced as that so many do not remain, no election can be had at all.—*R. v. BELLINGER* (1792), 4 Term Rep. 810; 100 E. R. 1315.

Annotations:—*Consd.* *R. v. Miller* (1795), 6 Term Rep. 268; *R. v. Morris* (1803), 4 East, 17; *R. v. Devonshire* (1823), 1 B. & C. 609; *Blacket v. Blizzard* (1829), 9 B. & C. 851. *Refd.* *R. v. Hoyte* (1795), 6 Term Rep. 430; *R. v. Thornton* (1803), 4 East, 294; *R. v. Bower* (1823), 1 B. & C. 492; *R. v. Wyllyams* (1823), 3 Dow. & Ry. K. B. 75; *Godmanchester Corpn. v. Phillips* (1836), 5 L. J. K. B. 108. *Mentd.* *Rennell v. Lincoln* (1825), 3 Bing. 223.

See, also, No. 419, *ante*.

799. — — —.]—To constitute a valid assembly of a select vestry appointed under Church Building Acts, 1818 (c. 43) & 1819 (c. 134), a majority of the whole number appointed should be present, & therefore a church rate made by a minority, viz. seven out of a body of twenty-six is invalid. It is a general rule of law, that where a limited number of persons are to perform a public duty, there must be a majority of the whole body assembled, & a majority of the persons assembled at such a meeting may

it was called to consider his conduct at a previous meeting.—*COHEN v. HAZEN AVENUE SYNAGOGUE CORPN.* (1920), 47 N. B. R. 400.—*CAN.*

PART VII. SECT. 2, SUB-SECT. 1.

*r. Meetings falling below prescribed number may act—Unless otherwise provided by constitution.]—*In the absence of anything to the contrary in the governing instrument, bodies meeting may act, notwithstanding the members present are below the prescribed number.—*DEUTSCHE EVANGELISCHE KIRCHE ZU PRETORIA v. HOEPFNER* (1911), T. P. D. 218.—*S. AF.*

act.—*BLACKET v. BLIZARD* (1829), 9 B. & C. 851; 4 Man. & Ry. K. B. 641; 2 Man. & Ry. M. C. 369; 109 E. R. 317; *sub nom.* *FREEMAN v. MEYMOTT, BLACKETT v. BLIZARD*, 8 L. J. O. S. K. B. 85.

Annotations:—*Reid. Hall v. Maule* (1838), 7 Ad. & El. 721; *R. v. Christ Church* (1857), 26 L. J. M. C. 68; *Attenborough v. Kemp & Page* (1860), 6 Jur. N. S. 1354; *R. v. Chester* (1901), 17 T. L. R. 533. *Mentd. R. v. Fenton* (1841), 1 Gal. & Dav. 17; *R. v. Leeds, Ex p. Binns* (1906), 95 L. T. 916.

SUB-SECT. 2.—HOW CALCULATED.

800. How calculated—Corporation consisting of definite number—Majority of that number.]—R. v. BEILINGER, No. 798, *ante*.

801. ——— Majority of existing members—Where warranted by charter or usage.]—R. v. HOYTE, No. 259, *ante*.

802. ——— Not majority of existing members.]—Where the charter of a corpn. provided that, when any one or more of the capital burgesses for the time being should die, or dwell without the borough, or be removed from his office, it should be lawful to the other capital burgesses at that time surviving & remaining, or the greater part of the same, of whom the mayor was to be one, to elect another, or others of the burgesses of the borough, into the place or places of the capital burgess or burgesses so happening to die, etc.:—*Held*: a majority of the entire body of capital burgesses, & not merely of those then existing, must be present to make a good election under that clause.—*R. v. DEVONSHIRE* (1823), 1 B. & C. 609; 107 E. R. 224; *sub nom.* *R. v. WYLLYAMS*, 3 Dow. & Ry. K. B. 75.

Annotations:—*Consd. R. v. Headley* (1827), 7 B. & C. 496. *Appld. R. v. May* (1833), 4 B. & Ad. 843.

803. ———.]—(1) The charter of the corpn. created two bailiffs & twelve assistants, & enacted that the bailiffs & assistants for the time being should be the common council of the borough; that the bailiffs & assistants, for the time being, or the greater part of them, of whom the bailiffs should be two, should make bye-laws, should elect the recorder & town-clerk, & should elect the bailiffs annually; if a bailiff died in office, or was removed, the successor was to be chosen by the assistants for the time being, or the greater part of them; the assistants nominated in the charter to hold for life unless removed by the bailiffs & assistants for the time being, or the greater part of them, of which part the bailiffs should be two, & to be removable by the bailiffs & assistants for the time being, or the greater part of them without the quorum clause; & in that case, or in case of death, the successor to be elected by the bailiffs & assistants then living or remaining, or the greater part of them without the quorum clause, & so from time to time:—*Held*: a meeting at which the two bailiffs & only six assistants were present, was not a regular corporate meeting for the purpose of accepting a resignation of a freeman, although the number of assistants was reduced below twelve by deaths. (2) One member of a corpn. cannot in law release the corpn. of which he is a member because he is a constituent portion of the party released.—

GODMANCHESTER CORPN. v. PHILLIPS (1836), 4 Ad. & El. 550; 1 Har. & W. 686; 6 Nev. & M. K. B. 211; 5 L. J. K. B. 108; 111 E. R. 893.

Annotations:—*Mentd. Quarterman v. Cox* (1837), 8 C. & P. 97; *Yeomans v. Leigh* (1837), 1 Jur. 479.

804. ——— Construction of charter.]—A charter constitutes a corpn. to consist of two bailiffs (senior & junior) 12 aldermen & an indefinite number of burgesses &, after nominating the two first bailiffs & directing the election of the first 12 aldermen, provides that, on a certain day in the year, the senior bailiff shall be chosen by the bailiffs & aldermen, or the major part of them, out of the aldermen, for one year, & until another of the aldermen to that office in due manner should be elected, perfected, & sworn; & also provides for the election of the junior bailiff on the same day by a different mode of election for one year, & until, etc., as before:—*Held*: the two bailiffs do not thereby constitute but one officer; & the senior & junior bailiffs of different years last legally appointed, their respective successors *de facto* for several years, having been ousted by *quo warranto*, might coalesce together & preside at a corporate meeting of the bailiffs & aldermen for the election of a senior bailiff; & the charter, having directed the future election of a senior bailiff, after the first appointment of two bailiffs & twelve aldermen, to be made of one of the aldermen, must be taken to mean that there should be only eleven acting efficient aldermen apart from the senior bailiff who was also an alderman; & consequently six aldermen were a majority of that integral part capable of making together with the two last legal bailiffs, an elective assembly for the purpose of choosing a senior bailiff.—*R. v. THORNTON* (1803), 4 East, 294; 1 Smith, K. B. 109; 102 E. R. 843.

Annotation:—*Reid. R. v. Devonshire* (1823), 1 B. & C. 609.

805. Corporation consisting of several integral parts—Majority of each part—Construction of charter.]—Where a charter directed that out of certain persons to be nominated in a particular mode, "the mayor, aldermen, bailiffs, principal burgesses, & other burgesses & inhabitants of the borough for the time being, they being for that purpose congregated & assembled together, or the greater part of them as should be so congregated, might, by the greater part of the voices of them so assembled, choose one to be mayor":—*Held*: a majority of each definite body must be present in order to make a valid election.—*R. v. BOWER* (1823), 1 B. & C. 492; 2 Dow. & Ry. K. B. 761; 1 L. J. O. S. K. B. 174; 107 E. R. 182.

Annotations:—*Consd. R. v. Wylliams* (1823), 3 Dow. & Ry. K. B. 75. *Reid. R. v. Headley* (1827), 7 B. & C. 496; *Blacket v. Blizard* (1829), 9 B. & C. 851.

806. ———.]—A charter granted to a corpn. by prescription, recognised the existence of a body consisting of 36 chief burgesses, & directed that the mayor, recorder, " & the chief burgesses, being the common council of the borough, of which chief burgesses twelve were called, known, or distinguished, by the name & distinction of chief burgesses, councillors, of the borough, or the greater part of them should have power & authority to choose, nominate, & appoint, a mayor, etc."; & the mayor was to be chosen out of the chief burgesses, councillors. It created a court of record within the borough, which was to be held before the mayor, recorder, & the chief burgesses, councillors, before whom also the sessions of the peace appointed to be held, out of whom

PART VII. SECT. 2, SUB-SECT. 2.

a. How calculated—Where no statutory quorum—Majority of members.

—In the case of a body constituted by statute it requires, in the absence of any statutory quorum, at least a majority of the members of

such body to determine what shall be a quorum.—*LOUGHLIN v. GUINNESS* (1904), 23 N. Z. L. R. 748.—N.Z.

the justices for the borough were to be chosen, & by whom fines were to be imposed on persons refusing to take upon themselves offices to which they had been elected:—*Held*: when the common council are assembled in their elective capacity, it was sufficient, if any 19 chief burgesses were present; & it was not necessary that the presence of a majority of the 24 chief burgesses, not being councillors, should concur, & therefore an election of chief burgesses at a council, where there were not more than the mayor, recorder, nine chief burgesses, councillors & ten chief burgesses was good.

When you give a right of election to persons, describing them by their corporate character, every member which enters into that description must concur, & must be present at the time of the election; & in the case of definite bodies, you must have a majority of every definite body; as for instance, if you give a right of election to the mayor, aldermen, chief burgesses, & other burgesses, the aldermen & the chief burgesses, being each of them definite bodies, then it is essential that you should have a majority of the aldermen present, & a majority of the chief burgesses; but the necessity of the concurrence of each integral part, may or may not, be applicable, according to the language of the right of election, when you can see the terms in which the right of election is granted (BAYLEY, J.).—*R. v. HEADLEY* (1827), 7 B. & C. 496; 1 Man. & Ry. K. B. 345; 6 L. J. O. S. K. B. 53; 108 E. R. 808.

807. — — — — —.] — The general rule of construction for charters is, that where the select body consists of integral parts, & "a majority" must be present at an election to fill up a vacancy there must be present a majority of such integral part. Thus, if there be a mayor, six aldermen & twelve capital burgesses, there must be present at an election, the mayor, four aldermen, to make a majority of the aldermen, & seven capital burgesses to make a majority of the capital burgesses; although ten would be a "majority" if that word were considered as applicable to the whole body. But this general rule is not inflexible, & where the terms of the charter show that it would be against the intention of the donor to adhere to the above rule, a different construction must be given. Thus, where there were a mayor, two bailiffs & four jurats; & the presence of a "majority" was necessary to fill up a vacancy:—*Held*: the above general rule did not apply; for there could be no majority with regard to the bailiffs, who were but two in number; & consequently, an election of a jurat, at which there were present, the mayor, the two bailiffs, & two out of the remaining jurats, was a good election, the general rule being inapplicable; & there being five, a majority of the whole seven, present.—*R. v. GREET* (1828), 8 B. & C. 363; 2 Man. & Ry. K. B. 391; 1 Man. & Ry. M. C. 428; 7 L. J. O. S. K. B. 92; 108 E. R. 1077.

Annotations:—*Reid. Blacket v. Blizard* (1829), 9 B. & C. 851; *R. v. Beaufort* (1833), 3 Nev. & M. K. B. 815; *Godmanchester Corpn. v. Phillips* (1836), 4 Ad. & El. 550.

Concurrence—Of quorum.—See Nos. 819, 820, *post*.

— **Of particular members of quorum.**—See Nos. 809, 818, *post*.

Power as co-agents—Provisional committee of railway.—See AGENCY, Vol. I., p. 560, No. 2086.

SUB-SECT. 3.—PRESENCE OF PARTICULAR OFFICER OR MEMBERS.

808. Head of corporation — Presence necessary — Master of college—Must be named in corporate acts.—Master of college must be named in corporate acts.—ANON. (1698), 12 Mod. Rep. 232; 88 E. R. 1284.

Annotation:—*Reid. R. v. St. Catherine's Hall, Cambridge* (1791), 4 Term Rep. 233.

809. — — — — —.] — (1) A corpn. may have several names.

(2) If a corpn. charges one of its officers with what does not appear to be an offence, though he may answer & answer insufficiently to what is, they cannot remove him.

(3) If a statute authorises a corpn. to remove an officer, making the bailiffs, who are the heads of the corpn., of the quorum, an allegation that he was duly removed by the bailiffs being present, implies that the requisites of the statutes were complied with in the removal.

(4) Though an Act of Parliament on authorising the performance of a particular act nominates a quorum, it is not necessary that the persons mentioned in it should expressly consent to it; it is sufficient if they are present when it is done.

(5) A corpn. can do no act in the absence of the head of the corpn.

(6) In a variation between the writ of mandamus & return in the name of a corpn., described in the former as of the town of Gippus & in the latter as of the town of Gipwico:—*Held*: these were different names & so the writ was misdirected.—*R. v. IPSWICH CORPN.* (1706), 2 Ld. Raym. 1232; 2 Salk. 434; 92 E. R. 313; *sub nom. R. v. WHITACRE*, Holt, K. B. 445; *sub nom. WHITACRE'S CASE*, 11 Mod. Rep. 67; *subsequent proceedings sub nom. R. v. IPSWICH CORPN.* (1707), 2 Ld. Raym. 1283. *Annotations*:—*As to* (1) *Consd. R. v. Ward* (1729), 1 Barn. K. B. 294; *R. v. Wells* (1767), 4 Burr. 1998. *Apld. Cassel v. Inglis*, [1916] 2 Ch. 211. *Reid. R. v. Cambridge University* (1724), Fortes. Rep. 202; *Hayman v. Rugby School* (1874), L. R. 18 Eq. 28. *As to* (3) *Reid. The L. B. of Southampton* (1858), 8 E. & B. 801. *As to* (4) *Reid. R. v. Leeds, Ex p. Bluns* (1906), 95 L. T. 916. *As to* (5) *Consd. R. v. Corry* (1804), 5 East, 372. *Reid. Blacket v. Blizard* (1829), 9 B. & C. 851. *Generally, Reid. R. v. Halford* (1734), 7 Mod. Rep. 193; *R. v. London* (1785), 4 Doug. K. B. 360; *R. v. Joint Stock Co.'s Registrar* (1847), 10 Q. B. 839; *R. v. Hayward* (1862), 2 B. & S. 585.

810. — — — — — **Mayor.**—It is insisted that there is a right in the common council to elect without the concurrence of the mayor & to fill up the vacancies in their body upon the election of the mayor but no instance is given that the members ever proceeded to an election without the direction of the mayor (PRATT, C.J.).—*MACHEILL v. NEVINSON* (1724), 11 East, 84, n.; 2 Ld. Raym. 1355; 103 E. R. 936.

Annotation:—*Reid. R. v. Parkyns* (1820), 3 B. & Ald. 668.

811. — — — — — **When business introduced—Not for completion.**—It is very true, that no new business can be proposed in the absence of such officer; but the assembly has always a right to proceed in the business, that was begun, when he was present (*per CUR.*).—*R. v. NORRIS* (1730), 1 Barn. K. B. 385; 94 E. R. 260.

Annotations:—*Reid. R. v. Buller* (1807), 8 East, 389; *R. v. Gaborian* (1809), 11 East, 77.

812. — — — — — **& until completion.**—If a presiding officer, who by the constitution of the borough forms an integral part of an elective assembly, depart from it after the meeting has been regularly formed, & the election entered upon, but before it is completed, an election made after

Sect. 2.—*The quorum*: Sub-sect. 3. Sect. 3: Sub-

his departure is void.—*R. v. BULLER* (1807), 8 East, 389; 103 E. R. 392.

Annotations:—*Refd.* *R. v. Gaborian* (1809), 11 East, 77; *R. v. Williams* (1813), 2 M. & S. 141.

813. — — — — —.]— Assuming that under 11 Geo. 1, c. 4, an election began at a corporate meeting, whereat the mayor presided, may be completed, in case of his absenting himself pending the proceeding, under the presidency of the next in place & order to him; yet where a question arose of a voter, on which the mayor as presiding officer decided by rejecting the vote, & thereupon the remaining votes being equal, he declared the same, & that no election could be made, & thereupon ordered the meeting to be dissolved; & no objection was made at the time, nor any notice given to the electors present that any of them intended to proceed in the election notwithstanding the decision which turned out to be erroneous, but after suffering the mayor & many of the freemen to depart without notice, the rest who remained together proceeded to complete the election:—*Held*: such election was void even under the statute, as a surprise & fraud on the other electors.—*R. v. GABORIAN* (1809), 11 East, 77; 103 E. R. 933.

814. — — — — —.]— It is necessary that a presiding officer, who by the charter of a borough forms an integral part of an elective assembly, should be present up to the time when the election is completed, & the election cannot be proceeded in during his absence although he should improperly absent himself.—*R. v. WILLIAMS* (1813), 2 M. & S. 141; 105 E. R. 335.

Annotation:—*Refd.* *R. v. Salway* (1829), 4 Man. & Ry. K. B. 314.

815. — — — — — Unless act to be done by particular part of corporation only.]—I agree, that wherever any business is to be done by a particular part of a corp'n. only, the presence of the mayor is not requisite at the assembly; but wherever the business is to be done by the whole corp'n. at large, the presence of the mayor is absolutely necessary. In the present case all the members of the corp'n. had a voice in the election (*LORD RAYMOND, C.J.*).—*R. v. DUFFIN* (1733), 2 Barn. K. B. 370; 94 E. R. 559.

816. — — — — — Head consisting of two bailiffs — One cannot act alone.]—Where two bailiffs are to be chosen by charter, & one only is chosen, the latter cannot act alone.—*R. v. SMART* (1768), 4 Burr. 2244; 98 E. R. 168.

817. Other particular members — Made part of quorum by constitution — Presence necessary — Concurrence unnecessary.]—*R. v. IPSWICH CORPN.*, No. 809, *ante*.

818. — — — — —.]— Where a power of election is vested in a set number, *quorum* A. & B. to be two, their presence only is requisite, & not their consent.—*COTTON v. DAVIES* (1717), 1 Stra. 53; 93 E. R. 380.

SECT. 3.—PROCEEDINGS AT MEETINGS.

SUB-SECT. 1.—POWERS OF MAJORITY.

A. *What Constitutes a Majority.*

819. Need not be majority of whole body.]— (1) Where a certain number are incorporated, a major part of them may do any corporate act, though nothing be mentioned in the charter.

PART VII. SECT. 3, SUB-SECT. 1.—B.

822 i. *General rule.*]—Whatever can

be lawfully done by a corp'n. can be done by the act of the majority of its members.—*GRAY & CATHCART v.*

(2) It is not necessary that every corporate act should be under the seal of the corp'n.

(3) By the rules of law, where corporate acts are to be done by the whole body, or by a select number of it, it is not necessary all should concur.

This is a rule of law, & no words are required to give this power to the majority, where an act is directed to be done by them, or a major part. The true construction is, that the words do not respect the doing the act itself, but respect the meeting, & give a power upon a proper summons to the whole body, for the major part to meet, for the purpose of doing such acts. In such cases, if a major part of the body meet a major part of those thus met, though less than a major part of the whole may do the act; but without such a clause all must meet, & then the major part met conclude the whole body (*LORD HARDWICKE, C.*).—*A.-G. v. DAVY* (1741), 2 Atk. 212; cited in 1 Ves. Sen. 419; *West temp. Hard.* 121; 26 E. R. 531, L. C.

Annotations:—*As to* (1) & (2) *Expld.* *Re Portuguese Consolidated Copper Mining Co., Steele's Case* (1889), 1 Meg. 246. *As to* (1) & (3) *Consd.* *Grindley v. Barker* (1798), 1 Bos. & P. 229. *Refd.* *A.-G. v. Parker* (1747), 3 Atk. 576; *R. v. Davie* (1837), 6 Ad. & El. 374.

820. Need not be quorum — Quorum fixed by constitution.]—The act of the majority of a corporation is in general considered as the act of the whole: therefore where one clause in an Act of Parliament declared, that "all powers & authorities given to certain comrs. might be executed by the major part of them assembled at a meeting, not being less than thirteen"; & another clause empowered those comrs. "at any meeting at which not less than thirteen should be present, by writing under their hands, to appoint a treasurer":—*Held*: a written appointment signed by twelve comrs. of a meeting, consisting of seventeen, was a valid appointment.—*CORTIS v. KENT WATER-WORKS CO.* (1827), 7 B. & C. 314; 5 L. J. O. S. M. C. 106; 108 E. R. 741.

Annotations:—*Refd.* *Wilkinson v. Malin* (1832), 2 Cr. & J. 636. *Mentd.* *R. v. Wilson* (1835), 1 Har. & W. 407; *Christopherson v. Lotinga* (1864), 15 C. B. N. S. 809; *Hereford Corp'n. v. Morton* (1866), 31 J. P. 56.

821. Majority of members present—All members not voting.]—By an order of the Poor Law Comrs. regulating the proceedings of Guardians of the Poor in the parish of M., the election of officers was to be by a majority of the guardians present at a meeting of the Board. By Poor Law Amendment Act, 1849 (c. 103), s. 19, in case of an equality of votes upon any question at a meeting of guardians of any union or parish, the Chairman has a second or casting vote.

At an election of Clerk to the Guardians of M. 22 guardians attended. On their assembling, the chairman said he should not vote for any candidate, but merely preside at the meeting as chairman. He did so, & took the votes, of which there were eleven for one candidate & ten for another. The former was declared elected, & entered upon the office. On motion for a *quo warranto*:—*Held*: the chairman could not be considered as having, for the purpose of the election, withdrawn; & such election was void, as not having been determined by a majority of the guardians present.—*R. v. GRIFFITHS* (1851), 17 Q. B. 164; 117 E. R. 1243; *sub nom.* *R. v. ST. MARTINS-IN-THE-FIELDS GUARDIANS*, 15 Jur. 800, 803.

B. *Binding on Minority.*

822. General rule.]—*HASCARD v. SOMANY*, No. 797, *ante*.

TRINITY COLLEGE, DUBLIN (PROVOST ETC.), [1910] 1 L. R. 370.—*IR.*

823. —.] — An information was brought, against deft., for making a false return to a mandamus, which commanded him to proceed to the election of a town clerk in the room of B, to which he returned, that before the arrival of the writ, S. had been duly chosen, & sworn into the office. It appeared in evidence, that the right of election was in thirty common council-men; & that the mayor at such a time had summoned them to meet for the election; that twenty-eight met, & three candidates were set up, & two of the twenty-eight voted for one; that thirteen voted for another, & the mayor & twelve more voted for the third; & that the mayor, pretending to have a casting vote, declared his man duly elected, & at another ct. swore him.

There needs no more evidence to prove this return to be the mayor's, but the copy of the writ & return thereof in the Crown Office. This action for a false return may be brought against the whole corpn., or against any particular member of it; & the mayor or other head officer, of common right, has no casting voice, but such a thing may be by prescription or charter, though not otherwise: if there be an equality of votes, & therefore they cannot choose, upon a mandamus they must agree, or else they shall be all brought up as in contempt, & laid by the heels till they agree therein; but it suffices that a majority do agree (HOLT, C.J.).—*R. v. CHAPMAN (MAYOR OF BATH) (1704)*, Holt, K. B. 442; 6 Mod. Rep. 152; cited 15 Vin. Abr. 214, pl. 4; 90 E. R. 1144, N. P. *Annotation*:—*Mentd.* Anon. (1730), 1 Barn. K. B. 327.

824. —.] — *A.-G. v. DAVY*, No. 819, *ante*.

825. —.] — *R. v. VARLO*, No. 255, *ante*.

826. —.] — *GRINDLEY v. BARKER*, No. 471, *ante*.

827. —.] — *CORTIS v. KENT WATER-WORKS CO.*, No. 820, *ante*.

See, also, Nos. 471–473. 799, *ante*.

828. Unless constitution provides otherwise.—*R. v. KENDALL*, No. 192, *ante*.

829. Minority cannot alter decision—By subsequent resolution—Without consent of majority.—A resolution passed by the majority in vestry to declare that no church rate is necessary & to refuse any such rate does not disentitle the persons composing that majority to vote upon the question of any particular proposal for a rate made by any of the minority, & if a rate should be made by the minority alone the votes of the other persons present not having been taken on it such rate will be bad.—*GOSLING v. VELEY (1853)*, 4 H. L. Cas. 679; 21 L. T. O. S. 265; 17 Jur. 939; 1 C. L. R. 950; 10 E. R. 627, H. L.; *reversg.* (1850), 12 Q. B. 328, Ex. Ch.

Annotations:—*Reid.* Cordey v. Bentley (1851), 15 J. P. Jo. 754; *R. v. Christ Church (1857)*, 26 L. J. M. C. 68. *Mentd.* *R. v. Christchurch (1857)*, 3 Jur. N. S. 1074; *R. v. London Consistory Court, Ex p. Beall (1862)*, 12 C. B. N. S. 220; *Drinkwater v. Deakin (1874)*, L. R. 9 C. P. 626; *A.-G. v. Wilts United Dairies (1921)*, 37 T. L. R. 884.

Concurrence of particular members of quorum.]

—*See* Nos. 809, 818, *ante*.

Majority acting in fraud of minority.—*See* No. 1378, *post*.

C. Concurrence of Particular Members.

830. Head of corporation—Necessary—Election of college fellow—Construction of statutes.—In Catherine Hall, Cambridge, the election of fellows is to be "*communi omnium assensu aut saltem ex consensu magistri et majoris partis communitatis*":

—*Held*: no election was valid, in which the master did not concur.—*CATHERINE HALL CASE (1802)*, 5 Russ. 85, n.; 38 E. R. 964, L. C.

Annotation:—*Consd.* *R. v. Kendall (1841)*, 1 Q. B. 366.

831. — Unnecessary—Election of college fellow—Construction of statutes.—Statutes of Clare Hall, Cambridge, provide that the election of a fellow shall be by the master & the major part of the fellows present:—*Held*: a valid election might be made without the concurrent voice of the master.—*CLARE HALL CASE (1788)*, 5 Russ. 73, n.; 38 E. R. 961, L. C.

832. — — — — —.] — Statutes of Queen's College, Cambridge, direct certain elections to be made by the president & the majority of the fellows:—Held: the concurrent voice of the president is necessary in all such elections.—*Re QUEEN'S COLLEGE, CAMBRIDGE (1828)*, 5 Russ. 64; 6 L. J. O. S. Ch. 176; 38 E. R. 951, L. C.

Annotations:—*Consd.* *R. v. Kendall (1841)*, 1 Q. B. 366. *Mentd.* *Re Downing College (1837)*, 2 My. & Cr. 642.

833. — — — Nomination to advowson.—*R. v. KENDALL*, No. 192, *ante*.

Particular members necessary for quorum.—*See* Nos. 809, 818, *ante*.

D. Restrictions on Powers.

834. Powers expressly limited to certain members—Cannot be exercised by majority.—Where a private statute of a college empowers certain members thereof to dispense with the absence of a fellow; dispensation by the major part only of those individuals is not sufficient.

If the major part of them grant & assent to such a dispensation & the residue deny it it is not good because it is out of the case of 33 Hen. 8, c. 27, which extends to grant of leases, grants, & elections of the major part of the whole number of a corpn. & not to any particular number of the corpn. as is the case here (*per* CUR.).—*NEW COLLEGE, OXFORD CASE (1566)*, 2 Dyer, 247 a; 73 E. R. 546.

835. Majority remaining after dissolution of meeting—Departure of head & some members—Cannot proceed.—*R. v. GABORIAN*, No. 813, *ante*.

836. Must be exercised in accordance with constitution.—The governing body of a corpn., which is in fact a trading partnership, cannot in general use the funds of the community for any purpose other than those for which they are constituted, whether that governing body is exclusively directors, or a council general, or the majority at a general meeting of the co. Therefore the special powers given either to the directors or to a majority by the statutes or other constituent documents of the association, are always to be construed as subject to a paramount & inherent restriction, that they are to be exercised in subjection to the special purposes of the original bond of association. That is not a mere canon in the English municipal law, but is a great & broad principle, which must be taken (in the absence of proof to the contrary) as part of any given system of jurisprudence.

The costs of a prosecution for libel instituted by the English directors of a foreign company are not properly payable out of the assets of the company. Such payments will accordingly be restrained for the future; but it does not follow that the directors will be ordered to repay such past costs so discharged by them.—*PICKERING v. STEPHENSON*

PART VII. SECT. 3, SUB-SECT. 1.—D.

a. Majority appropriating corporation funds to certain members.—A

corpn. was possessed of bank stock on which a bonus was declared:—*Held*: incompetent for a majority of the corpn. to divide & appropriate the

bonus among the existing members.—*HOWDEN v. GOLDSMITH'S INCORPORATION (1840)*, 2 (Dunl. Ct. of Sess.) 996; 36 Fac. Coll. 1064.—*SCOT*.

Sect. 3.—Proceedings at meetings: Sub-sect. 1, D.; sub-sects. 2, 3 & 4: Sect. 4: Sub-sects. 1, 2 & 3.]

(1872), L. R. 14 Eq. 322; 41 L. J. Ch. 493; 26 L. T. 608; 20 W. R. 654.

Annotations:—*Expld.* Peel v. L. & N. W. Ry., [1907] 1 Ch. 5. *Refd.* Studdert v. Grosvenor (1886), 33 Ch. D. 528; Cullerne v. London & Suburban General Permanent Bldg. Soc. (1890), 25 Q. B. D. 485. *Mentd.* Tomkinson v. S. E. Ry. (1887), 35 Ch. D. 675; *Re* Faure Electric Accumulator Co. (1888), 40 Ch. D. 141; Cullerne v. London & Suburban General Permanent Benefit Bldg. Soc. (1890), 6 T. L. R. 214; *Re* Liverpool Household Stores Assocn. (1890), 59 L. J. Ch. 616; *Re* Sharpe, *Re* Bennett, Masonic & General Life Assce. v. Sharpe, [1892] 1 Ch. 154; Breay v. Royal British Nurses' Assocn. (1897), 76 L. T. 735.

Where notice given of particular business.]—See No. 783, ante.

SUB-SECT. 2.—RIGHTS OF MINORITY.

837. May elect—Where majority dissent—But vote for no one else.]—A majority dissent from an election, but vote for nobody else; the election by the minority is good.—*R. v. FOXCROFT* (1760), 2 Burr. 1017; 97 E. R. 683; *sub nom.* OLDKNOW v. WAINWRIGHT, 1 Wm. Bl. 229.

Annotations:—*Consd.* Grindley v. Barker (1798), 1 Bos. & P. 229; *R. v. Courtenay* (1808), 9 East, 246. *Refd.* *R. v. Parkyns* (1820), 3 B. & Ald. 668; *Gosling v. Velej* (1853), 4 H. L. Cas. 679.

838. Cannot alter decision of majority—Without their consent.]—GOSLING v. VELEY, No. 829, ante.

Election by votes of minority—Where majority vote for unqualified candidate.]—See Part V., Sect. 4, sub-sect. 2, ante.

SUB-SECT. 3.—PRESIDING OFFICER.

839. Duties & powers—General rule.]—It is the duty of a chairman to preserve order, conduct proceedings regularly, & take care that the sense of the meeting is properly ascertained with regard to any question before it; but he has no power to stop or adjourn a meeting at his own will; & if he purports to do so, it is competent for the meeting to resolve to go on with the business for which it has been convened, & to appoint another chairman for that object.—*NATIONAL DWELLINGS SOCIETY v. SYKES*, [1894] 3 Ch. 159; 63 L. J. Ch. 906; 42 W. R. 696; 10 T. L. R. 563; 38 Sol. Jo. 601; 1 Mans. 457; 8 R. 758.

840. — To put question to vote—Not enforced by mandamus.]—The ct. will not grant a mandamus to the mayor of a corpn., directing him to put a particular question to the vote.—*R. v. NEWCASTLE CORPN.* (1832), 1 L. J. K. B. 128.

841. — Signature of minutes—Signature by chairman of next meeting sufficient.]—MILES v. BOUGH, No. 329, ante.

842. Liabilities—Not liable to personal action—For refusal to submit resolution—Ruling honestly given.]—BREAY v. BROWNE (1896), 41 Sol. Jo. 159, D. C.

843. Replacement — Existing chairman improperly stopping or adjourning meeting.]—*NATIONAL DWELLINGS SOCIETY v. SYKES*, No. 839, ante.

Necessity for presence of head of corporation—As part of quorum.]—See Part VII., Sect. 2, sub-sect. 3, ante.

PART VII. SECT. 3, SUB-SECT. 2.

b. Entitled to property of corporation—Where majority resolve to amalgamate with another body.]—Where by a majority of the members of a religious

body a resolution was passed to amalgamate with another religious body & to transfer its property to such body & a minority objected:—*Held*: the minority were entitled to the

property registered in the name of the corpn.—*NEDERDUTSCH HERVORMDE CONGREGATION OF STANDERTON v. NEDERDUTSCH CONGREGATION OF STANDERTON* (1893), H. 69.—S. AF.

SUB-SECT. 4.—ADJOURNMENT.

844. Business to be done on charter day—Meeting adjourned at 10 a.m.—Whether illegal.]—Motion for an information in the nature of a *quo warranto* against P. for exercising the office of bailiff in the town of L. The objection taken to his election was that by charter the bailiffs were appointed to be chosen on Oct. 18. The corpn. assembled on that day, but the mayor at 10 a.m. of that day adjourned to the next day, when P. was elected:—*Held*: a rule would be made to show cause.—*ANON.* (1733), 2 Barn. K. B. 326; 94 E. R. 531.

845. — — — — —.]—S. moved for an information against B., for adjourning the assembly in the manner mentioned in *Anon.* (1733), No. 844, ante. Accordingly the ct. made a rule to show cause in this case likewise.—*ANON.* (1734), 2 Barn. K. B. 327; 94 E. R. 531.

846. — & at no other time—Business not reached on charter day—May be done on adjournment day.]—Where a charter of incorporation after ordaining who should be entitled to be burgesses, directed that they should make application for that purpose to the mayor & commonalty on a day certain in each year, & at no other time, & then make due & legal proof of their qualifications, & A. & B., claiming to be admitted burgesses, made application to the mayor & commonalty on the charter day, & offered to make due & legal proof of their qualifications, but their qualifications were not heard, nor their proofs received, on account of the time having been spent in other business; the ct. granted a mandamus to the mayor & commonalty to enter an adjournment to a subsequent day, & then to hold a meeting, & receive & examine such proofs, etc. A return to such mandamus that it was impossible for A. & B., before the expiration of the charter day, to make due & legal proof, etc., according to the intent of the charter, by reason of the day being consumed in the necessary business of the borough & that the mayor & commonalty were not authorised to hear such proof on any other than the charter day, etc.:—*Held*: return was ill & would be quashed.—*R. v. CARMARTHEN CORPN.* (1813), 1 M. & S. 697; 105 E. R. 260.

847. Adjourned meeting part of original meeting—Even though fresh summons required.]—*R. v. LONDON CORPN.*, No. 374, ante.

848. Right to adjourn meeting—In chairman—Special provision in notice of meeting.]—Where a meeting for the election of churchwardens takes place in the parish church, in pursuance of a notice that such meeting would be held at the parish church, & that in case a poll should be demanded the meeting would be immediately adjourned to the town hall, the chairman may, upon a poll being demanded, adjourn the meeting to the town hall, although a majority of the voters present object to such adjournment.

The right of adjourning the business in progress at a meeting, is vested in the persons assembled, & not in the chairman.—*R. v. CHESTER (ARCH-DEACON)* (1834), 1 Ad. & El. 342; 3 Nev. & M. K. B. 413; 2 Nev. & M. M. C. 277; 3 L. J. M. C. 95; 110 E. R. 1236.

Annotations:—*Consd.* Baker v. Wood (1837), 1 Curt. 507. *Refd.* Campbell v. Maund (1836), 1 Nev. & P. K. B. 558; *R. v. Birmingham* (1837), 7 Ad. & El. 254.

849. — Not in chairman—In persons as-

sembled.]—*R. v. CHESTER (ARCHDEACON)*, No. 848, *ante*.

850. ——— At his own will.]—*NATIONAL DWELJINGS SOCIETY v. SYKES*, No. 839, *ante*.

Notice of adjourned meeting.]—*See* Nos. 511, 782, 794, *ante*.

SECT. 4.—VOTING.

SUB-SECT. 1.—RIGHT TO VOTE.

851. Right restrained by valid bye-law—*Mandamus removing restraint refused*.]—Motion for a mandamus to restore a man to his right to vote as a member of the Charitable Corpn. The corpn. had a power by their charter to make bye-laws by virtue of which the resolution was made that applt. should be excluded from the liberty of voting, in cases where he was concerned in interest, & might be thought to be too partial:—*Held*: a reasonable law & rule would be discharged.—*R. v. CHARITABLE CORPN.* (1734), *Cunn.* 95; 94 *E. R.* 1084.

852. Number of votes not affected by name being on wrong roll.]—Where a corporator is in office, & in a situation to exercise his rights, the ct. will not interfere by mandamus to try the effect of them. Accordingly, where a corporator, by the situation of his name on the books, in rotation, was entitled to but one vote, whereas, if his name had been put in the proper place, he would have been entitled to two the ct. refused a mandamus to alter the situation of his name.—*R. v. YARMOUTH CORPN., Ex p. REYNOLDS* (1826), 5 *L. J. O. S. K. B.* 69.

See, also, No. 583, *ante*.

Right to vote at elections.]—*See* Part V., Sect. 3, *ante*.

Demand for poll—By vestry.]—*See* ECCLESIASTICAL LAW.

By ratepayers.]—*See* LOCAL GOVERNMENT.

By shareholders.]—*See* COMPANIES.

SUB-SECT. 2.—CASTING VOTE.

853. Head has no casting vote—Unless by charter—Or prescription.]—Information against the mayor of B. for a false return to a mandamus for electing a town clerk which stated that the clerk had been duly chosen & sworn into office before the coming of the writ. Two candidates for the post had 13 votes each, the mayor having voted for one of them. The mayor, pretending he had a casting vote, declared his man duly chosen & swore him:—*Held*: the mayor had no casting vote of common right, though he might have one by prescription or charter.—*R. v. CHAPMAN (MAYOR OF BATH)* (1704), 6 *Mod. Rep.* 152; cited 15 *Vin. Abr.* 214, pl. 4; *Holt, K. B.* 442; 87 *E. R.* 910, N. P.

Annotation:—*Mentd. Anon.* (1730), 1 *Barn. K. B.* 327.

Validity of bye-law giving casting vote.]—*See* No. 685, *ante*.

Casting vote of mayor or chairman.]—*See* LOCAL GOVERNMENT.

Chairman of board of guardians.]—*See* POOR LAW.

SUB-SECT. 3.—PROXIES.

854. Who may give—Corporation holding shares in another company.]—A corpn. legally holding

shares in another co. may give a proxy in respect of such shares.—*Re INDIAN ZOEDONE CO.* (1884), 26 *Ch. D.* 70; 53 *L. J. Ch.* 468; 50 *L. T.* 547; 32 *W. R.* 481, C. A.

855. Form of proxy—General proxy under private Act—Not inconsistent with 7 & 8 Vict. c. 21.]—By 7 & 8 Vict. c. 21, it is enacted that any "letter or power of attorney, or other instrument, made for nominating a proxy, & chargeable with duty under this Act, shall authorise such proxy to vote on any matter at one meeting of the proprietors, etc., the time of the holding whereof shall be specified in such instrument, or at any adjournment of such meeting, & shall not be further available." By a local act, 7 & 8 Vict. c. ciii., it was enacted that it should be lawful for pltfs. to "depute & appoint any one of the elder brethren of their guild or brotherhood, by writing under their common seal, to represent their guild or brotherhood at all meetings of the company, etc., & to vote at such meetings as the proxy of the guild or brotherhood on whatever question, matter, or thing might be proposed, discussed, or considered thereat":—*Held*: there was no inconsistency in the provisions of the two acts, & the general proxy to vote at all meetings was good.—*TRINITY HOUSE IN KINGSTON-UPON-HULL (GUILD OF MASTERS, ETC.) v. BEADLE* (1849), 13 *Q. B.* 175; 18 *L. J. Q. B.* 78; 13 *Jur.* 557; 116 *E. R.* 1230.

Date of use may be filled in after execution.]—A proxy is a delegation of authority for a particular purpose then in the contemplation of the person giving it. Proxies were given in Nov. & Dec. 1886 by the governors of an infirmary for a contemplated election between E. & C. for the post of surgeon. The particular election did not take place, owing to the retirement of C.:—*Held*: the proxies so given were properly rejected at a subsequent election in Apr. 1887 between E. & T. *Semble*: the date of the meeting for which a proxy is to be used may be filled up when ascertained & after execution, the important date being the date of execution.—*HOWARD v. HILL* (1888), 59 *L. T.* 818; 37 *W. R.* 219.

857. ———.]—Provided a proxy be stamped with a penny stamp on execution, the date of execution & the date of the meeting at which it is to be used may be filled in afterwards by any person duly authorised by the giver of the proxy to do so; even though at the time of execution the date of the meeting has not been fixed.—*SADGROVE v. BRYDEN*, [1907] 1 *Ch.* 318; 76 *L. J. Ch.* 184; 96 *L. T.* 361; 23 *T. L. R.* 255; 51 *Sol. Jo.* 210; 14 *Mans.* 47.

858. ——— Under common seal—Confined to English corporations.]—*COLONIAL GOLD REEF, LTD. v. FREE STATE RAND, LTD.*, No. 173, *ante*.

859. Given for specific purpose—Cannot be used for another purpose.]—*HOWARD v. HILL*, No. 856, *ante*.

See, also, *AGENCY*, Vol. I., p. 302, No. 274.

860. Who may exercise—Statutory limitation to shareholder or officer—Elector not included.]—*Thames Conservancy Act*, 1894, 57 & 58 Vict. c. clxxxvii., empowers, amongst other persons, shipowners to vote at elections of conservators. Sect. 12 defines the qualification of shipowners. Sect. 22 provides that a vote at an election by shipowners, etc., may be given either personally or by proxy, or in the case of a body corporate by any shareholder or officer of the body as their proxy. Sect. 23 provides that the returning officer

Sect. 4.—Voting: Sub-sect. 3. Sect. 5. Part VIII. Sects. 1, 2 & 3. Part IX. Sect. 1.]

shall, according to the best of his ability, make a return of those elected, & every person so returned shall be deemed duly elected. Sect. 25 provides that an election by shipowners shall not be invalidated or be illegal by reason of any error in any list of voters, or by reason of any irregularity in the making or publishing such list, or by reason of any other error or irregularity, in or about any election or matter preliminary or incidental thereto.

At an election of conservators by shipowners objection was taken to the return of the respondents on the ground that some of the votes were invalid inasmuch as they had been given by proxies given by certain corporate bodies to electors not shareholders or officers of such corporate bodies, & such votes had been received & counted at such election by the returning officer:—*Held*: in an election of conservators by shipowners, a body corporate can only exercise its right of voting by proxy by a shareholder or officer of the body, & not by an elector. The returning officer, however, had acted judicially, & his return was conclusive, & the reception & counting of the votes objected to was precisely one of those errors in or about an election provided for by sect. 25.—*R. v. SAMUEL*, [1895] 1 Q. B. 815; 64 L. J. Q. B. 515; 72 L. T. 572; 59

J. P. 375; 11 T. L. R. 358; 7 Asp. M. L. C. 595; 15 R. 380.

861. Wrongful admission of—Judicial act of returning officer—Election not invalidated.]—*R. v. SAMUEL*, No. 860, *ante*.

862. Stamp on proxy—Adhesive stamp—Sufficiency of cancellation.]—An adhesive stamp used on a letter or power of attorney for appointing a proxy to vote at a meeting is sufficiently cancelled within the meaning of Stamp Act, 1891 (c. 39), s. 8 (i), by the writing across it of part of the name of the person cancelling it, or the date of cancellation alone, or other marks of a defacing nature.—*M'MULLEN v. SIR ALFRED HICKMAN STEAMSHIP LTD.* (1902), 71 L. J. Ch. 766; 18 T. L. R. 650; 10 Mans. 106.

863. — Must be stamped on execution.]—*SADGROVE v. BRYDEN*, No. 857, *ante*.

SECT. 5.—MINUTES OF MEETINGS.

As evidence of agreement not under seal.]—*See* No. 1108, *post*.

Right of inspection—By members of corporation.]—*See* Part VIII., Sect. 3, *post*.

Corporation books & documents generally, *see* Part VIII., *post*.

Part VIII.—Corporation Books and Documents.

SECT. 1.—POSSESSION OF.

864. Subject to lien.]—Mandamus to deliver up corporation books. B. showed for cause that I. was executor of W. who had laid out several sums for the borough & never been repaid; & that he kept these as security for such repayment:—*Held*: as he confessed having public books in his custody a mandamus must go; & if he had any just cause for keeping them, he might set it out in the return.—*R. v. INGRAM* (1750), 1 Wm. Bl. 50; 96 E. R. 27.

865. — Town clerk also solicitor.]—A person who is both town clerk & solr. to a corpn., may have in the latter character a lien on corpn. papers:—*Held*: the ct. would not issue a mandamus to such a person to deliver up books & writings said to belong to the corpn., if he claims as solr. to have a lien on them.—*R. v. WILLIAMS & SANKEY* (1836), 2 Har. & W. 275.

866. Removed from usual place by mayor—For good cause—Mandamus for restoration refused.]—The mayor of a corpn. cannot be compelled in a summary way to replace in their usual place the corporate books, under particular circumstances.—*R. v. PIGRAM* (1759), 2 Burr. 766; 97 E. R. 552.

867. Presumption as to.]—*LUDLOW CORPN. v. CHARLTON*, No. 86, *ante*.

868. Recovery—By mandamus—Directed to former officer.]—A mandamus was granted to be directed to the late clerk of the Blacksmiths' Co. in London, to deliver over all public books of the

co. to the present officer.—*ANON.* (1730), 1 Barn. K. B. 402; 94 E. R. 271

SECT. 2.—AS EVIDENCE.

869. Entries in public books—By public officer.]—On an information in the nature of a *quo warranto* the prosecutor produced in evidence a book which appeared to be only minutes of some corporate acts ten years ago, all written by the prosecutor's clerk, who was no officer of the corpn.

Corporation books are generally allowed to be given in evidence, when they have been publicly kept as such, & the entries made by the proper officer; not but that entries made by other persons may be good, if the town clerk be sick, or refuses to attend, but then that must be made appear. Whoever produces a book must establish it, before he delivers it in (*per CUR.*).—*I. SELL* (1718), 1 Stra. 93; 93 E. R. 405.

870. — Entry of public nature.]—An entry in the public books of a corpn., is not evidence for them, unless it be an entry of a public nature.—*MARRIAGE v. LAWRENCE* (1819), 3 B. & Ald. 142; 106 E. R. 615.

Annotation:—*Mentd. Brett v. Beales* (1830), 5 Man. & Ry. K. B. 433.

— **Minutes of meetings.]—***See* No. 1108, *post*.

871. Old letter produced from corporation chest.]—On a trial at bar the question was, whether

PART VIII. SECT. 2.

d. Minute book—Transcribed minutes unconfirmed at subsequent meeting—Inadmissible.]—Minutes of a meeting taken down in shorthand by the solr. of the corpn., transcribed by him & retranscribed into the minute book by the secretary, & not confirmed

at any subsequent meeting, are not admissible in evidence *per se*, though the solr. has died before the trial of the action.—*CLAUDET v. GOLDEN GIANT MINES, LTD.* (1910), 15 R. C. R. 13.—*CAN.*

e. Book of bye-laws—Entry not sealed.]—A book of bye-laws was produced, in which a bye-law was written

out, but not sealed, & in the margin was written "expurged," signed with the chairman's initials:—*Held*: such proof, even without the entry in the margin, would have been insufficient to show a bye-law.—*McDONELL v. ONTARIO, SIMCOE, & HURON RY. UNION CO.* (1854), 11 U. C. R. 267.—*CAN.*

B. at the time he did a corporate act, was an out-burgess or not. To prove he was, deft., who had a rule for copies *omnium librorum et recordorum burgi praed'*, produced a copy of a letter fifty years old, & found in one of the corpn. chests, wherein B. was mentioned to be of another place: but the ct. refused to hear it read, because not a corporate act within the rule, so that a copy is not evidence, but the original ought to be produced.—*R. v. GWYN (MAYOR OF CHRIST-CHURCH) (1721)*, 1 Stra. 401; 93 E. R. 593.

872. Public book—Chapter book.—A book kept in the chapter-house of the dean & chapter of S., purporting to contain copies of leases granted by the dean & chapter, is, as a public book, evidence of those leases for the purpose of reputation, without proof of possession under the leases.—*COOMBS v. COETIER & WHEELER (1829)*, Mood. & M. 398, N. P.

873. Against non-member.—The question being, whether the appointment of a curate belonged to the vicar of the parish or to a corpn., entries in old books of the corpn. were not received as evidence against the vicar, to show that the corpn. had from time to time appointed the curate.—*A.-G. v. WARWICK CORPN. (1827)*, 4 Russ. 222; 38 E. R. 789, L. C.

874. — Conditions precedent.—*DAVIES v. MORGAN*, No. 729, *ante*.

875. Minute book—Ordered to be stamped.—A minute book, containing the proceedings of the council of a corpn., will be directed to be produced at the Stamp Office, in order that an entry in it may be stamped.—*CLARKE v. COVENTRY CORPN. (1835)*, 4 L. J. Ex. Eq. 58.

See, generally, EVIDENCE.

SECT. 3.—INSPECTION OF.

By members.—*See Nos. 336-341, ante.*

876. By strangers—Elector—Books & papers in which freemen enrolled.—An elector of a borough is entitled to have inspection of that part of the corpn. books where the names of the free-

men are enrolled, & to take copies at his own expense.—*RICHARDS v. PATTINSON (1737)*, Barnes, 235; 94 E. R. 893.

877. — Persons interested in election—All books & papers in which freemen enrolled.—*SCHULDAM v. BUNNISS*, No. 478, *ante*.

878. — Ratepayer—Minutes of urban district council being burial board—Application not made *bond fide*.—A ratepayer made an application to an urban district council, being the burial board, for his solrs. to inspect & take copies of the minutes. The solrs. were acting for a co., which for another matter wished to obtain inspection of the books. The board refused to allow the solrs. to inspect, on the ground that the ratepayer alone was the person to whom they were bound to produce the books, & that the application was not made *bond fide*, but for another purpose, that was indirectly obtaining inspection on behalf of the co. for which the solrs. were also acting:—*Held*: the ct. would not, in the exercise of their discretion make absolute a rule for a writ of mandamus, as the application was not made *bond fide* for the purpose of the ratepayer, but for another purpose.

—*R. v. WIMBLEDON URBAN DISTRICT COUNCIL, Ex p. HATTON (1897)*, 77 L. T. 599; 62 J. P. 84; 14 T. L. R. 146; 41 Sol. Jo. 698, D. C.

879. — Parochial elector—About to sue district council.—A parochial elector of a parish in a rural district having threatened litigation against the council of the district, the council took the opinion of counsel as to their liability. The parochial elector claimed a right under Local Government Act, 1844 (c. 73), s. 58 (5), to inspect the case submitted to counsel & his opinion thereon:—*Held*: the case & opinion were "documents" within the meaning of the sect. but under the circumstances the ct. would not enforce the parochial elector's right of inspection by mandamus.

—*R. v. GODSTONE RURAL COUNCIL, [1911] 2 K. B. 465*; 80 L. J. K. B. 1184; 105 L. T. 207; 75 J. P. 413; 27 T. L. R. 424; 9 L. G. R. 665.

Annotation:—*Refd. R. v. Hampstead B. C., Ex p. Woodward (1917)*, 116 L. T. 213.

In legal proceedings—By & against corporations.—*See Part XV., Sect. 10, sub-sect. 3, B., post.*

Part IX.—Powers and Liabilities Generally.

SECT. 1.—IN GENERAL.

880. General rule—Statutory corporation.—A corpn. was empowered by Act of Parliament to make & maintain docks for the use of the public, & to take tolls for persons using them. Neither the corpn. nor its individual members derived any emolument from the tolls, but were bound to apply them in maintaining the docks, & in paying a debt contracted in making them. The corpn. had the usual powers of appointing water-bailiffs, harbour-masters, & servants, by whose hands the duties of superintendence were practically carried out. A ship, in entering one of the docks, struck against a bank of mud left at its entrance, of the existence of which the corpn. was either aware, or negligently ignorant. The ship & cargo were both damaged, & the respective owners thereof brought actions for negligence against the corpn.:—*Held*: as long as the docks were open for the public the corpn. was bound, whether they received

the tolls for beneficial or fiduciary purposes, to take care that the docks were navigable without danger, & consequently they were liable to the owners in the actions for negligence.

In construing statutes creating bodies corporate, such as the corpn. in question, the legislature, must be considered, unless the contrary appears, to intend that the corporate body shall have the same duties & liabilities as are imposed by the general law upon private persons doing the same things.—*MERSEY DOCKS TRUSTEES v. GIBBS, MERSEY DOCKS TRUSTEES v. PENHALLOW (1866)*, L. R. 1 H. L. 93; 11 H. L. Cas. 686; 35 L. J. Ex. 225; 14 L. T. 677; 30 J. P. 467; 12 Jur. N. S. 571; 14 W. R. 872; 2 Mar. L. C. 353; 11 E. R. 1500, H. L.; *affg. S. C. sub nom. GIBBS v. LIVERPOOL DOCKS TRUSTEES (1858)*, 3 H. & N. 164; *sub nom. MERSEY DOCK BOARD v. PENHALLOW (1861)*, 7 H. & N. 329, Ex. Ch.

Annotations:—*Distd. Ruck v. Williams (1858)*, 3 H. & N. 308; *Walker v. Goe (1858)*, 3 H. & N. 395. *Consd.*

PART IX. SECT. 1.

1. General rule.—A corpn. has the same powers as an individual

unless by the express terms of its constitution or by necessary implication from its nature it is precluded from

their exercise.—*BANK OF AFRICA v. KIMBERLEY MINING BOARD (1886)*, 2 Buch. A. C. 132.—*S. AF.*

Sect. 1.—In general. Sect. 2: Sub-sect. 1.]

Metcalf v. Hetherington (1860), 5 H. & N. 719; *Holliday v. St. Leonard, Shoreditch Vestry* (1861), 11 C. B. N. S. 192; *Thompson v. N. E. Ry.* (1862), 31 L. J. Q. B. 194; *Coe v. Wise* (1864), 5 B. & S. 440. *Expld. & A.* *Worral Waterworks Co. v. Lloyd* (1866), L. R. 1 C. P. 719. *Consd. Clowes v. Staffordshire Potteries Waterworks Co.* (1872), 8 Ch. App. 129, n.; *Winch v. Thames Conservators* (1874), L. R. 9 C. P. 378; *Forbes v. Lee Conservancy Board* (1879), 4 Ex. D. 116; *Fleming v. Manchester Corp.* (1881), 44 L. T. 517; *The Moorcock* (1889), 14 P. D. 64; *Gibraltar Sanitary Comrs. v. Orfila* (1890), 15 App. Cas. 400. *Extd. Taft Vale Ry. v. Amalgamated Soc. of Ry. Servants*, [1901] A. C. 426. *Consd. The Bearn*, [1906] P. 48; *Liebig's Extract of Meat Co. v. Mersey Docks & Harbour, & Walter Nelson*, [1918] 2 K. B. 381; *Boynton v. Ancholme Drainage & Navigation Comrs.*, [1921] 2 K. B. 213. *Refd. Southampton & Itchin Floating Bridge & Roads Co. of Proprietors v. Southampton L. B.* (1858), 8 E. & B. 801; *Walker v. Goe* (1859), 4 H. & N. 350; *Whitehouse v. Fellowes* (1861), 10 C. B. N. S. 765; *Brownlow v. Metropolitan Board of Works & Aird* (1863), 13 C. B. N. S. 768; *Ohrby v. Ryde Comrs.* (1864), 5 B. & S. 743; *Stiles v. Cardiff Steam Navigation Co.* (1864), 33 L. J. Q. B. 310; *Coe v. Wise* (1866), L. R. 1 Q. B. 711; *Foreman v. Canterbury Corp.* (1871), L. R. 6 Q. B. 214; *White v. Hindley L. B.* (1875), L. R. 10 Q. B. 219; *Goslin v. Agricultural Hall Co.* (1876), 1 C. P. D. 482; *Holborn Union Grdns. v. St. Leonard, Shoreditch Vestry* (1876), 2 Q. B. D. 145; *Hill v. Metropolitan Asylum District* (1879), 4 Q. B. D. 433; *Dormont v. Furness Ry.* (1883), 11 Q. B. D. 496; *R. v. Williams* (1884), 9 App. Cas. 418; *Lowther v. Curwen* (1887), 58 L. T. 168; *Tucker v. Axbridge Highway Board* (1888), 53 J. P. 87; *Jersey v. Uxbridge R. S. A.*, [1891] 3 Ch. 183; *R. v. Selby Dam Drainage Comrs.*, [1892] 1 Q. B. 348; *Crossfield v. Manchester Ship Canal Co.* (1903), 19 T. L. R. 398; *Hackney Corp. v. Lee Conservancy Board*, [1904] 2 K. B. 541; *Bede S.S. Co. v. River Wear Comrs.*, [1907] 1 K. B. 310; *Queens of the River S.S. Co. v. Thames Conservators & Easton Gibb* (1907), 23 T. L. R. 478; *Tozeland v. West Ham Union*, [1907] 1 K. B. 920; *McClelland v. Manchester Corp.*, [1912] 1 K. B. 118; *Papworth v. Battersea Corp.*, [1914] 2 K. B. 89; *Pyman S.S. Co. v. Hull & Barnsley Ry.*, [1914] 2 K. B. 788; *Ryan v. Tipperary North Riding County Council* (1914), 8 B. W. C. C. 415; *The Ella*, [1915] P. 111. *Mentd. Waller v. S. E. Ry.* (1863), 32 L. J. Ex. 205; *A.-G. v. Colney Hatch Lunatic Asylum* (1868), 4 Ch. App. 146; *Birch v. Marylebone Vestry* (1869), 17 W. R. 1014; *A.-G. & Dommes v. Basingstoke Corp.* (1876), 24 W. R. 817; *Harris v. G. W. Ry.* (1876), 1 Q. B. D. 515; *Weir v. Barnett* (1877), 3 Ex. D. 32; *Hillyer v. St. Bartholomew's Hospital*, [1909] 2 K. B. 820; *Hayward v. Drury Lane Theatre & Moss' Empires*, [1917] 2 K. B. 899; *Baker v. James*, [1921] 2 K. B. 674.

881. ———.]—A corp. which is constituted by an Act of Parliament ought rigorously to comply with the duties prescribed by the Act incorporating it.

Deft. co. were entitled under the Act incorporating pltf. co. to receive from the latter such a sum as would make up the deficiency in their receipts in any one year to the sum of £1,000. Pltf. co., subject to the payment of such deficiency & subject also to certain other payments incident to their undertaking, were entitled & required by the Act constituting them to distribute the profits as dividends among their own shareholders. Deft. co. omitted to make any claim against pltf. co. in respect of any of the deficiencies during the years extending from 1847 to 1870, but in 1870 sent in a claim for the total of such deficiencies during the years extending from 1847 to 1858, this total appearing from an account which accompanied the claim to amount to £3,710:—*Held*: deft. co. was debarred by laches from recovering any part of this sum of £3,710.

Pltf. co. through their solr. by letter dated Oct. 8, 1870, sent by them to deft. co. submitted to pay whatever under the Act of Parliament was payable, upon the amount thereof being made to satisfactorily appear upon account:—*Held*: after that letter pltf. co. must pay to deft. the sum of

the deficiencies for the years extending from 1858 to 1870.

Deft. co. had a certain amount of discretion in certain respects in the management of their undertaking, but they exercised their discretion in matters other than those authorised by the Act to the prejudice of pltf. co., & so as wilfully to diminish the receipts which they were authorised to receive:—*Held*: the account in the suit must be directed with wilful default.—**SOUTHAMPTON DOCK CO. v. SOUTHAMPTON HARBOUR & PIER BOARD** (1872), L. R. 14 Eq. 595; 41 L. J. Ch. 832; 26 L. T. 828; 20 W. R. 940.

882. ———.]—A.-G. v. **MANCHESTER CORPN.**, No. 972, *post*.

883. ——— **Corporations by charter.**]—A.-G. v. **MANCHESTER CORPN.**, No. 972, *post*.

884. Whether bound by acquiescence—Of some corporators—Permitting expenditure on corporation property—In breach of covenant.]—*Qu.*: whether a corp., consisting of numerous governors, would be bound by the acquiescence of some, standing by, permitting expenditure, etc.—**MACHER v. FOUNDLING HOSPITAL** (1813), 1 Ves. & B. 188; 35 E. R. 74, L. C.

Annotations:—*Refd. Wilmot v. Coventry Corp.* (1835), 1 Y. & C. Ex. 518. *Mentd. Diggle v. Blackwall Ry.* (1850), 14 Jur. 937; *Hogg v. Scott* (1874), L. R. 18 Eq. 444.

Acquiescence in contract.]—*See* No. 1093, *post*.

885. Corporation assuming to act as such—Without authority of Act of Parliament or charter.]—Every co. assuming to act as a body corporate, without the authority of an Act of Parliament, or the King's Charter; or having a great number of shares generally transferable, is an illegal co.—**JOSEPHS v. PEBRER** (1825), 3 B. & C. 639; 1 C. & P. 507; 5 Dow. & Ry. K. B. 542; 3 L. J. O. S. K. B. 102; 107 E. R. 870.

Annotations:—*Refd. London Grand Junction Ry. v. Freeman* (1841), 2 Man. & G. 606. *Mentd. Tomkins v. Savory* (1829), 9 B. & C. 704; *Jackson v. Cocker* (1841), 4 Beav. 59.

886. Power of churchwardens to execute power of attorney—Authorising party to receive dividends.]—*Re* **STRATFORD BRIDGE IMPROVEMENT ACT**, *Ex p. ANNESLEY*, No. 160, *ante*.

887. Power to act as officer of friendly society.]—An incorporated banking co. cannot be the treasurer of a friendly society within the meaning of Friendly Societies Act, 1875 (c. 60).—*Re* **WEST OF ENGLAND & SOUTH WALES DISTRICT BANK**, *Ex p. SWANSEA FRIENDLY SOCIETY* (1879), 11 Ch. D. 768; 48 L. J. Ch. 577; 40 L. T. 551; 43 J. P. 637; 27 W. R. 596.

Annotation:—*Refd. John O'Gaunt Lodge of Oddfellows v. Bell* (1885), Dip. & G. 67.

See, further, FRIENDLY SOCIETIES.

Power to act as executor or trustee.]—*See* Sect. 4, *post*.

Power to borrow.]—*See* Nos. 939, 953-958, *post*.

888. Power to revoke resolution—Granting pension to clerk—Statutory authority to pay annuities from "time to time".]—Certain trustees were created by 13 & 14 Vict. c. cix. a body corporate, for the management of the navigation of a river, with a common seal & perpetual succession. The statute empowered them to levy tolls, & enacted by s. 76, that it should be lawful for the trustees, from time to time, to pay & allow to any officer or servant of the trustees whose services might, from any other cause than that of misconduct, be no longer required by the trustees, such annuity or other allowance as, having regard

distinction between trading & non-trading corporation.]—**CHINESE EMPIRE REFORM ASSOCN. v. CHINESE DAILY NEWSPAPER PUBLISHING CO., LTD.** (1907), 13 B. O. R. 141.—**CAN.**

h. — Statutory corporation — Permissive powers.]—Permissive powers given by statute to a corp. are not obligatory upon it.—**SCOTTISH NORTH-EASTERN RY. CO. v. STEWART** (1859), 3 Macq. 382.—**SCOT.**

k. Whether bound by acquiescence.]—A corp. may be bound by acquiescence as an individual may.—**PEMBROKE, TOWNSHIP v. CANADA CENTRAL RY. CO.** (1883), 3 O. R. 503.—**CAN.**

to length of service & all the other circumstances of the case, might, in the judgment of the trustees, be reasonable & proper; & the trustees might, from time to time, pay & allow such annuity or allowance out of the moneys which might come to their hands by virtue of the powers & provisions of certain Acts. Pltf., who had been their clerk, removable at their will & pleasure, for forty years, having in 1865 resigned, owing to ill health, the trustees duly passed a resolution, not sealed, that his resignation be accepted, & that a retiring pension of £300 *per annum*, free of income tax, be granted to him during the remainder of his life. The pension was duly paid quarterly for some years, until defts., who had meanwhile been substituted by statute for the trustees, with all their powers, & subject to all their liabilities,—duly passed a resolution to reduce the pension to £150 *per annum*, to be paid during their pleasure, & made the first quarterly payment on the reduced scale. Pltf. having brought an action to recover the difference for that quarter:—*Held*: the resolution of 1865 was revocable, & pltf. could not recover.—*MERCHANT v. LEE CONSERVANCY BOARD* (1874), L. R. 9 Exch. 60; 43 L. J. Ex. 44; 30 L. T. 367, Ex. Ch.

Annotation:—*Mentd.* R. v. St. George's, Southwark Vestry (1887), 19 Q. B. D. 533.

889. Whether action by rival corporation maintainable—For alleged ultra vires act contrary to public interest—No private injury sustained by plaintiffs.]—The ct. will not entertain a suit at the instance of one rival co. against another, alleging that defts. were acting *ultra vires*, & contrary to the public interest, where pltf. sustain no private injury by the acts done.—*STOCKPORT DISTRICT WATERWORKS CO. v. MANCHESTER CORPN.* (1862), 7 L. T. 545; 9 Jur. N. S. 266; 11 W. R. 156, L. C.

Annotations:—*Consd.* Pudsey Coal Gas Co. v. Bradford Corpn. (1873), L. R. 15 Eq. 167. *Refd.* Preston Corpn. v. Fullwood L. B. (1885), 34 W. R. 196; Dover Picture Palace & Pessers v. Dover Corpn. & Grundall Wraith, Gurr & Knight (1913), 11 L. G. R. 971; Dundee Harbour Trustees v. Nicol, [1915] A. C. 550.

Legal proceedings against corporations generally, see Part XV., *post*.

Power to give undertaking.]—See No. 1331, *post*.

Ratification of act of officer—After repudiation.]

—See AGENCY, Vol. I., p. 403, No. 1032.

As to regulations & bye-laws, see Part VI.

As to Livery Companies, Trade Guilds, etc., see Part XVII.

As to *ultra vires* acts, see Part IX., Sect. 5, sub-sect. 1.

SECT. 2.—CORPORATION AS A "PERSON,"

SUB-SECT. 1.—IN STATUTES.

See Interpretation Act, 1889 (c. 63), ss. 2, 19, & generally, STATUTES.

890. General rule.]—"Person" in a legal sense, is an apt word to describe a corpn.—*ROYAL MAIL STEAM PACKET CO. v. BRAHAM* (1877), 2 App. Cas. 381; 46 L. J. P. C. 67; 36 L. T. 220; 25 W. R. 651, P. C.

891. —.]—Whether the word "person" in a statute can be treated as including a corpn.

PART IX. SECT. 2, SUB-SECT. 1.

890 i. General rule.]—"Person" may in the same Act in one clause include a corpn., while in another clause it may not so do.—*Ex p. SPERRING* (1890), 11 N. S. W. L. R. 407; 7 N. S. W. W. N. 89.—AUS.

1. — R. S. c. 1, s. 7 (21)—Does not include corporation in criminal

proceedings before justice of peace.]—*Re CHAPMAN & CITY OF LONDON* (1890), 19 O. R. 33.—CAN.

m. *Public statute — Crown Lands Alienation Act*, 1861, s. 13.]—"Person" in above sect. does not include a corpn.—*R. v. REDHEAD COAL MINING CO.* (1886), 7 N. S. W. L. R. 279; 3 N. S. W. W. N. 59.—AUS.

must depend on a consideration of the object of the statute, & of the enactments passed with a view to carry that object into effect.

A small body of persons had obtained a registration under the Companies Acts, 1862-1867. One only of these persons was a qualified, certified, & registered chemist. His share in the co. was very small; he was the person who appeared in the shop & conducted the sales, & he received a salary for his labour in dispensing the drugs, which were sold for the profit of the co.:—*Held*: under these circumstances, the word "person" in Pharmacy Act, 1868 (c. 121), ss. 7, 15, did not apply so as to make this incorporated co. liable to the penalty, but the actual seller must be a qualified person.—*PHARMACEUTICAL SOCIETY v. LONDON & PROVINCIAL SUPPLY ASSOCN.* (1880), 5 App. Cas. 857; 49 L. J. Q. B. 736; 43 L. T. 389; 45 J. P. 20; 28 W. R. 957. H. L.

Annotations:—*Consd.* *Hirst v. West Riding Union Banking Co.*, [1901] 2 K. B. 560; *Pharmaceutical Soc. v. White*, [1901] 1 K. B. 601; *Willmott v. London Road Car Co.*, [1910] 2 K. B. 525. *Expld.* *Edwards v. Pharmaceutical Soc. of Great Britain*, [1910] 2 K. B. 766. *Refd.* *Chapleo v. Brunswick Permanent Bldg. Soc.* (1881), 6 Q. B. D. 696; *G. W. Ry. v. Swindon & Cheltenham Extension Ry.* (1882), 52 L. J. Ch. 306; *Re Jeffcock's Trusts* (1882), 51 L. J. Ch. 507; *Enniskillen Union Grdns. v. Hilliard* (1884), 15 Cox, C. C. 643; *Pharmaceutical Soc. v. Wheeldon* (1890), 24 Q. B. D. 683; *R. v. Tyler & International Commercial Co.*, [1891] 2 Q. B. 588; *Pearks, Gunston & Tee v. Ward, Hennen v. Southern Counties Dairies Co.*, [1902] 2 K. B. 1; *Wills v. Tozer* (1904), 53 W. R. 74; *Pharmaceutical Soc. v. Nash* (1910), 80 L. J. K. B. 416; *Re Royal Naval School, Seymour v. Royal Naval School*, [1910] 1 Ch. 806.

892. —.]—The word "person," when used in a statute, does not include corpn. where the statute contains expressions that are repugnant to that construction. Under a statute providing that the persons present at a meeting may vote, but that a proxy shall not be admitted, a corpn., though a person in law, is debarred from voting.—*WILLS v. TOZER* (1904), 53 W. R. 74; 20 T. L. R. 700; 48 Sol. Jo. 654.

Annotation:—*Distd.* *Evans v. L. C. C.* (1914), 83 L. J. K. B. 1264.

893. Public Statute — Bridges Act, 1803 (c. 59), s. 5—Trustees appointed under local turnpike Act.]—By the above Act no bridge thereafter to be built in any county, by or at the expense of any individual or private person, body politic or corporate, shall be deemed a county bridge, unless erected in a substantial & commodious manner, under the direction or to the satisfaction of the county surveyor, etc. Trustees appointed by a local turnpike Act are individuals or private persons within the meaning of this statute; & therefore, a bridge erected by such trustees after the passing of the statute, but not under the direction or to the satisfaction of the county surveyor, etc., is not a bridge which the inhabitants of the county are liable to repair.—*R. v. DERBY COUNTY (INHABITANTS)* (1832), 3 B. & Ad. 147; 1 L. J. M. C. 15; 110 E. R. 55.

Annotation:—*Mentd.* *North Staffordshire Ry. v. Hanley Corpn.* (1909), 73 J. P. 477.

894. — Pharmacy Act, 1868 (c. 121), s. 15.]—*PHARMACEUTICAL SOCIETY v. LONDON & PROVINCIAL SUPPLY ASSOCN.*, No. 891, *ante*.

See, further, MEDICINE & PHARMACY.

895. — City of London Parochial Charities Act, 1883 (c. 36), s. 10.]—On a petition under the

n. — *Grand Jury Act*, 1836, s. 135—*Includes corporation.*—*M'BIRNEY & CO., LTD. v. DUBLIN CORPN.*, *TODD, BURNS & CO., LTD. v. DUBLIN CORPN.* (1908), 42 L. L. T. 71.—IR.

o. — *Industrial Arbitration Act*, 1912, s. 48—*Does not include corporation.*—*Re BRENNAN* (1915), 15

Sect. 2.—Corporation as a "person": Sub-sects. 1 & 2. Sects. 3 & 4: Sub-sect. 1.]

above Act, s. 10, a preliminary objection was taken that the petitioners had no vested interest:—*Held*: a vested interest under that Act meant an emolument received by some person in respect of some office which he held, an emolument which that person received for his own benefit. The word "person" includes any body of persons, whether corporate or unincorporate.—*Re St. JOHN THE EVANGELIST, D'AUNGRE'S CHARITY* (1888), 59 L. T. 617; 4 T. L. R. 765.

896. — Patents, Designs, & Trade Marks Act, 1883 (c. 57), s. 103.]—A patent under the International Convention can only be granted to the person who has made the foreign application. A corp'n. can apply under the above Act, s. 103.—*Re CAREZ'S APPLICATION* (1889), 6 R. P. C. 552.

See, further, PATENTS & INVENTIONS.

897. — Statute of Frauds Amendment Act, 1828 (c. 14), s. 6.]—The word "person" in the above Act, s. 6, includes a corp'n.; & an incorporated co. is, under the sect., not liable for a false representation of the kind contemplated by the sect., made in a letter written & signed by their agent.—*HIRST v. WEST RIDING UNION BANKING CO.*, [1901] 2 K. B. 560; 70 L. J. K. B. 828; 85 L. T. 3; 49 W. R. 715; 17 T. L. R. 629; 45 Sol. Jo. 614, C. A.

*Annotations:—***Apprvd.** *Banbury v. Bank of Montreal*, [1918] A. C. 626. **Refd.** *Re Royal Naval School, Seymour v. Royal Naval School*, [1910] 1 Ch. 806.

See, further, CONTRACT, GUARANTEE.

898. — Sale of Food & Drugs Act, 1875 (c. 63), s. 6.]—The above Act, s. 6, enacts that no person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, & quality of the articles demanded by such purchaser, under a penalty not exceeding £20:—*Held*: a joint stock co. incorporated under Companies Acts can be convicted of an offence under s. 6.—*PEARKS, GUNSTON & TEE, LTD. v. WARD, HENNEN v. SOUTHERN COUNTIES DAIRIES CO.*, [1902] 2 K. B. 1; 71 L. J. K. B. 656; 87 L. T. 51; 66 J. P. 774; 18 T. L. R. 538; 20 Cox, C. C. 279.

*Annotations:—***Consd.** *Hawke v. Hulton*, [1909] 2 K. B. 93; *Mousell v. L. & N. W. Ry.*, [1917] 2 K. B. 836; *Pearks Dairies v. Tottenham Food Control Committee* (1918), 88 L. J. K. B. 623. **Refd.** *Smithlies v. Bridge* (1902), 71 L. J. K. B. 555; *Re Royal Naval School, Seymour v. Royal Naval School*, [1910] 1 Ch. 806; *Chuter v. Freeth & Pocock*, [1911] 2 K. B. 832; *R. v. Ascanio Puck, & Paice* (1912), 76 J. P. 487. **Mentd.** *Korten v. West Sussex County Council* (1903), 88 L. T. 466.

899. — Sale of Food & Drugs Act, 1899 (c. 51), s. 20 (6).]—By the above Act, s. 20 (6), it is enacted that every person who, in respect of an article of food or drug sold by him gives to the purchaser a false warranty in writing, shall be liable on summary conviction to a fine as therein mentioned, unless he proves that when he gave the warranty he had reason to believe that the statements or descriptions contained therein were true:—*Held*: a joint stock co. incorporated under the Companies Act can be convicted of an offence under the above enactment.—*CHUTER v. FREETH & POCKOCK, LTD.*, [1911] 2 K. B. 832; 80 L. J. K. B. 1322; 105 L. T. 238; 75 J. P. 430; 27 T. L. R. 467; 22 Cox, C. C. 573; 9 L. G. R. 1055, D. C.

*Annotations:—***Consd.** *Mousell v. L. & N. W. Ry.*, [1917] 2 K. B. 836. **Refd.** *R. v. Ascanio Puck, & Paice* (1912), 76 J. P. 487.

S. R. N. S. W. 173; 32 N. S. W. W. N. 51.—AUS.

p. — Interpretation Act, 1868, s. 7 (9).—Includes corporation.—Signature to bill of lading under 33 Vict. c. 19, s. 3.]—*ROYAL CANADIAN BANK v.*

GRAND TRUNK RY. CO. (1873), 23 C. P. 225.—CAN.

q. — Master & Servants Act, 1857.—May include corporation.]—*Exp. SPERRING* (1890), 11 N. S. W. L. R.

900. — Public Health (London) Act, 1891, s. 47 (3).]—The person who sells unsound food liable to be seized to another person, which is not in fact seized, but is voluntarily given up by the purchaser for condemnation, is not guilty of an offence under the above Act, s. 47 (3).

An indictment lies against a limited co. in respect of an offence created by the above Act, s. 47 (3) (*per CUR.*).—*R. v. ASCANIO PUCK & CO. & PAICE* (1912), 76 J. P. 487; 29 T. L. R. 11; 11 L. G. R. 136.

See, further, FOOD & DRUGS.

901. — Dentists Act, 1878 (c. 33), s. 3.]—A co. was formed in 1906 to carry on the business of S., whose name, formerly on the dentists' registrar, was struck off in that year. An action was brought against the co. & S. the sole director, to restrain the co. from representing that it was carrying on the business of a dentist or surgeon dentist as successors to S. or that it was a person specially qualified to practise dentistry:—*Held*: the co. was a "person" within the above Act, s. 3, & an injunction must be granted.—*A.-G. v. SMITH (GEORGE C.), LTD.*, [1909] 2 Ch. 524; 78 L. J. Ch. 781; 100 L. T. 225; 25 T. L. R. 257.

See, further, MEDICINE & PHARMACY.

902. — Lotteries Act, 1823 (c. 60), s. 41.]—A body corporate cannot be convicted as rogues & vagabonds under the above Act, s. 41.

Qu.: whether an action will lie in the name of the A.-G. to recover the penalty of £50 imposed for the offence created by the sect.—*HAWKE v. HULTON (E.) & CO., LTD.*, [1909] 2 K. B. 93; 78 L. J. K. B. 633; 100 L. T. 905; 73 J. P. 295; 25 T. L. R. 474; 22 Cox, C. C. 122; 16 Mans. 164, D. C.

*Annotations:—***Mentd.** *R. v. Ascanio Puck, & Paice* (1912), 76 J. P. 487; *R. v. Daily Mirror Newspapers, R. v. Glover*, [1922] 2 K. B. 530.

See, further, GAMING & WAGERING.

903. — Summary Jurisdiction Act, 1848 (c. 43).]—There is nothing in the provisions of Shops Act, 1912 (c. 3), to exclude an incorporated co. which occupies a shop from the obligation imposed by s. 4 of that Act upon occupiers of shops to close their shops on the afternoon of one day in the week.

The provisions of the Summary Jurisdiction Act, 1848 (c. 43), as to summoning offenders before a ct. of summary jurisdiction to answer an information for a penalty apply to corpns. as well as to natural persons.—*EVANS & CO., LTD. v. LONDON COUNTY COUNCIL*, [1914] 3 K. B. 315; 83 L. J. K. B. 1264; 111 L. T. 288; 78 J. P. 345; 30 T. L. R. 509; 24 Cox, C. C. 290; 12 L. G. R. 1079.

904. Act enabling person to sue as common informer.]—The words of 7 Geo. 2, c. 7, being "any person or persons":—*Held*: a corp'n. therefore could not sue as a common informer.—*WEAVERS' CO. v. FORREST* (1745), 2 Stra. 1241; 93 E. R. 1156.

*Annotations:—***Mentd.** *Lloyd v. Williams* (1771), 2 Wm. Bl. 722; *Smith v. Jennings* (1840), 4 Jur. 1160.

905. —]—A corp'n. cannot sue for penalties as a common informer, unless expressly empowered by statute so to do.

1 & 2 Will. 4, c. lxxvi., s. xiv., imposes a penalty on coal dealers who knowingly sell one sort of coals for another within a certain district, & the penalty is recoverable under s. lxxxv. by the person or persons who shall inform & sue for the same:—*Held*: a board of guardians, being a corp'n., did

407; 7 N. S. W. W. N. 89.—AUS.

r. — Trustee Act, 1893, s. 10.—Does not include corporation.]—*In the Estate of LONGWORTH, VENDOR* (1900), 34 L. L. T. 148.—IR.

not come within the terms of s. lxxxv., & therefore could not sue for the penalty.—*ST. LEONARD'S, SHOREDITCH GUARDIANS v. FRANKLIN* (1878), 3 C. P. D. 377; 47 L. J. Q. B. 727; 39 L. T. 122; 42 J. P. 727; 26 W. R. 882.

Annotations:—*Distd. Enniskillen Union Grdns. v. Hilliard* (1884), 15 Cox, C. C. 643. *Refd. Allman v. Hardcastle* (1903), 89 L. T. 553. *Mentd. Robinson v. Curry* (1880), 43 L. T. 504.

906. Private statute—Special provisions for actions against any "person"—For acts done in pursuance of statute.]—Where in a private Act of Parliament special provisions are enacted for actions "against any person" for any act done in pursuance or by the authority of the statute:—*Held*: the provision would apply to the co. for whose benefit the Act was passed as well as to a single individual.—*BOYD v. CROYDON RY. CO.* (1838), 4 Bing. N. C. 669; 6 Dowl. 721; 6 Scott, 461; 7 L. J. C. P. 241; 2 J. P. 680; 2 Jur. 327; 132 E. R. 946.

907. — Local Gas Act.]—A corpn. who have set up gas lamps at the expense of their corporate funds are a "person" within 5 Geo. 4, c. lxxvii., s. lix., which enacts that if any person accidentally should break a lamp belonging to the gas co., or set up by any person at his private expense, & should not make satisfaction for the damage done, he might be proceeded against summarily before justices:—*Held*: therefore, any person damaging such a lamp might be dealt summarily with.—*HEREFORD CORPN. v. MORTON* (1866), 15 L. T. 187; 31 J. P. 56; 15 W. R. 110.

908. — Provision for voting by "persons" present at meetings.]—*WILLS v. TOZER*, No. 892, *ante*.

SUB-SECT. 2.—IN DOCUMENTS.

909. Power to lease to any "person or persons."]—Trustees of a will had power to grant leases to any "person or persons" they should think fit:—*Held*: this authorised them to grant a lease to a limited co.—*Re JEFFCOCK'S TRUSTS* (1882), 51 L. J. Ch. 507.

Annotation:—*Consd. Willmott v. London Road Car Co.*, [1910] 2 Ch. 525.

910. Covenant not to assign without consent of lessor—Consent not to be withheld in case of respectable & responsible "person."]—A lease of land, with an iron furnace & mill & certain water rights for the purpose of working the same, contained a covenant on the part of the lessees not to assign or underlet without the consent in writing of the lessors, such consent not to be unreasonably refused, or refused to "a person" of responsibility & respectability. The lessees agreed with the corpn. of B.-in-F. to assign to them, & the corpn. agreed with the lessees not to use, the water rights for manufacturing iron or steel. The lessors refused to consent to the assignment, on the ground that the corpn. could not use the premises for the purposes they were intended:—*Held*: the corpn. was not, under the terms of the lease, "a person" of responsibility & respectability within the meaning of the covenant therein, & the consent had not been unreasonably withheld.—*HARRISON*,

906 i. Private statute—Special provisions for actions against any "person"—For acts done in pursuance of statute.]—The Melbourne Harbour Trust Comrs. are a "person" within the Melbourne Harbour Trust Act, 1876, s. 46, so as to be entitled to notice of action, before commencement of an action against them for anything pur-

porting to have been done in pursuance of the Act.—*UNION STEAM SHIPPING CO. OF NEW ZEALAND v. MELBOURNE HARBOUR TRUST COMRS.* (1882), 8 V. L. R. 167.—*AUS.*

PART IX. SECT. 4, SUB-SECT. 1.

a. Corporation aggregate—No grant of

AINSLIE & CO. v. BARROW-IN-FURNESS CORPN. (1891), 63 L. T. 834; 39 W. R. 250.

Annotation:—*Overd. Willmott v. London Road Car Co.*, [1910] 2 Ch. 525.

911. — — — — —]—A limited co. may be a respectable & responsible "person" within the meaning of a covenant by a lessee not to assign without the consent of the lessor, such consent not to be withheld in the case of a respectable & responsible "person."

The question before us is the construction of the provision in this lease, & of course in construing it we must take all the words that we find there; but, as the argument of counsel before us has indicated, this naturally falls into two parts. We have first to consider whether the word "person" used in a provision of a lease of this type can include a corpn. or whether it is restricted to individuals. Then, if we come to the conclusion that it can include a corpn., we have to consider whether the indications afforded by the two epithets which are applied to the word "person" are such as to lead us to the conclusion that it bears a narrower sense. In my opinion, there can be no question that the word "person" may include corpn. (*FLETCHER MOULTON, L.J.*).—*WILLMOTT v. LONDON ROAD CAR CO., LTD.*, [1910] 2 Ch. 525; 80 L. J. Ch. 1; 103 L. T. 447; 27 T. L. R. 4; 54 Sol. Jo. 873, C. A.

See, generally, LANDLORD & TENANT.

SECT. 3.—CORPORATION AS "OCCUPIER."

912. Public statute—Factory & Workshops Act, 1901 (c. 22), s. 137.]—A limited co., as the occupier of a factory, may be proceeded against for a contravention of the above Act, s. 137, in employing persons contrary to the Act.—*R. v. GAINSFORD JJ.* (1913), 29 T. L. R. 359.

913. — Shops Act, 1912 (c. 3), s. 4.]—*EVANS & CO., LTD. v. LONDON COUNTY COUNCIL*, No. 903, *ante*.

SECT. 4.—APPOINTMENT AS EXECUTOR OR TRUSTEE.

SUB-SECT. 1.—EXECUTOR.

See, now, Administration of Justice Act, 1920 (c. 81), s. 17; Stat. R. & O. 1921 ([1921] W. N., pt. ii, p. 99); Law of Property Act, 1922 (c. 16), s. 157.

914. Corporation sole.]—Testator appointed the Archbishop of T. for the time being, an exor. of his will, the archi-episcopal jurisdiction of T. having been abolished by 3 & 4 Wm. 4, c. 37:—*Held*: probate would be granted to the Bishop of T. as exor.—*In the Goods of HAYNES* (1842), 3 Curt. 75; 1 Notes of Cases, 402.

915. Corporation aggregate—Formerly grant of letters of administration—To syndic appointed by corporation.]—When a corpn. aggregate have been appointed exors. of a will, the ct. will, on motion, grant letters of administration, with the will annexed, to a syndic who has been duly appointed by such corpn. to take the grant. The grant will not be made until the appointment

letters of administration unless authorised by statute.]—*In the Will of BASSE*, [1909] V. L. R. 313.—*AUS.*

t. — Grant of probate—Where some one appointed to take executor's oath & swear to administration of estate by corporation.]—*Re COMER* (1914), 20 B. C. R. 432.—*CAN.*

Sect. 4.—Appointment as executor or trustee: Sub-sects. 1 & 2. Sect. 5: Sub-sect. 1.]

of syndic is before the ct.—*In the Goods of DARKE* (1859), 1 Sw. & Tr. 516; 29 L. J. P. M. & A. 71; 2 L. T. 24; 8 W. R. 273.

Annotation:—Refd. In the Estate of Rankine, [1918] P. 134.

916. —————Upon the production of the confirmation of the exors. of a person dying domiciled in Scotland, leaving personal estate both in Scotland & England, to the Probate Division in England, in accordance with Confirmation & Probate Act, 1858 (c. 56), s. 12, the ct. must seal & return the confirmation, & cannot refuse to do so, on the ground that one of the exors. appointed by the will is a corpn., & that by English law a corpn. is not competent to take a grant of probate, but can only take administration by a syndic. The act of sealing is purely ministerial.—*In the Estate of RANKINE*, [1918] P. 134; 87 L. J. P. 114; 118 L. T. 670; 34 T. L. R. 294; 62 Sol. Jo. 382, C. A.

Annotation:—Refd. Re McLaughlin, [1922] P. 235.

917. —————On evidence of sufficiency & power of corporation to act & on corporation becoming surety.—Testator appointed a limited co. trustees & exors. of his will. The ct. on motion, upon evidence of the sufficiency of the co. & its power to act, granted letters of administration with the will annexed to a nominee of the co. with the co. as sole surety.—*In the Goods of HUNT*, [1896] P. 288; 66 L. J. P. 8; 45 W. R. 236.

Annotation:—Refd. In the Estate of Rankine, [1918] P. 134.

918. ————No grant of probate—To corporation & individuals jointly.—The ct. will not make a grant of probate to a body corporate & to one or more individuals, all of whom have been appointed exors. by a will.—*In the Goods of MARTIN* (1904), 90 L. T. 264; 20 T. L. R. 257.

919. ————With principal place of business in colony.—Although the power given to the High Ct. by Administration of Justice Act, 1920 (c. 81), to grant probate to a corpn. named as exor. of a will applies only to a corpn. which has its principal place of business in the United Kingdom, the ct. will, in exercise of the discretion given to it by Colonial Probates Act, 1892 (c. 6), s. 2, reseal a grant of probate made by a colonial ct., having jurisdiction, to a corpn. having its principal place of business in a colony.—*Re McLAUGHLIN*, [1922] P. 235; 127 L. T. 527; 38 T. L. R. 622; 66 Sol. Jo. 578; *sub nom.* *McLAUGHLIN v. McLAUGHLIN*, 91 L. J. P. 205.

SUB-SECT. 2.—TRUSTEE.

Power to act as trustee — Of charity.] — See CHARITIES, Vol. VIII., pp. 369, 370.

920. ————Jointly with individuals.—A marriage settlement contained a proviso that, if the trustees should die, it should be lawful for the husband & wife to appoint a new trustee or trustees in the place of those dying. One of the trustees having died, the husband & wife proposed to appoint a corpn. to be new trustee jointly with the surviving trustee:—*Held*: since Bodies Corporate (Joint Tenancy) Act, 1899 (c. 20), had

enabled corporate bodies to hold property in joint tenancy with individuals, the appointment could legally be made under the power.—*Re THOMPSON'S SETTLEMENT TRUSTS*, *THOMPSON v. ALEXANDER*, [1905] 1 Ch. 229; 74 L. J. Ch. 133; 91 L. T. 885; 21 T. L. R. 86.

Annotation:—Refd. Re Royal Naval School, *Seymour v. Royal Naval School*, [1910] 1 Ch. 806.

921. ————Appointment—Trustee of settlement.—*Re BROGDEN*, *BILLING v. BROGDEN*, [1888] W. N. 238.

———Trustee of charity.]—*See CHARITIES*, Vol. VIII., pp. 372, 373.

Removal from trusteeship.]—*See CHARITIES*, Vol. VIII., pp. 374, 375.

Ownership of property as trustees.]—*See Sect. 6, sub-sect. 2, post.*

Trustees for debenture-holders.]—*See COMPANIES*.

SECT. 5.—LIMITATION OF POWERS (ULTRA VIRES).

SUB-SECT. 1.—IN GENERAL.

922. General rule — Corporations by statute.]—

(1) A co. created a corpn. under the Companies Act, 1862 (c. 89), is not thereby created a corpn. with inherent common law rights.

(2) The objects of a co. proposed to be incorporated under that Act, as stated in the memorandum of assocn. required by the sect. 8 of the Act, cannot be departed from, except so far as the sect. 12 permits the change. The memorandum is the charter of the co. Consequently a contract made by the directors of such a co. upon a matter not included in the memorandum of assocn. is *ultra vires* of the directors, & is not binding on the co.

(3) Such a contract cannot be rendered binding on the co. though afterwards expressly assented to at a general meeting of shareholders, for being in its inception void, as beyond the provisions of the stat., it cannot be ratified even by the assent of the whole body of shareholders.—*ASHBURY RAILWAY CARRIAGE & IRON CO. v. RICKE* (1875), L. R. 7 H. L. 653; 44 L. J. Ex. 185; 33 L. T. 450; 24 W. R. 794, H. L.; *varying S. C. sub nom. RICKE v. ASHBURY RAILWAY CARRIAGE CO.* (1874), L. R. 9 Exch. 224, Ex. Ch.

Annotations:—As to (1) Consd. Cree v. Somervail (1879), 4 App. Cas. 648. *Consd. & Expld. A.-G. v. G. E. Ry.* (1880), 5 App. Cas. 473. *Apld. Wenlock v. River Dee Co.* (1885), 10 App. Cas. 354. *Consd. Southwark & Vauxhall Water Co. v. Dickenson* (1889), 5 T. L. R. 251. *Apld. L. C. C. v. A.-G.*, [1902] A. C. 165. It is impossible to go behind those two cases [No. 922, *supra*, & No. 932, *post*]: they are now part of the law of this country, & we must acquiesce in them, whether we like them or not (LORD HALSBURY, C.); *A.-G. v. Mersey Ry.*, [1907] 1 Ch. 81. *Consd. Amalgamated Soc. of Ry. Servants v. Osborne*, [1910] A. C. 87; *British South Africa Co. v. De Beers Consolidated Mines*, [1910] 1 Ch. 354; *Bonanza Creek Gold Mining Co. v. R.*, [1916] 1 A. C. 566. *Refd. Putney Overseers v. L. & S. W. Ry.*, [1891] 1 Q. B. 440; *Oregum Gold Mining Co. of India v. Roper*, Wallroth v. Roper, [1892] A. C. 125; *Mann & Beattie v. Edinburgh Northern Tram. Co.* (1892), 1 R. 86; *Foster v. L. C. & D. Ry.*, [1895] 1 Q. B. 711; *A.-G. v. West Gloucestershire Water Co.* (1909), 25 T. L. R. 650; *A.-G. v. Leicester Corpn.* (1910), 103 L. T. 214; *Sinclair v. Brougham*, [1914] A. C. 398; *Re Woking Urban Council (Basingstoke Canal) Act, 1911*, [1914] 1 Ch. 300; *Dundee Harbour Trustees v. Nicol*, [1915] A. C. 550; *Bowman v. Secular Soc.*, [1917]

PART IX. SECT. 4, SUB-SECT. 2.

a. Power to act as trustee.]—The Public Trustee of England, being a corpn. sole under Public Trustee Act, 1906, is empowered to accept the trusteeship of land in Victoria in the case of a trust declared in an English will.—*Re TRANSFER OF LAND ACT; BALFOUR TO THE PUBLIC TRUSTEE*, [1916] V. L. R. 397.—AUS.

PART IX. SECT. 5, SUB-SECT. 1.

922 i. General rule—Corporations by statute.]—A corpn. created for a particular purpose with statutory powers is not entitled to exercise powers not expressly or impliedly authorised.—*DE VILLIERS v. PRETORIA MUNICIPALITY* (1912), T. P. D. 626.—S. AF.

922 ii. —————A statutory

corpn. cannot grant to any one a right incompatible with the main object which the legislature had in view in creating it, & cannot impose upon its revenues the burden of maintaining for the benefit of strangers works not necessary for the primary purpose of the statutory creation.—*CLARK v. MELBOURNE HARBOUR TRUST COMRS.* (1903), 29 V. L. R. 467.—AUS.

A. C. 406; County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251; Kensington & Knightsbridge Electric Lighting Co. v. Notting Hill Electric Lighting Co. (1918), 87 L. J. K. B. 565; A.-G. v. Fulham Corp., [1921] 1 Ch. 440; Jenkin v. Pharmaceutical Soc. of Great Britain, [1921] 1 Ch. 392. *As to (2) Distd. Re Norwich Provident Insee. Soc.* (1877), 37 L. T. 272. *Consd. Guinness v. Land Corp. of Ireland* (1882), 22 Ch. D. 349; London Financial Assoon. v. Kelk (1884), 26 Ch. D. 107; Ashbury v. Watson (1885), 30 Ch. D. 376. *Distd. Re South Durham Brewery Co.* (1885), 31 Ch. D. 261. *Consd. Re Walker & Hacking* (1887), 57 L. T. 763; *Re London Celluloid Co., Bayley & Hanbury's Cases* (1888), 59 L. T. 109; *Re Kingsbury Collieries & Moore's Contract*, [1907] 2 Ch. 259. *Reid. Hope v. International Financial Soc.* (1876), 4 Ch. D. 327; *Re Albion Life Assce. Soc., Winstone's Case* (1879), 27 W. R. 752; *Re Dronfield Silkstone Coal Co.* (1880), 17 Ch. D. 76; *Re German Date Coffee Co.* (1882), 20 Ch. D. 169; L. & N. W. Ry. v. Price (1883), 11 Q. B. D. 485; Trevor v. Whitworth (1887), 12 App. Cas. 409; Howard v. Patent Ivory Manufacturing Co., *Re Patent Ivory Manufacturing Co.* (1888), 38 Ch. D. 156; Balkis Consolidated Co. v. Tomkinson, [1893] A. C. 396; Andrews v. Gas Meter Co., [1897] 1 Ch. 361; *Re Borax Co., Foster v. Borax Co.*, [1901] 1 Ch. 326; *Re Walker & Smith* (1903), 72 L. J. Ch. 572; Corbett v. S. E. & C. Rys. Managing Committee, [1906] 2 Ch. 12; *Re Birkbeck Permanent Benefit Bldg. Soc.*, [1912] 2 Ch. 183; *Re Doeckham Gloves*, [1913] 1 Ch. 226. *As to (3) Reid. Gibson v. Barton* (1875), L. R. 10 Q. B. 329; *Re West of England, Ex p. Booker* (1880), 14 Ch. D. 317; *Re Coltman, Coltman v. Coltman* (1881), 19 Ch. D. 64; Trevor v. Whitworth (1887), 12 App. Cas. 409; *Re Railways Time Tables Publishing Co., Sandy's Case* (1889), 61 L. T. 94. *Generally, Mentd. Chapleo v. Brunswick Permanent Bldg. Soc.* (1881), 6 Q. B. D. 696; Murray v. Scott, Brimelow v. Murray, Agnew v. Murray (1884), 53 L. J. Ch. 745; Melliss v. Shirley & Freemantle L. B. of Health (1885), 54 L. J. Q. B. 408; Newell v. Hemingway (1888), 53 J. P. 324; Ho Tung v. Man On Insee. Co., [1902] A. C. 232; *Re Layard, Layard v. Bessborough* (1916), 85 L. J. Ch. 505.

923. ———.] — Generally speaking all corpns. are bound by a covenant under their corporate seal, properly affixed, which is the legal mode of expressing the will of the entire body, & are bound as much as an individual is by his own deed. Corpns. which are creations of law, are, when the seal is properly affixed, bound just as individuals are by their own contracts, & as much as all the members of a partnership would be by a contract in which all concurred. But where a corp. is created by an Act of Parliament for particular purposes, with special powers, their deed, though under their corporate seal, & that regularly affixed, does not bind them, if it appears by the express provisions of the stat. creating the corp. or by necessary or reasonable inference from its enactments, that the deed was *ultra vires*, that is that the legislature meant that such a deed should not be made (PARKE, B.).—SOUTH YORKSHIRE RY. & RIVER DUN CO. v. GREAT NORTHERN RY. CO. (1853), 9 Exch. 55; 7 Ry. & Can. Cas. 744; 22 L. J. Ex. 305; 22 L. T. O. S. 20; 1 C. L. R. 758; 156 E. R. 23; *affd. sub nom. GREAT NORTHERN RY. CO. v. SOUTH YORKSHIRE RY. & RIVER DUN CO.* (1854), 9 Exch. 642, Ex. Ch.

Annotations:—Apprvd. Shrewsbury & Birmingham Ry. v. N. W. Ry. (1857), 6 H. L. Cas. 113. *Consd. Bateman v. Ashton-under-Lyne Corp.* (1858), 3 H. & N. 323; Payne v. Brecon Corp. (1858), 3 H. & N. 572; Lewis v. Rochester Corp. (1860), 9 C. B. N. S. 401; Chambers v. Manchester & Milford Ry. (1864), 5 B. & S. 588; Taylor v. Chichester & Midhurst Ry. (1867), L. R. 2 Exch. 356; Yorkshire Ry. Wagon Co. v. Maclure (1881), 19 Ch. D. 478. *Reid. Nowell v. Worcester Corp.* (1854), 2 C. L. R. 981; Bostock v. North Staffordshire Ry. (1855), 25 L. T. O. S. 115; Norwich Corp. v. Norfolk Ry. (1855), 4 E. & B. 397; L. B. & S. C. Ry. v. L. & S. W. Ry. (1859), 4 De G. & J. 362; Riche v. Ashbury Ry. Carriage Co. (1874), L. R. 9 Exch. 224; Dartford Union Grdns. v. Trickett (1888), 59 L. T. 754. *Mentd. Charlton v. Newcastle & Carlisle & N. E. Ry.* (1860), 34 L. T. O. S. 22.

924. ———.] — Action against a railway co. on a covenant under their seal that, in case certain works were not completed within twelve months, whether an Act agreed to be obtained were obtained or not, the co. should pay £1,000 as liquidated damages. Plea, setting out the whole deed, by which it appeared that defts., being authorised by stat. to make a railway from certain

termini crossing the river Y. at a place described, found difficulties in crossing there, & had, with the assent of the Lords of the Admty. & the land owners, made a pier in the river Y. at another place, with the view of making a bridge there, to carry the railway across there; that pltf. had indicted them for this as a nuisance; that, to settle the matter, it was agreed that pltf. should withdraw their opposition, & defts. should with all dispatch complete the bridge & works on the pier, according to a plan, containing provisions for protecting the navigation there; that the co. should use their best endeavours to obtain an Act legalising this agreement; & that, whether the Act was obtained or not, unless the works were completed within twelve months the co. should pay pltf. £1,000 as liquidated damages. Averments, that the Y. was a public navigable river; that the pier was a public nuisance; & that the works were not authorised by any Act of Parliament. On demurrer to the replication:—*Held*: (1) (LORD CAMPBELL, C.J., & WIGHTMAN, J.) the agreement was, in substance, an agreement to commit an indictable offence, & therefore illegal; (COLERIDGE, J., & ERLE, J.) it was an agreement to procure the making of the works, not necessarily by illegal means, & therefore not objectionable on this ground; (2) (LORD CAMPBELL, C.J.) the agreement was *ultra vires* of a corp. created for the purpose of making a specific railway, & void on that account; (COLERIDGE, J.) though any contract by the railway corp. not in furtherance of its main object was *ultra vires* & illegal, yet this contract, being for the purpose of effectuating the main object, the making of the railway between the termini, though by an unauthorised deviation, was not *ultra vires*; (ERLE, J.) corpns. had at law capacity to make all contracts not expressly or impliedly prohibited by law, & though contracts frustrating or necessarily inconsistent with the object for which a co. was incorporated by statute, might be considered as impliedly prohibited by it, & therefore illegal, this contract was not of such a nature as to be so prohibited.—NORWICH CORPN. v. NORFOLK RY. CO. (1855), 4 E. & B. 397; 24 L. J. Q. B. 105; 25 L. T. O. S. 11; 1 Jur. N. S. 344; 3 C. L. R. 519; 119 E. R. 143.

Annotations:—As to (2) Reid. Bostock v. North Staffordshire Ry. (1855), 4 E. & B. 798; Bateman v. Ashton-under-Lyne Corp. (1858), 3 H. & N. 323; Rogers v. Oxford, etc. Ry. (1858), 2 De G. & J. 662; South Wales Ry. v. Redmond (1861), 10 C. B. N. S. 675; Maunsell v. Mid. G. W. Ry. (of Ireland) & G. N. & W. (of Ireland) Ry. (1863), 8 L. T. 347; Taylor v. Chichester & Midhurst Ry. (1867), L. R. 2 Exch. 356; Riche v. Ashbury Ry. Carriage Co. (1874), L. R. 9 Exch. 224. *Generally, Reid. Eastern Counties Ry. v. Hawkes* (1855), 5 H. L. Cas. 331.

925. ———.] — *Primâ facie* all corporate bodies are bound by contracts under their common seal, but this *primâ facie* power to contract cannot be insisted on as to matters where from the nature of the corporate body or the object of its incorporation, it is expressly or impliedly by reasonable inference, prohibited from contracting. A contract as to such matters is *ultra vires*.

Primâ facie a corp. may contract under seal. You must show that the particular contract is one which the corp. has no power to enter into. It must be shown on the face of it to be a breach of duty, something foreign to the object for which the co. was established (LORD CRANWORTH, C.).—SHREWSBURY & BIRMINGHAM RY. CO. v. NORTH-WESTERN RY. CO. (1857), 6 H. L. Cas. 113; 26 L. J. Ch. 482; 29 L. T. O. S. 186; 3 Jur. N. S. 775; 10 E. R. 1237, H. L.; *affg.* (1853), 4 De G. M. & G. 115, L. JJ.

Annotations:—Consd. Riche v. Ashbury Ry. Carriage Co. (1874), L. R. 9 Exch. 224. *Reid. Lancaster & Carlisle Ry. v. N. W. Ry.* (1856), 2 K. & J. 293; L. B. & S. C. Ry.

Sect. 5.—Limitation of powers (*ultra vires*): Subsect. 1.]

v. L. & S. W. Ry. (1859), 4 De G. & J. 362; *Hare v. L. & N. W. Ry.* (1861), 2 John. & H. 80; *South Wales Ry. v. Redmond* (1861), 10 C. B. N. S. 675; *Taylor v. Chichester & Midhurst Ry.* (1867), L. R. 2 Exch. 356; *A.-G. v. G. E. Ry.* (1879), 11 Ch. D. 449; *Hire Purchase Furnishing Co. v. Richens* (1887), 20 Q. B. D. 387. **Mentd.** *Eastern Counties Ry. v. Hawkes* (1855), 5 H. L. Cas. 331; *Charlton v. Newcastle & Carlisle & N. E. Ry.* (1860), 34 L. T. O. S. 22; *Richmond Waterworks Co. & Southwark & Vauxhall Waterworks Co. v. Richmond Vestry* (1876), 34 L. T. 480; *Sun Bldg. Soc. v. Western Suburban Bldg. Soc.*, [1921] 2 Ch. 83.

926. ———.] — Generally speaking, corpsns. are as much bound by their contracts as individuals, where the seal is affixed in a manner binding on them; & where a corpn. is created by Act of Parliament for particular purposes, with special powers, their contract will bind them unless it appears by the express provisions of the stat. creating the corpn., or by necessary & reasonable inference from its enactments, that the contract was *ultra vires*, or that the legislature meant that such a contract should not be made.

A co. was incorporated by Act of Parliament for the supply of a certain district with water from certain sources within that district, & empowered to break up highways & place pipes within the district, & to do all other acts which the co. should deem necessary for supplying water to the inhabitants according to the true intent of the Act, & penalties were imposed on the co. not supplying water to the inhabitants of dwelling-houses within the district. In consequence of the increase of population the supply of water within the district became insufficient both in quantity & quality. The co. employed an engineer, who reported that a sufficient supply could not be obtained from existing sources, & recommended that a supply should be obtained from a brook beyond the district. The co. determined to apply to Parliament for powers to enlarge their works so as to make the brook available for the entire district & to increase their capital:—**Held**: the co. might lawfully take steps to apply to Parliament for such extension of the undertaking, it being for the benefit of the corporate body, & the contracts made by the co. for the supply of plans, etc., essential to the application to Parliament were not necessarily illegal or void, or otherwise incapable of being enforced against the co. in a ct. of law.—**BATEMAN v. ASHTON-UNDER-LYNE CORPN.** (1858), 3 H. & N. 323; 27 L. J. Ex. 458; 31 L. T. O. S. 299; 22 J. P. 498; 6 W. R. 829; 157 E. R. 494.

Annotations:—**Reid**. *Maunsell v. Mid. G. W. Ry.* (of Ireland) & *G. N. & W. (of Ireland) Ry.* (1863), 8 L. T. 347; *Taylor v. Chichester & Midhurst Ry.* (1867), L. R. 2 Exch. 356; *A.-G. v. G. E. Ry.* (1879), 11 Ch. D. 449. **Mentd.** *Pickering v. Ilfracombe Ry.* (1868), L. R. 3 C. P. 235; *Dartford Union Grdms. v. Trickett* (1888), 59 L. T. 754.

927. ———.]—(1) A co. incorporated by Act of Parliament cannot exercise its powers or apply its capital except in strict conformity with the Act.

(2) An Act of Parliament constituting a railway co. is a contract between the co. & the public, the performance of which the public has an interest in enforcing; & therefore a railway co., with the ordinary powers, was restrained from carrying on the business of coal merchants, at the suit of the A.-G., on the relation of a stranger to the co.—**A.-G. v. GREAT NORTHERN RY. CO.** (1860), 1 Drew. & Sm. 154; 29 L. J. Ch. 794; 2 L. T. 653; 6 Jur. N. S. 1006; 8 W. R. 556; 62 E. R. 337.

Annotations:—**As to** (1) **Reid**. *G. W. Ry. v. Met. Ry.* (1863), 9 Jur. N. S. 562; *A.-G. & Bristol Waterworks Co. v. West Gloucestershire Water Co.* (1909), 101 L. T. 258. **As to** (2) **Consd.** *A.-G. v. G. E. Ry.* (1879), 11 Ch. D. 449. **Reid**. *Hare v. L. & N. W. Ry.* (1861), 30 L. J. Ch. 817; *A.-G. v.*

Manchester Corpn., [1906] 1 Ch. 643. **Generally, Mentd.** *Evershed v. L. & N. W. Ry.* (1877), 2 Q. B. D. 254; *Norton v. L. & N. W. Ry.* (1878), 9 Ch. D. 623; *A.-G. v. Shrewsbury (Kingsland) Bridge Co.* (1882), 30 W. R. 916.

928. ———.] — Generally speaking, all corpsns. are bound by a covenant under their corporate seal, but where a corpn. is created by an Act of Parliament for particular purposes with special powers their deed, though under their corporate seal, does not bind them if it appears by the express provisions of the stat. creating the corpn., or by necessary or reasonable inferences from its enactments, that the deed was *ultra vires*, that is that the Legislature meant that such a deed should not be made.

The directors of a railway co. gave one of their body bonds bearing interest for money which he was liable to pay on behalf of the co.:—**Held**: upon a true construction of the co.'s special Act, 23 & 24 Vict. c. clxxv., & Railway Regulation Act, 1844 (c. 85), s. 19, & Cos. Clauses Consolidation Act, 1845 (c. 16), s. 38, such bonds were illegal, & could not be enforced against the co.—**CHAMBERS v. MANCHESTER & MILFORD RY. CO.** (1864), 5 B. & S. 588; 4 New Rep. 425; 33 L. J. Q. B. 268; 10 L. T. 715; 10 Jur. N. S. 700; 12 W. R. 980; 122 E. R. 951.

Annotations:—**Consd.** *Re Cork & Youghal Ry.* (1869), 4 Ch. App. 748; *Yorkshire Ry. Wagon Co. v. Maclure* (1881), 19 Ch. D. 478. **Reid**. *Taylor v. Chichester & Midhurst Ry.* (1867), L. R. 2 Exch. 356; *Fountain v. Carmarthen Ry.* (1868), L. R. 5 Eq. 316; *Wenlock v. River Dee Co.* (1885), 10 App. Cas. 354; *Wenlock (Baroness) v. River Dee Co.* (1887), 36 Ch. D. 674; *Re Wrexham, Mold & Connah's Quay Ry.*, [1899] 1 Ch. 440; *Payne v. Cork Co.*, [1900] 1 Ch. 308. **Mentd.** *Rashdall v. Ford* (1866), L. R. 2 Eq. 750; *Webb v. Herne Bay Comrs.* (1870), L. R. 5 Q. B. 642; *Landowners West of England & South Wales Land Drainage & Inclosure Co. v. Ashford* (1880), 16 Ch. D. 411; *R. v. Reed* (1880), 5 Q. B. D. 483; *Re Manchester, Middleton & District Tram. Co.*, [1893] 2 Ch. 638; *Wauthier v. Wilson* (1911), 27 T. L. R. 582.

929. ———.]—A co. incorporated by stat. is entitled to make all contracts connected with the purposes of its incorporation not expressly or by necessary implication prohibited; all such contracts are *prima facie* valid, & it lies upon the co. seeking to repudiate a contract to show that it is prohibited, not upon the opposite party to show that it is authorised.—**TAYLOR v. CHICHESTER & MIDHURST RY. CO. (DIRECTORS, ETC.)** (1867), L. R. 2 Exch. 356; 36 L. J. Ex. 201; 16 L. T. 703; 16 W. R. 147, Ex. Ch.; *reversd.* on other grounds (1870), L. R. 4 H. L. 628, H. L.

Annotations:—**Consd.** *Riche v. Ashbury Ry. Carriage Co.* (1874), L. R. 9 Exch. 224. **Reid**. *Guest v. Poole & Bournemouth Ry.* (1870), L. R. 5 C. P. 553. **Mentd.** *Driver v. Kingston Highway Board* (1871), 20 W. R. 20.

930. ———.]—**PICKERING v. STEPHENSON**, No. 836, *ante*.

931. ———.]—**SOUTHAMPTON DOCK CO. v. SOUTHAMPTON HARBOUR & PIER BOARD**, No. 881, *ante*.

932. ———.]—The doctrine of *ultra vires* as explained in *Ashbury Railway Carriage & Iron Co. v. Riche*, No. 922, *ante*, is to be maintained, but is to be applied reasonably, so that whatever is fairly incidental to those things which the Legislature has authorised by an Act of Parliament, ought not, unless expressly prohibited, to be held as *ultra vires*.

In an act granting special powers, what is not permitted is prohibited.

An Act of Parliament authorised a co. to make a railway to T. & S. There were two other railway cos., which were afterwards combined into one called the G. E. Ry. Co. This latter co. entered into a contract with the T. & S. Co., with which it was in connection in several respects, to supply it with rolling stock upon receiving a certain

annual payment, & having certain other advantages. The contract was adopted by the shareholders of both cos. An action was brought against the G. E. Ry. Co., & an injunction asked for to restrain it from executing this contract. 26 & 27 Vict. c. lxxix., s. 14, one of the Acts relating to the two cos., provided that the two cos. might enter into agreements with respect to the working, maintenance & management of the extension railway, which was the T. & S. Railway, or any part thereof, & of the railways of the two cos. connected therewith, which were the two cos. which had been incorporated under the name of the G. E. Ry. Co., & with respect to the apportionment of the traffic, & of the tolls, fares, & charges for traffic on the extension railway, & the railways of the two cos., the appointment of a joint committee or any other matters incident to the carrying out the purposes of the Act. Sect. 15 of the Act provided that the directors of the T. & S. Co. & the directors of the two cos., respectively, might, subject to the sanction of the shareholders, enter into any contracts or agreements for effecting all or any of the purposes of the Act, or any objects incidental to the execution thereof, & that every such contract or agreement might contain such covenants, clauses, powers, provisions, & conditions as might be mutually agreed upon between the parties thereto:—*Held*: the contract of the G. E. Ry. Co. to supply the T. & S. Co. with rolling stock was not *ultra vires*, but was warranted by the words of these sects. of the Act.

I cannot doubt that the principle by which this House in the case of *Ashbury Railway Carriage & Iron Co. v. Riche*, No. 922, *ante*, tested the power of a joint stock co. registered, with limited liability, under the Companies Act, 1862 (c. 89), applies with equal force to the case of a railway co. incorporated by Act of Parliament (LORD WATSON).—*A.-G. v. GREAT EASTERN RY. CO.* (1880), 5 App. Cas. 473; 49 L. J. Ch. 545; 42 L. T. 810; 44 J. P. 648; 28 W. R. 769, H. L.

Annotations:—*Appld.* L. & N. W. Ry. v. Price (1883), 11 Q. B. D. 485. *Consd.* Small v. Smith (1884), 10 App. Cas. 119; Johns v. Balfour (1889), 1 Meg. 191; Foster v. L. C. & D. Ry., [1895] 1 Q. B. 711. *Appld.* L. C. C. v. A.-G., [1902] A. C. 165. It is impossible to go behind those two cases [No. 922, *supra*, & No. 932, *post*]: they are now part of the law of this country, & we must acquiesce in them, whether we like them or not (LORD HALSBURY, C.). *Consd.* A.-G. v. Mersey Ry., [1907] 1 Ch. 81; *Re* Kingsbury Collieries & Moore's Contract, [1907] 2 Ch. 259; *Re* Woking Urban Council (Basingstoke Canal) Act, 1911, [1914] 1 Ch. 300; A.-G. v. Fulham Corp., [1921] 1 Ch. 440. *Refd.* Guinness v. Land Corp. of Ireland (1882), 22 Ch. D. 349; Wenlock v. River Dee Co. (1885), 10 App. Cas. 354; Henderson v. Bank of Australasia (1888), 40 Ch. D. 170; Sheffield & South Yorkshire Permanent Bldg. Soc. v. Aizlewood (1889), 44 Ch. D. 412; Peel v. L. & N. W. Ry., [1907] 1 Ch. 5; Metropolitan Water Board v. Solomon (1908), 77 L. J. Ch. 517; A.-G. v. West Gloucestershire Water Co., [1909] 2 Ch. 338; Amalgamated Soc. of Ry. Servants v. Osborne, [1910] A. C. 87; Dundee Harbour Trustees v. Nicol, [1915] A. C. 550; County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251. *Mentd.* A.-G. v. Shrewsbury Kingsland Bridge Co. (1882), 21 Ch. D. 752; Harris v. De Pinna (1886), 33 Ch. D. 238; A.-G. v. L. & N. W. Ry., [1900] 1 Q. B. 78; Vacher v. London Soc. of Compositors, [1912] 3 K. B. 547; R. v. Bedfordshire County Council, *Ex p.* Sear, [1920] 2 K. B. 465.

(BARONESS) v.

., No. 955, *post*.

934. ———.]—A co. created by Act of Parliament has no right to spend a penny of its money except in the manner provided by the Act of Parliament. It is beyond the power either of promoters or of directors or of shareholders to apply the moneys of such a co. which are devoted by stat. to special purposes, to any purpose which is not sanctioned by the provisions of the Act of incorporation.

Appls., promoters of a co. incorporated by Act

of Parliament, who were also respectively solr. & engineer, agreed in consideration of a lump sum, to bear all the expenses of procuring the Act:—*Held*: the agreement, even if approved & adopted by the directors & shareholders, was *ultra vires* & void, & applts. were bound to account for all sums in excess of that which was actually expended by them in obtaining the Act.—*MANN v. EDINBURGH NORTHERN TRAMWAYS CO.*, [1893] A. C. 69; 62 L. J. P. C. 74; 68 L. T. 96; 57 J. P. 245; 9 T. L. R. 102; 1 R. 86, H. L.

935. ———.]—In 1777 an Act of Parliament was passed for making a canal. It incorporated a co. by name of the Co. of Proprietors of the B. Canal Navigation, authorised them to construct the canal, & make bye-laws, demand tolls, & acquire land. All persons were to have the right to use the canal on payment of tolls. The co. were to make & maintain bridges. Throughout the Act in conferring rights or imposing obligations on the co. the words "their successors & assigns" were added. The canal was made & navigation carried on till 1866, when a winding-up order was made. In 1874 the liquidator with the sanction of the judge sold the canal to A. The word "undertaking" was not used in the conveyance, but possession was taken, & tolls levied & received. In 1878 the co. was dissolved by an order of the ct. A. sold various portions of the land, & the last purchaser of the canal & undertaking was the L. & S. W. Canal Co., which executed a mortgage thereof to C.

The canal bridges fell into disrepair, & the Woking Urban District Council obtained an Act of Parliament in 1911 which authorised them to do the repairs & recover the costs from "the co.":—*Held*: (1) the co. had no power to assign their undertaking & nothing passed to A. by the conveyance of 1874; (2) on the dissolution the land of the co. reverted to the original grantors, & as they made no claim to it their right of entry had been barred by Stat. Limitations & A. had thus acquired the legal fee simple in the canal free from any of the obligations or rights of the co.; (3) the L. & S. W. Canal Co. were owners of the canal, but were not bound to keep it up or do repairs, & could not demand tolls; (4) the Act of 1911 did not impose any fresh liability; & no liability attached upon either the L. & S. W. Canal Co., or C.

Where a co. is incorporated by stat. for a public purpose, with compulsory powers of acquiring land & other statutory privileges, & with statutory obligations, it cannot without the intervention & authority of Parliament transfer its undertaking, or its powers or privileges to other persons. Neither can it mortgage its undertaking except in the manner & to the extent permitted by Parliament (SWINFEN EADY, L.J.).—*Re* WOKING URBAN COUNCIL (BASINGSTOKE CANAL) ACT, 1911, [1914] 1 Ch. 300; 83 L. J. Ch. 201; 110 L. T. 49; 78 J. P. 81; 30 T. L. R. 135; 12 L. G. R. 214, C. A.

Annotations:—*Generally*, *Mentd.* A.-G. v. N. E. Ry., [1915] 1 Ch. 905; *R. v. Bedfordshire County Council*, *Ex p.* Sear, [1920]

936. ———

The doctrine of *Ashbury Railway Carriage & Iron Co. v. Riche*, No. 922, *ante*, does not apply to a co. which derives its existence from the act of the Sovereign & not merely from the regulating stat.—*BONANZA CREEK GOLD MINING CO., LTD. v. R.*, [1916] 1 A. C. 566; 85 L. J. P. C. 114; 114 L. T. 765; 32 T. L. R. 333, P. C.

Annotations:—*Refd.* A.-G. for Canada v. A.-G. for Alberta, [1916] 1 A. C. 588; A.-G. for Ontario v. A.-G. for Canada, [1916] 1 A. C. 598.

—.]—*See, also*, No. 972, *post*.

Sect. 5.—Limitation of powers (*ultra vires*): Sub-sects. 1 & 2, A. & B. (a).]

937. Whether act *ultra vires*—Not decided by event—Agreement not unreasonable or unnecessary for corporate purposes—But turning out bad bargain.]—Under the Public Health Act, 1848 (c. 63), s. 48, the owner of land adjoining a district by deed agreed with the local board to do certain works & pay £10 a year, & the board gave him leave to drain through their drain all sewage from the property & houses then belonging to the landowner & from any houses thereafter to be erected on the property. Many more houses were afterwards erected & the urban sanitary authority, which had succeeded the local board, were under a new Act of Parliament prevented from passing as before the sewage through the drain into the Thames:—**Held:** (1) the deed was not *ultra vires*, & the board could bind their successors as to the sewage of houses not then in existence; (2) though the board were trustees for the ratepayers they had exercised their discretion, & the agreement did not appear at the time improvident, & its turning out badly for them did not affect it; (3) the law being altered so as to prevent the discharge of sewage into the Thames was no ground for setting aside the deed.

In the first place if the arrangement was within their powers its turning out badly for them would not affect it, & in the next place there was, in my opinion, nothing improvident or unreasonable about it (NORTH, J.).—**NEW WINDSOR CORPN. v. STOVELL** (1884), 27 Ch. D. 665; 54 L. J. Ch. 113; 51 L. T. 626; 33 W. R. 223.

Annotations:—As to (1) **Consd. A.-G. v. Hastings Corpn.** (1902), 67 J. P. 165; **Municipal Mutual Insce. v. Pontefract Corpn.** (1917), 116 L. T. 671. **Generally, Mentd. Milner's Safe Co. v. G. N. & City Ry.**, [1907] 1 Ch. 208.

938. ————.]—By an agreement dated Dec. 2, 1904, deft. corpn. effected an insurance with pltfs. The agreement contained scheds. in which property insured could from time to time be entered, & there was a provision that it should last for five years. Later, on June 24, 1908, a continuation agreement was entered into under which defts. agreed to insure all the properties mentioned in the first agreement for a period of five years, from the expiration of the fifth year after the last entry of any insurance in any of the scheds. In other words, the contract between pltfs. & defts. might last ten years, because if, when the end of the fifth year was approaching further property was entered in a sched. the whole of the properties were insurable for five years thereafter. Pltf. co. was started in 1902, as a result of inquiries conducted over a period of twenty years, with the primary object of getting a cheaper rate of insurance for public buildings than the rate then in force. The system of insurance was largely carried out by reinsurance treaties. When they accepted a risk pltfs. never retained more than a certain amount on their own account, & they distributed the remainder, up to a certain maximum in each case, over a number of reinsurance cos. They also reinsured the greater portion of the remainder of the risk with a group of underwriters at Lloyd's, & still further with another group of underwriters at Lloyd's they insured against the aggregate of losses exceeding a certain amount. From time to time pltfs.

considered & altered the cos. with whom they reinsured their risks, & their scheme met with considerable success:—**Held:** (1) an agreement made by a public corpn. was not to be judged by the event. If, on the face of it, it was not entirely improvident or unreasonable, or foreign to & unnecessary for the express or implied purposes of the corpn., or detrimental to the public welfare, it would not be held to be *ultra vires* merely because the bargain contained in it turns out to be a bad one for the corpn.; (2) the agreement in this case could not be said to be *ultra vires* on the score of time, & inasmuch as pltfs., the reinsuring companies, & Lloyd's underwriters had never failed to meet their obligations, & for thirteen years defts. & hundreds of other corpns. in a like position had insured with pltfs., the onus was on defts. to show that pltfs.' scheme & the reinsurance cos. were actuarially unsound, & this they entirely failed to do, therefore a contract of insurance with pltfs. was not *ultra vires* a public body.—**MUNICIPAL MUTUAL INSURANCE, LTD. v. PONTEFRACT CORPN.** (1917), 116 L. T. 671; 33 T. L. R. 234; 15 L. G. R. 299.

Borrowing powers.]—See Nos. 939, 953–958, post.
Application to local authorities & municipal corporations.]—See Sect. 5, sub-sect. 2, D., post.

Application to railway companies.]—See RAILWAYS.

Power to apply funds for application to Parliament for Act for extension of objects of corporation.]—See Nos. 962, 967, post, & generally, RAILWAYS & CANALS.

Power to acquire land compulsorily.]—See COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., p. 103 et seq.

Liability to action—For *ultra vires* acts.]—See Nos. 889, 932, ante.

SUB-SECT. 2.—AUTHORITY FOR SPECIFIC PURPOSES.

A. Corporations created by Charter.

Whether doctrine of *ultra vires* applicable.]—See No. 936, ante, No. 972, post.

939. Whether act outside scope of charter—Power to mortgage—Grant of mortgage with power of sale.]—An institution was incorporated by Royal charter & deed of settlement, authorising the council or managing body to hold land, tenements or hereditaments, & to sell, grant, demise, exchange & dispose of the same, but no sale, mtge., incumbrance, or other disposition of any such lands, tenements or hereditaments to be made except with the approbation & concurrence of a general meeting of the proprietors of the corpn. At a general meeting of the proprietors the council were authorised to mtge. the property of the corpn. for £25,000:—**Held:** the council had no power to grant a mtge. with a power of sale.—**CLARKE v. THE ROYAL PANOPTICON** (1857), 4 Drew. 26; 27 L. J. Ch. 207; 28 L. T. O. S. 335; 3 Jur. N. S. 178; 5 W. R. 332; 62 E. R. 10.
Annotations:—Mentd. Re Chawner's Trusts (1869), 38 L. J. Ch. 726; **Stevens v. Theatres**, [1903] 1 Ch. 857.

Ownership of property generally, see Sect. 6, post.

940. ——— Prohibition against admission on payment of money to building & grounds on

b. Whether act *ultra vires*—Not decided by event—Agreement not unreasonable for corporate purposes—Though requiring the carrying on of a new business not foreign to original business.]—**NATIONAL MALLEABLE CASTINGS CO. v. SMITH'S FALLS MALLE-**

ABLE CASTINGS CO. (1907), 9 O. W. R. 165; 14 O. L. R. 22.—**CAN.**

PART IX. SECT. 5, SUB-SECT. 2.—A.

c. Whether act outside scope of charter—Power to regulate faculty of physio—& to grant testimonials—Grant

of degrees.]—The charter of the College of Physicians empowered the President & Fellows to make such statutes, decrees, & ordinances for the regulation of the faculty of physio as to them might seem necessary, & to grant testimonials to all candidates present-

Sundays—Conversion of shares into tickets of admission for shareholders—Admission on Sundays included.]—A charter of incorporation was granted to the co. on condition that no person should be admitted to the co.'s building or grounds on the Lord's Day in consideration of any money payment, whether made directly or indirectly, unless the sanction of the Legislature should have been obtained. The co., having obtained an Act of Parliament authorising their directors to agree with the proprietors of any shares or stock for the conversion thereof into tickets of admission for life or years for such proprietor or his nominee, but providing that nothing therein contained should relieve the co. from any condition contained in the charter, issued advertisements offering to accept the surrender of shares in exchange for tickets of admission for a term limited, to be made out to bearer, & to be available for Sundays as well as ordinary days. Upon a bill filed by a shareholder:—*Held*: (1) the admission of any person on Sunday by means of such a ticket as proposed would occasion a forfeiture of the co.'s charter; (2) the co. would be restrained from accepting a surrender of any shares in exchange for such tickets of admission.—**RENDALL v. CRYSTAL PALACE CO.** (1858), 4 K. & J. 326; 27 L. J. Ch. 397; 31 L. T. O. S. 51; 22 J. P. 321; 6 W. R. 416; 70 E. R. 136.

Annotation:—As to (1) *Apld. Jenkin v. Pharmaceutical Soc. of Great Britain*, [1921] 1 Ch. 392.

941. — Costs of prosecution for libel—Trading corporation.]—**PICKERING v. STEPHENSON**, No. 836, *ante*.

942. — Defending servant in action for libel—Nursing association—Publishing newspaper.]—A nursing assocn. incorporated by Royal charter were the proprietors & publishers of a newspaper on nursing & employed one of the members of the assocn. as honorary editor. An action for libel having been brought against the editor alone in respect of an article inserted in the newspaper under the express instructions of the association:—*Held*: as a matter of ordinary business, & apart from any question as to the legal right of the editor to be indemnified, the funds of the assocn. could be lawfully applied in undertaking the defence of the action.—**BREAY v. ROYAL BRITISH NURSES' ASSOCN.**, [1897] 2 Ch. 272; 66 L. J. Ch. 587; 76 L. T. 735; 46 W. R. 86; 13 T. L. R. 467, C. A.

Annotation:—*Apld. Jenkin v. Pharmaceutical Soc. of Great Britain*, [1921] 1 Ch. 392.

943. — Act done at common law—Expressly prohibited by charter.]—*Semble*: an act done by a corpn. at common law which the corpn. is not empowered, or is forbidden to do by its charter is not necessarily *ultra vires* the corpn.—**BRITISH SOUTH AFRICA CO. v. DE BEERS CONSOLIDATED MINES, LTD.**, [1910] 1 Ch. 354; 79 L. J. Ch. 345; 102 L. T. 95; 26 T. L. R. 285; 54 Sol. Jo. 289; 17 Mans. 190; *reversd.* on other grounds, *sub nom. DE BEERS CONSOLIDATED MINES, LTD. v. BRITISH SOUTH AFRICA CO., [1912] A. C. 52*

Annotations:—*Consd. Jenkin v. Pharmaceutical Soc. of Great Britain*, [1921] 1 Ch. 392. *Mentd. Re MacKenzie, MacKenzie v. Edwards-Moss*, [1911] 1 Ch. 578; *Kreglinger v. New Patagonia Meat & Cold Storage Co.*, [1914] A. C. 25; *Re Smith, Lawrence v. Kitson*, [1916] 2 Ch. 206.

944. — — — — —.]—A member of a society incorporated by Royal charter is entitled to ask

ing themselves for examination, whom they might deem entitled to receive them:—*Held*: this did not imply the power to grant degrees.—**A.-G. v. COLLEGE OF PHYSICIANS IN IRELAND** (1864), 16 Ir. Jur. 362.—**IR.**

d. — Trade guild—Expenditure

on social entertainments—Sanctioned by custom.]—**KESSEON v. ABERDEEN WRIGHTS' & COOPERS' INCORPORATION** (1898), 1 F. (Ct. of Sess.) 36; 36 Sc. L. R. 38.—**SCOT.**

PART IX. SECT. 5, SUB-SECT. 2.—B. (a).

e. Power to establish fairs—Establish-

for an injunction to restrain the commission by the society of acts which are outside the scope of the charter & which may result in the forfeiture of the charter & the destruction of the society.

A corpn. created by charter can at common law do with its property all such acts as an ordinary person can do, & bind itself to such contracts as an ordinary person can bind himself to, even if the charter expressly prohibits a particular act the corpn. can at common law do the act (**PETERSON, J.**).—**JENKIN v. PHARMACEUTICAL SOCIETY OF GREAT BRITAIN**, [1921] 1 Ch. 392; 90 L. J. Ch. 47; 124 L. T. 309; 37 T. L. R. 54; 65 Sol. Jo. 116.

— **Incidental acts.]**—*See* Sect. 5, sub-sect. 3, *post*.

945. Effect of act being outside scope of charter—Forfeiture of charter.]—I am of opinion that a corpn. may be forfeited if the trust be broken & the end of the institution be perverted (**HOLT, C.J.**).—**R. v. LONDON CORPN.** (1691), 1 Show. 274; **Holt, K. B.** 168; 12 Mod. Rep. 17; 89 E. R. 569; *sub nom. SMITH'S CASE*, 4 Mod. Rep. 52.

Annotations:—*Reid. R. v. Grosvenor* (1734), 7 Mod. Rep. 198; *Colchester Corpn. v. Seaber* (1766), 3 Burr. 1866; *R. v. Amery* (1788), 2 Term Rep. 515; *Colchester Corpn. v. Brooke* (1845), 7 Q. B. 339.

946. — — — — —.]—**JENKIN v. PHARMACEUTICAL SOCIETY OF GREAT BRITAIN**, No. 944, *ante*.

947. — Appointment of schoolmaster contrary to tenor of charter—Liability for costs—Of information for removal of schoolmaster.]—**SALOP TOWN v. A.-G.** (1726), 2 Bro. Parl. Cas. 402; 1 E. R. 1025, H. L.

Appointment & removal of schoolmasters generally, *see* **EDUCATION**.

B. Corporations created by Statute.

(a) In General.

General rule.]—*See* Nos. 922, 935, *ante*.

948. Carrying on business foreign to original objects—Application to Parliament for Act.]—A co. established for one purpose cannot, against the will of any dissentient minority, however small, undertake a business foreign to its original object, & no portion of the funds of a co. can be applied in procuring the means of carrying on a different undertaking, such as soliciting a bill in Parliament to confer powers necessary for that purpose.—**LYDE v. EASTERN BENGAL RY. CO.** (1866), 36 Beav. 10; 55 E. R. 1059.

Annotation:—*Reid. A.-G. v. N. E. Ry.*, [1906] 2 Ch. 675.

949. Infringement of special provision for benefit of public—Causing no injury to public.]—Upon an information filed by the A.-G. to restrain a public body with statutory powers from infringing a term introduced into their Act in the interests of the public, as a condition of the exercise of their powers, it is not necessary to prove that injury to the public results from that infringement.

A railway co. was empowered by a special Act, which incorporated Railways Clauses Consolidation Act, 1845 (c. 20), to carry their railway across a turnpike road on the level. They constantly drove their trains over the level crossing, which adjoined a station, at a speed exceeding four miles an hour, in contravention of the provisions of Railways Clauses Consolidation Act, 1845 (c. 20), s. 48. On an information filed

ment of markets—11 Vict. c. 61.]—A power to establish fairs given by above Act necessarily includes a power to establish markets.—**JAMEISON v. FREDERICTON CITY** (1851), 2 All. 128.—**CAN.**

Sect. 5.—Limitation of powers (ultra vires):

by the A.-G. to restrain them from so doing, they set up by way of defence that there was no proof of any injury occasioned to the public by their contravention of the sect. & that the inconvenience caused to the public by reason of the existence of the crossing would be increased if they complied with it:—*Held*: as the information was filed by the A.-G. to enforce the express terms of an enactment made by the Legislature in the interests of the public, the ct. could not entertain the question whether injury to the public was in fact occasioned by the contravention of the Act, but were bound to grant the injunction.—*A.-G. v. LONDON & NORTH WESTERN RY.*, [1900] 1 Q. B. 78; 69 L. J. Q. B. 26; 81 L. T. 649; 63 J. P. 772; 16 T. L. R. 30, C. A.

Annotations:—*Apprvd.* *A.-G. v. Birmingham, Tame & Rea District Drainage Board*, [1910] 1 Ch. 48. *Refd.* *A.-G. v. Ashborne Recreation Ground Co.*, [1903] 1 Ch. 101. *Mentd.* *Islington Vestry v. Hornsey U. C.*, [1900] 1 Ch. 695; *Bickmore v. Dimmer*, [1903] 1 Ch. 158; *A.-G. v. Dorchester Corp.* (1905), 93 L. T. 290; *A.-G. v. Long Eaton U. C.*, [1914] 2 Ch. 251.

Implied authority to do incidental acts.—*See Sect. 5, sub-sect. 3, post.*

Sec, also, Sect. 5, sub-sect. 2, B. (c), post.

(b) Railway Companies.

See, also, Nos. 924, 927, 928, ante.

950. Application of ultra vires doctrine.—*A.-G. v. GREAT EASTERN RY. CO.*, No. 932, *ante*.

951. Authority to add new undertaking to old—Capital raised for old undertaking—Applicable to new.—An existing railway co. authorised by Act of Parliament to enter on a new undertaking & to add the new undertaking to the old, & to treat the capital intended to be raised for the new undertaking as capital added to the old, is thereby authorised, should it be unable successfully to raise the new capital, which is a matter not to be assumed, to apply to the new undertaking the funds previously applicable to the old.—*TAYLOR v. CHICHESTER & MIDHURST RY. CO. (DIRECTORS, ETC.)* (1870), L. R. 4 H. L. 628; 39 L. J. Ex. 217; 23 L. T. 657; 35 J. P. 228, H. L.

Annotations:—*Refd.* *Driver v. Kingston Highway Board* (1871), 20 W. R. 20; *Riche v. Ashbury Ry. Carriage & Iron Co.* (1874), L. R. 9 Exch. 224. *Mentd.* *A.-G. v. G. E. Ry.* (1879), 11 Ch. D. 449.

952. Whether empowered to run omnibuses.—A railway co., without express power to run omnibuses, ran omnibuses:—*Held*: the co. must be restrained from carrying on the omnibus business, which was as a matter of fact not incidental or consequential upon their statutory powers.—*A.-G. v. MERSEY RY.*, [1907] A. C. 415; 76 L. J. Ch. 568; 97 L. T. 524; 71 J. P. 449; 23 T. L. R. 684; 51 Sol. Jo. 624, H. L.

Annotations:—*Refd.* *A.-G. & Bristol Waterworks Co. v. West Gloucestershire Water Co.* (1909), 101 L. T. 258. *Mentd.* *Re Kingsbury Collieries & Moore's Contract*, [1907] 2 Ch. 259.

See, further, RAILWAYS & CANALS.

(c) Other Corporations.

953. Power to borrow—For one purpose—Money used for another purpose—Impeachment of promissory notes in payment.—(1) *Semle*: if a corp. is authorised to raise money on promissory notes for a particular purpose evidence may be

received to impeach the notes by showing they were issued for another purpose.

(2) *Qu*: whether a local act enabling a corp. to issue promissory notes under their seal, enables them to make a promise & subjects them to an action of *assumpsit* as incident to the making of promissory notes.—*SLARK v. HIGHGATE ARCHWAY CO.* (1814), 5 Taunt. 792; 128 E. R. 904.

Annotations:—*As to* (2) *Refd.* *Broughton v. Manchester Waterworks Co.* (1819), 3 B. & Ald. 1; *East London Waterworks Co. v. Bailey* (1827), 4 Bing. 283; *Aggs v. Nicholson* (1856), 1 H. & N. 165; *Bateman v. Mid-Wales Ry.* (1866), L. R. 1 C. P. 499; *Crouch v. Credit Foncier of England* (1873), L. R. 8 Q. B. 374. *Generally, Mentd.* *Arnold v. Poole Corp.* (1842), 5 Scott, N. R. 741.

954. — Temporary loan—By school board.—A school board have no power, when the school fund proves insufficient, to contract a temporary loan for the purpose of meeting their current expenses until they can obtain money out of the rates.—*R. v. REED* (1880), 5 Q. B. D. 483; 49 L. J. Q. B. 600; 42 L. T. 835; 44 J. P. 633; 28 W. R. 787, C. A.

Annotations:—*Refd.* *A.-G. v. L. C. C.*, [1901] 1 Ch. 781; *Re Kingsbury Collieries & Moore's Contract*, [1907] 2 Ch. 259; *R. v. Locke*, [1910] 2 K. B. 201.

955. — Excessive borrowing—Whether restrained by special Act.—Resps. were constituted a co. by an Act of Geo. II. for the purpose of recovering & preserving the navigation of the River Dee. This Act was amended by subsequent Acts, but none of them expressly authorised or forbade the co. to borrow till 14 & 15 Vict., c. lxxxvii., s. 24 empowered the co. to borrow at interest for the purposes of their Acts upon bond or mtge. of the lands recovered & inclosed by them, or partly upon bond & partly upon such mtge., a sum not exceeding £25,000 & also a further sum, not exceeding £25,000 upon mtge. of their tolls, rates, & duties:—*Held*: whether the earlier Acts gave an implied power to borrow or not, the co. was prohibited by 14 & 15 Vict., c. lxxxvii. from borrowing except in accordance with the provisions of that Act.

Though it was not necessary for the decision in *Ashbury Railway Carriage & Iron Co. v. Riche*, No. 922, *ante*, to do more than decide what the law was with regard to a co. formed under the Cos. Act, 1862 (c. 89), I think the law there laid down applies to all cos. created by any stat. for a particular purpose (LORD BLACKBURN).—*WENLOCK (BARONESS) v. RIVER DEE CO.* (1885), 10 App. Cas. 354; 54 L. J. Q. B. 577; 53 L. T. 62; 49 J. P. 773; 1 T. L. R. 477, H. L.; *subsequent proceedings* (1887), 19 Q. B. D. 155, C. A.; (1887), 36 Ch. D. 674; (1888), 38 Ch. D. 534, C. A.

Annotations:—*Consd.* *Amalgamated Soc. of Ry. Servants v. Osborne*, [1910] A. C. 87. *Refd.* *General Auction Estate & Monetary Co. v. Smith*, [1891] 3 Ch. 432; *Putney Overseers v. L. & S. W. Ry.*, [1891] 1 Q. R. 440; *A.-G. v. L. C. C.*, [1901] 1 Ch. 781; *A.-G. v. De Winton*, [1906] 2 Ch. 106; *Corbett v. S. E. & C. Rys. Managing Committee*, [1906] 2 Ch. 12; *Re Birkbeck Permanent Benefit Bldg. Soc.*, [1912] 2 Ch. 183; *Re Home & Foreign Investment & Agency Co.*, [1912] 1 Ch. 72; *Re Woking Urban Council (Basingstoke Canal) Act*, 1911, [1914] 1 Ch. 300. *Mentd.* *Balkis Consolidated Co. v. Tomkinson*, [1893] A. C. 396; *Sinclair v. Brougham*, [1914] A. C. 398; *A.-G. v. Liverpool Corp.*, [1922] 1 Ch. 211.

956. — Whether borrowing powers exceeded.—*Re PADDINGTON ESTATE ACT, BATHURST v. THISTLETHWAYTE* (1893), 37 Sol. Jo. 212.

957. — Power to mortgage—Surplus lands.—A navigation co. incorporated by stat. had power

PART IX. SECT. 5, SUB-SECT. 2.—
B. (c).

1. Power to construct bridge—For railway purposes & impose tolls for user—Lease of bridge to a railway company.—A co. was incorporated in Canada & in the State of N. Y. in

U.S.A. to construct a suspension bridge across the river Niagara, for railroad & other purposes, with compulsory powers as to the taking of lands, etc., & having the right to impose tolls for the user of the bridge. The two cos. joined in a lease of the

ry. floor of the bridge, to a ry. co., to be for their exclusive use, & the use of such other ry. cos. as the lessees might arrange with:—*Held*: such assignment was *ultra vires*, & void.—*A.-G. v. NIAGARA FALLS INTERNATIONAL BRIDGE CO.* (1873), 20 Gr. 34.—**CAN.**

under a special Act, with which Lands Clauses Consolidation Act, 1845 (c. 18), was not incorporated, to borrow money upon the security of a mtge. of their undertaking, but no express power was given to mortgage their surplus lands:—*Held*: the co. could create a valid charge upon their surplus lands to secure an existing debt in respect of which the creditor by obtaining judgment would be able to take the surplus lands in execution under a writ of *elegit*.—*STAGG v. MEDWAY (UPPER) NAVIGATION CO.*, [1903] 1 Ch. 169; 72 L. J. Ch. 177; 87 L. T. 705; 51 W. R. 329; 19 T. L. R. 143, C. A.

Annotation:—*Consd.* *Reeve v. Medway (Upper) Navigation Co.* (1905), 21 T. L. R. 400.

958. ——— Chattels.]—REEVE v. MEDWAY (UPPER) NAVIGATION CO. (1905), 21 T. L. R. 400.

—— **By building society.]—See BUILDING SOCIETIES**, Vol. VII., pp. 485–492.

—— **By local authorities & municipal corporations.]—See LOCAL GOVERNMENT; PUBLIC HEALTH & LOCAL ADMINISTRATION.**

959. Power to lease—Rent reservable to “treasurer”—Rent reserved to “trustees or treasurer.”—By a local Act trustees had power to make leases provided the lease was duly executed by the trustees, etc. & the rent reserved payable to the treasurer of the trustees, etc. or, in default, the lease to be null & void:—*Held*: a reservation of rent “to the trustees or their treasurer” was not in accordance with the provisions of the Act, & the lease was void.

Semble: in *cujus rei testimonium* is no part of the deed, & the execution of a counterpart by deft., in which it was alleged, that to one part of which indenture the trustees had affixed their hands & seals, would not estop deft. from calling on plffs. to prove that the lease was executed by the trustees.—*PEARSE v. MORRICE* (1834), 2 Ad. & El. 84; 4 Nev. & M. K. B. 48; 4 L. J. K. B. 21; 111 E. R. 32.

Annotations:—*Reid.* *R. v. St. Gregory* (1834), 2 Ad. & El. 99; *Oldroyd v. Crampton* (1837), 3 Hodg. 261; *Willington v. Browne* (1845), 8 Q. B. 169.

960. Power to amalgamate—Navigation company & railway company.]—Shareholders in an incorporated navigation co. filed a bill to restrain the committee of management from entering into or carrying into effect an agreement with the trustees of a projected railway co. for amalgamating the two undertakings:—*Held*: the injunction would be refused, defts. undertaking to

to oppose

PARKER v. RIVER DUNN NAVIGATION CO. (1847), 1 De G. & Sm. 192; 9 L. T. O. S. 292; 11 Jur. 624; 63 E. R. 1028.

Annotations:—*Reid.* *Stevens v. South Devon Ry.* (1851), 13 Beav. 48. *Mentd.* *Hare v. L. & N. W. Ry.* (1861), 30 L. J. Ch. 817.

961. ——— Pier companies.]—An agreement was made between the G. Pier co. & a waterman's society, which owned a floating pier at G., by which the pier co. agreed to compensate the waterman's society for the abandonment of their pier by paying to them a part of the net profits of the co.'s pier:—*Held*: this agreement was *ultra vires* of the pier co.—*GREENWICH PIER CO. v. THAMES CONSERVATORS* (1905), 21 T. L. R. 669.

962. Powers of rating—Application of rates—Raised under special Act—To obtain extension of powers under new Act.]—By a local Act of Parliament the comrs. thereby appointed were authorised to construct certain reservoirs & other works for supplying the town of S. with water, & to do all things necessary for that purpose, & to levy rates

for erecting & maintaining the works, & in otherwise carrying the Act into execution:—*Held*: they were not justified in applying the money so raised in defraying the expenses of an application to Parliament for another Act to extend their powers, & an injunction would be granted to restrain them from so doing.—*A.-G. v. ANDREWS* (1850), 2 Mac. & G. 225; 2 H. & Tw. 431; 20 L. J. Ch. 467; 15 L. T. O. S. 322; 14 Jur. 905; 42 E. R. 87.

Annotations:—*Consd.* *A.-G. v. Eastlake* (1853), 11 Hare, 205; *A.-G. v. West Hartlepool Improvement Comrs.* (1870), L. R. 10 Eq. 152; *Cleverton v. St. Germain's Union R. S. A.* (1886), 56 L. J. Q. B. 83. *Reid.* *A.-G. v. Plymouth Corpn.* (1853), 1 W. R. 445; *A.-G. v. Wigan Corpn.* (1854), Kay, 268; *Bateman v. Ashton-under-Lyne Corpn.* (1858), 3 H. & N. 323.

963. ——— To incidental liabilities arising from execution of works.]—Where a local Act of Parliament incorporates comrs. for the execution of works, & confers on them rating powers for the purposes of the Act, the implication will be, unless the contrary clearly appear, that it is within their powers to levy a rate in order to provide for a liability arising through negligence in the execution of the works.—*GALSWORTHY v. SELBY DAM DRAINAGE COMRS.*, [1892] 1 Q. B. 348; *sub nom. R. v. SELBY DRAINAGE COMRS.*, 61 L. J. Q. B. 372; 66 L. T. 17; 56 J. P. 356; 8 T. L. R. 198, C. A.

964. Power to take water—By canal company—For particular purpose—Acquisition of water for other purposes.]—A co. was established by 34 Geo. 3, c. lxxviii., for making & maintaining a certain navigable canal, & by sect. 113 reciting that the erection of steam engines near to the navigation might promote its interests, it was made lawful for the owners of lands within twenty yards of the canal to draw off water sufficient to supply such engines for the sole purpose of condensing the steam used for working them, the water to be returned into the canal, allowing for inevitable waste, so that no obstruction should arise to the navigation.

The co. sued R. in case, for that he, being possessed of land within twenty yards of the canal,

water from the canal more than sufficient for the sole purpose of condensing, etc., & used the same for other purposes than that of condensing, etc., whereby plffs. lost & were deprived of the water. The jury, in answer to questions put by the judge, found that the user proved had been as of right, a verdict was taken for plffs. Plffs. moved for

non

& relied upon the above Act & others establishing & regulating their canal, which gave the public a right, for the purposes of the navigation, to use the canal & the adjoining wharfs & ways, paying certain rates, empowered the co. to raise money on the security of such rates, & obliged them to convey all their waste water into the B. canal:—*Held*: the co. could not, consistently with these enactments, have granted the water for other purposes than that permitted by 34 Geo. 3, c. lxxviii.—*ROCHDALE CANAL CO. v. RADCLIFFE* (1852), 18 Q. B. 287; 21 L. J. Q. B. 297; 19 L. T. O. S. 163; 16 Jur. 1111; 118 E. R. 108.

Annotations:—*Consd.* *National Guaranteed Manure Co. v. Donald* (1859), 4 H. & N. 8; *Preston Corpn. v. Fullwood L. B.* (1885), 53 L. T. 718. *Reid.* *Creyke v. Hatfield Chase Corpn.* (1896), 12 T. L. R. 383; *Manchester Ship Canal Co. v. Rochdale Canal Co.* (1899), 81 L. T. 472. *Mentd.* *Carlyon v. Lovering* (1857), 1 H. & N. 784; *Moore v. Webb* (1857), 1 C. B. N. S. 673; *Medway Co. v. Romney* (1861), 9 C. B. N. S. 575; *Neaverson v. Peterborough R. C.*, [1902] 1 Ch. 557.

965. ——— ——— ———.]—A co. incorporated by Act of Parliament for the purpose of

Sect. 5.—Limitation of powers (*ultra vires*): Sub-sect. 2, B. (c), C. & D. (a).]

making & maintaining a canal, & having powers under their Act to take water for the purpose of supplying the canal cannot by user acquire, under Prescription Act, 1832 (c. 71), s. 2, a prescriptive right to take the water for any other purpose.

By 59 Geo. 3, c. xiii, a co. was incorporated for the purpose of making a canal, & empowered to supply the canal with water from certain rivers. In 1824 the canal co. made a cut & erected on it a water wheel for pumping water into the canal. The canal co. occasionally used the water wheel to drive a bone-crushing mill. 16 & 17 Vict. c. cxix., for converting the canal into a railway, after repealing 59 Geo. 3, c. xiii., reincorporated the co. for the purpose (*inter alia*) of making the railway. By sect. 10 it was enacted that easements, etc., vested in the canal co. should after the passing, etc., be vested in the co. thereby incorporated for their absolute benefit. By sect. 11, that all "titles by possession" acquired, etc., by the canal co. should be as good in favour of the co. thereby incorporated as the same were good immediately before the passing of that Act in favour of the canal co. Sect. 83 provided that in case any of the works, etc., used for the purpose of the canal should in consequence of the stopping up of the canal be no longer required for the purposes of the Act, the works which should be no longer required might be sold by the co. in the manner provided by Lands Clauses Consolidation Act, 1845 (c. 18), with respect to the sale of superfluous lands. The canal having been stopped up & converted into a railway:—*Held*: on the conversion of the canal into a railway the right of the co. to the flow of water in the cut for driving the wheel ceased, & the railway co. could not convey to a purchaser any right to such flow.—*NATIONAL GUARANTEED MANURE CO. v. DONALD* (1859), 4 H. & N. 8; 28 L. J. Ex. 185; 7 W. R. 185; 157 E. R. 737.

Annotations:—*Reid*. *Rigby v. Bristol Corpn.* (1860), 29 L. J. Ex. 359; *Mason v. Shrewsbury & Hereford Ry.* (1871), L. R. 6 Q. B. 578; *Preston Corpn. v. Fullwood L. B.* (1885), 53 L. T. 718; *Acton L. B. v. North & South Western Ry.* (1893), 37 Sol. Jo. 357.

966. Exercise of discretion—Outside authority of special Act—Liability for loss.—*SOUTHAMPTON DOCK CO. v. SOUTHAMPTON HARBOUR & PIER BOARD*, No. 881, *ante*.

967. Expenditure not authorised by special Act—Application to Parliament for Act.—It is not lawful to apply the funds of a co. in an application to Parliament for powers to extend the business of the co. beyond the objects for which it was constituted, & the ct. will interfere, by injunction, at the suit of a shareholder to restrain any such application.—*SIMPSON v. DENISON* (1852), 10 Hare, 51; 7 Ry. & Can. Cas. 403; 20 L. T. O. S. 46; 16 Jur. 828; 68 E. R. 835.

Annotations:—*Distd.* *South Yorkshire Ry. & River Don Co. v. G. N. Ry.* (1853), 9 Exch. 55. *Reid*. *Norwich Corpn. v. Norfolk Ry.* (1855), 4 E. & B. 397. *Mentd.* *Bostock v. North Staffordshire Ry.* (1855), 24 L. J. Q. B. 225; *Russell v. Wakefield Waterworks Co.* (1875), L. R. 20 Eq. 474.

968. —.—*MANN v. EDINBURGH NORTHERN TRAMWAYS CO.*, No. 934, *ante*.

—.*See, also*, No. 948, *ante*.

969. No power to transfer undertaking—Without consent of Parliament.—*Re WOKING URBAN*

COUNCIL (BASINGSTOKE CANAL) ACT, 1911, No. 935, *ante*.

970. Power to maintain steamers—For ferry traffic—No power to let on hire for excursions.—A franchise of ferry within certain defined limits was vested by a private Act of Parliament in a statutory body of harbour trustees who maintained a service of steamers for ferry traffic. When the steamers were not required for ferry traffic the trustees let them out on hire for excursion trips beyond the ferry limits. A firm of shipowners, who let out steamers on excursion trips, & who paid rates to the trustees for the use of the harbour, brought an action of interdict to restrain the trustees from so using their steamers:—*Held*: the acts complained of were *ultra vires*.—*DUNDEE HARBOUR TRUSTEES v. NICOL*, [1915] A. C. 550; 84 L. J. P. C. 74; 112 L. T. 697; 31 T. L. R. 118, H. L. *Annotation*:—*Reid*. *Kemp v. Glasgow Corpn.*, [1920] A. C. 836.

See, also, Sect. 5, sub-sect. 2, D., *post*.

Compulsory purchase of land.—*See* COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., p. 103.

Implied authority to do incidental acts.—*See* Sect. 5, sub-sect. 3, *post*.

Power of water companies.—*See* WATER SUPPLY.

C. Companies incorporated under Companies Acts.

See, further, COMPANIES.

971. General rule.—*ASHBURY RAILWAY CARRIAGE & IRON CO. v. RICHE*, No. 922, *ante*.

Application of rule—To companies created by statute for particular purposes.—*See* Nos. 932, 955, *ante*.

— **To companies deriving existence from act of Sovereign.**—*See* No. 936, *ante*.

D. Local Authorities and Municipal Corporations.

(a) *Payment out of corporate Funds.*

972. In excess of statutory powers—Not legal within general powers of charter.—By virtue of various provisional orders & private Acts of Parliament the M. Corpn. had power to use all tramways belonging to or in lease to the corpn., or on which they had power to place or run carriages, for the purpose of conveying & delivering animals, goods, minerals, or parcels. The corpn. worked a large system of tramways, of which they were owners or lessees, extending all over the city & suburbs of M. & a considerable surrounding district. They had commenced, or advertised their intention to commence, a general parcels delivery business within & beyond the area covered by their tramways, not confined to parcels & goods carried on their tramways. This action was brought by the A.-G., on the relation of M. ratepayers, to restrain the carrying on of such a business:—*Held*: (1) under the power given by the Act of 1899, the corpn. had power to carry on the business of common carriers upon their tramways, & as ancillary to that business to do all things necessary for the collection & delivery of parcels carried on their tramways. For this purpose they had power to maintain stations or warehouses for receiving & storing parcels or goods, to provide horses, vans, carts, & to employ servants, messengers, & agents for the purposes of collection & delivery; but all these services must be confined to parcels or goods carried or

PART IX. SECT. 5, SUB-SECT. 2.—
D. (a).

g. For improvements within borough.
Having regard to the provisions of

6 Vict. No. 7 which governs the corpn. of the city of G., that corpn. has power to purchase a building for municipal objects, & to make such

building by alterations better adapted for the purpose of a town hall, & to levy a rate therefor.—*A.-G. v. GUELONG CORPN.* (1914), V. L. R. 553.—*AUS.*

to be carried on the tramways; the corp'n. had no power to carry on a general parcels delivery business apart from their tramways; (2) the part of the general business which was in excess of the statutory powers of the corp'n. must cause some expense to the city funds, & therefore the corp'n. were prevented by Municipal Corporations Act, 1882 (c. 50), from carrying it on under their general powers as a corp'n. by charter.

A statutory corp'n. can do such acts only as are authorised directly or indirectly by the statute creating it, a corp'n. incorporated by Royal Charter, speaking generally, can do everything that an ordinary individual can do (FARWELL, J.).—A.-G. v. MANCHESTER CORPN., [1906] 1 Ch. 643; 75 L. J. Ch. 330; 70 J. P. 201; 54 W. R. 307; 22 T. L. R. 261; 4 L. G. R. 365.

Annotations:—As to (1) *Consd.* A.-G. v. Mersey Ry., [1906] 1 Ch. 811; A.-G. v. West Gloucestershire Water Co., [1909] 2 Ch. 338.

973. Purposes not included in local Acts—Power to levy rates for expenses incurred.—Certain local Acts of Parliament gave the corp'n. of the City of D. the power to take measures for supplying that city with water, & to levy rates & rents on the inhabitants to meet the expenses that might thereby be incurred. The corp'n. passed bye-laws appropriating part of the revenue thus raised in a manner not strictly falling within the provisions of these Acts. Some of the inhabitants of D. filed an information against the corp'n. for an account, & the ct. of Ch. in Ireland decreed an account, & held the corp'n. answerable for all sums which it had received & appropriated in a way not strictly conformable with the provisions of the local Acts:—*Held*: this decree would be affirmed.—DUBLIN CORPN. v. A.-G. (1835), 9 Bli. N. S. 395; 3 Cl. & Fin. 289; 5 E. R. 1341, H. L.

municipal corp'n., which was subject to Municipal Corporations Act, 1882 (c. 50), & a Local Improvement Act, agreed with a ry. co. to pay the co. a certain annual sum for fifteen years in consideration that the co. would throw open the roadway of a bridge belonging to them within the borough for the use of foot-passengers free from toll. The local Act authorised rates for certain purposes not including such a bridge as the agreement referred to, & provided that the money accruing from the general rate should be applied to certain specified purposes & subject thereto for the improvement or benefit of the borough in such manner as the corp'n. from time to time think fit in as full & ample a manner as any borough rate authorised by the above Act is made applicable. An action having been brought by the A.-G. at the instance of relators against the corp'n., claiming an injunction to restrain the corp'n. from making the payments out of moneys derived from the rates & a declaration that the agreement was *ultra vires* & void:—*Held*: there must be a declaration that the corp'n. were not entitled to pay any moneys, which might become payable under the agreement, out of the borough fund, nor to make any borough rate nor any general or improvement rate under Municipal Corporations Act, 1882, or the local Act for the purpose of such payments; but that the agreement was not *ultra vires* or void, & that the foregoing declaration was not to prevent the corp'n. from paying such moneys out of any surplus which there might be of the borough fund or of the aforesaid rates after applying the same respectively to the purposes for which they might respectively be made under the provisions of those Acts, with liberty to pltf. to apply for an

injunction if necessary.—NEWCASTLE-UPON-TYNE CORPN. v. A.-G., A.-G. v. NEWCASTLE-UPON-TYNE CORPN. & NORTH EASTERN RY. CO., [1892] A. C. 568; 62 L. J. Q. B. 72; 67 L. T. 728; 56 J. P. 836; 1 R. 31, H. L.

Annotations:—*Consd.* A.-G. v. Hastings Corp'n. (1902), 67 J. P. 165. *Refd.* A.-G. v. Tynemouth Corp'n., [1898] 1 Q. B. 604; A.-G. v. L. C. C., [1901] 1 Ch. 781; A.-G. v. De Winton, [1906] 2 Ch. 106.

975. Costs of opposing rule—Against councillor & alderman.—A town council ordered a payment from the borough fund for defraying the expenses of opposing two rules, one for a *quo warranto* against a party who had been declared duly elected a councillor & had accepted the office for exercising that office, the other for a criminal information against an alderman of the borough, for alleged misconduct at an election of councillors. The payments were made by the treasurer, & his accounts audited, & afterwards 7 Will. 4 & 1 Vict. c. 78 was passed. Upon the affidavit of a burgess who applied in pursuance of the instructions of a subsequent town council:—*Held*: a *certiorari* would be granted to bring up the orders of the previous town council under 7 Will. 4 & 1 Vict. c. 78, s. 44, & they would be quashed.—R. v. BRIDGEWATER CORPN. (1839), 10 Ad. & El. 281; 2 Per. & Dav. 558; 113 E. R. 109.

Annotations:—*Consd.* R. v. Liverpool Corp'n. (1872), 41 L. J. Q. B. 175. *Refd.* R. v. York (1842), 6 Jur. 797; R. v. Leeds Corp'n. (1843), 7 J. P. 704; R. v. Gloucester Corp'n. (1859), 33 L. T. O. S. 145; R. v. Tamworth Corp'n., *Ex p.* Tamworth Corp'n. (1868), 19 L. T. 433.

976. — To admit councillor.—The returning officer of a borough published the names of A. & B. as returned to sit in the town council. On the same day he discovered an error in the calculation of the votes, & made a second publication, in which the name of C. was substituted for that of B. B. obtained a rule *nisi* for a mandamus to the town-council to admit him. The town council resisted the rule, which was made absolute, & afterwards issued an order for the payment to their attorney of the expenses thereby incurred. The ct. made absolute a rule for a *certiorari* to bring up such order for the purpose of having it quashed, holding such application of the monies of the corp'n. to be improper.—R. v. LEEDS CORPN. (1843), 4 Q. B. 796; 1 Dav. & Mer. 143; 12 L. J. Q. B. 369; 1 L. T. O. S. 229; 7 J. P. 704; 7 Jur. 669; 114 E. R. 1097.

Annotations:—*Refd.* R. v. Chester Corp'n. (1855), 25 L. J. Q. B. 61; R. v. Welchpool Corp'n. (1876), 35 L. T. 594; R. v. Bangor Corp'n. (1886), 18 Q. B. D. 349. *Mentd.* R. v. St. Faith's (1856), 4 W. R. 267.

977. For improvements within borough—Removal of obstruction—Resolution not under seal.—LUDLOW CORPN. v. CHARLTON, No. 170, *ante*.

978. — Street paving—Contract not under seal—Payments exceeding £50.—By Public Health Act, 1875 (c. 53), s. 174, every contract made by an urban authority, whereof the value or amount exceeds £50, shall be in writing & sealed with the common seal of such authority. 1 Vict. c. 78, s. 44, after reciting that it is expedient to give all persons interested in the borough fund of every borough a more direct & easy remedy for any misapplication of such fund, enacts that any order of the council of any borough for the payment of money out of the borough fund may be removed into the ct. by *certiorari*.

A resolution was passed by a corp'n. ordering the payment of certain sums, each exceeding £50, to contractors for costs incurred in paving a street, no contracts having been entered into under the seal of the corp'n. On an application for a *certiorari* to bring up & quash such resolution, on the ground that it was a "misapplication" of the

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borough funds within 1 Vict. c. 78, s. 44 :—*Held* : as the work was useful & done at a reasonable cost, & there was no suggestion of corruption or partiality, there had been no misapplication, & the ct. in its discretion refused to grant the *certiorari*.—*R. v. NORWICH CORPN.* (1882), 30 W. R. 752.

Annotations :—*Consd.* Bournemouth Comrs. v. Watts (1884), 14 Q. B. D. 87. *Refd.* A.-G. v. Tynemouth Corpn., [1898] 1 Q. B. 604.

Necessity for contracts to be under seal, generally, see Part X., Sect. 2, *post*.

979. — Use of tar macadam.—The ct. refused to order a writ of *certiorari* to issue to bring up & quash a resolution of the corpn. of B. for the payment of certain sums of money for paving a road in the borough with tarmac, the expenditure not having been incurred solely for the purpose of enabling the motor car speed trials of the Automobile Club to be held on the road, but having been incurred in good faith for the purpose of improving the road for the benefit of the inhabitants of the borough, though the occasion of the alteration of the surface of the road was the meeting of the club.—*R. v. BRIGHTON CORPN., Ex p. SHOOSMITH* (1907), 96 L. T. 762; 71 J. P. 265; 23 T. L. R. 440; 51 Sol. Jo. 409; 5 L. G. R. 584, C. A.

980. Costs of petitioning court—With respect to appointment of charity trustees.—Where the town council made an order for payment out of the borough fund of £100 on account of costs incurred with the sanction of the town council, in petitioning the Ct. of Ch. with respect to the appointment of the charity trustees, under the Municipal Corporations Act, 1835 (c. 76):—*Held* : such order was illegal.

Where, under the above Act, ss. 66, 67, the town council executed a bond for payment of an annuity to a person removed from office, & also for payment, on demand, of arrears due before the date, & where upon the obligee consenting not to press for the arrears, the council passed a resolution to pay him interest thereon :—*Held* : such resolution & orders of the council for payment of the interest, were unsanctioned by s. 92 & were liable to be quashed on being brought up by *certiorari*.

Independently of this objection the resolution not being under seal could not bind the corpn. (*PATTESON, J.*).

Where the members of a corpn. have, as such, occupied a particular pew in the parish church, the repairs of it may be properly charged on the borough fund.—*R. v. WARWICK CORPN.* (1846), 8 Q. B. 926; 15 L. J. Q. B. 306; 7 L. T. O. S. 137; 10 Jur. 962; 115 E. R. 1123.

Annotations :—*Refd.* *R. v. Tamworth Corpn., Ex p. Tamworth Corpn.* (1868), 19 L. T. 433; *R. v. Sheffield Corpn.* (1871), L. R. 6 Q. B. 652.

981. Interest on bond—Given under Municipal Corporations Act, 1835 (c. 76), s. 67.—*R. v. WARWICK CORPN., No. 980, ante.*

982. Repairs of pew occupied by corporation.—*R. v. WARWICK CORPN., No. 980, ante.*

983. Costs of town clerk acting as solicitor for corporation—No retainer under seal.—The duties of a town clerk were specified in a resolution of the town council, & included the issuing of the summonses & notices, attendance upon the council & its committees, the preparation of election papers, attendance before justices in cases of summary jurisdiction preparation of documents for levying rates. He was also

required to act as the professional adviser of the mayor & council in the business of the council; but he was to be paid the usual professional charges for conducting actions or suits. Some disputes having arisen between the corpn. & the overseers of several parishes, as to the validity of a borough rate, which the latter refused to levy in obedience to the precept of the mayor, the town clerk was instructed to take the opinion of counsel, & to communicate with the overseers. Considerable negotiation took place, & ultimately the matter was arranged between the counsel on each side, at a conference in L., which was attended by the town clerk, at the request of the counsel. The finance committee made an order upon the treasurer of the borough for payment of the town clerk's bill, which contained the usual charges of a solr. for the work which he had done in relation to that dispute. Upon the removal of that order into the ct. of Q. B., under 7 Will. 4 & 1 Vict. c. 78, s. 44 :—*Held* : the order was not to be quashed, either because there had been no retainer under seal, or because no action or suit had been actually commenced, it being enough that threatened litigation had been prevented by the steps taken.

Under 7 Will. 4 & 1 Vict. c. 78, s. 44, the ct., in considering whether there had been any misapplication of the borough fund, is not bound to disallow all payments which could not have been enforced adversely in a court of law.—*R. v. PREST* (1850), 16 Q. B. 32; 20 L. J. Q. B. 17; 16 L. T. O. S. 210; 15 Jur. 554; 117 E. R. 787.

Annotations :—*Consd.* *R. v. Norwich Corpn.* (1882), 30 W. R. 752; Bournemouth Comrs. v. Watts (1884), 14 Q. B. D. 87; *R. v. Ramsgate Corpn.* (1889), 23 Q. B. D. 66. *Refd.* *R. v. Newbury Town Council* (1850), 15 J. P. 115; *Lewis v. Rochester Corpn.* (1860), 9 C. B. N. S. 401; A.-G. v. Tynemouth Corpn., [1898] 1 Q. B. 604.

Necessity for contracts to be under seal generally, see Part X., Sect. 2, *post*.

984. Costs of opposing mandamus proceedings—To revise burgess lists.—The mayor & assessors of the borough of R. having refused to revise the lists of burgesses of certain parishes within the borough, on the ground that they had not been published within the time prescribed by the Municipal Corporations Act, 1835 (c. 76), s. 15; & having rejected certain notices of claim & objections, on the ground that they had not been personally delivered to the town-clerk, the parties thus disfranchised obtained writs of mandamus to compel the succeeding mayor & assessors to hold another ct. to revise the lists. The corpn. under their seal retained pltf. as their attorney to defend them against these proceedings, but the defences substantially failed :—*Held* : pltf. was entitled to maintain an action against the corpn. for his costs incurred under the retainer; & inasmuch as there was nothing to show that the defence was unjustifiable or improper, the expense was chargeable on the borough fund.—*LEWIS v. ROCHESTER CORPN.* (1860), 9 C. B. N. S. 400; 30 L. J. C. P. 169; 3 L. T. 300; 7 Jur. N. S. 680; 9 W. R. 100; 142 E. R. 157.

Annotation :—*Refd.* A.-G. v. Newcastle-on-Tyne Corpn. & N. E. Ry. (1889), 23 Q. B. D. 492.

985. Costs of application to Parliament for Act—For construction of tramways—Power to charge future surplus funds.—The municipal corpn. of L. had determined by resolution of the council to pay to a tramway co. the expenses of passing a bill in Parliament for the construction of tramways in the borough. The resolution was consequent upon an agreement, not under seal, entered into by the town clerk on behalf of the corpn., by which it was agreed that in consideration of the corpn. paying the expenses of the bill within six

months of the date of the passing thereof, the corp'n. should be entitled to assume the powers granted by the Act of Parliament to the co. A. clause in the Act enabled the corp'n. to take over these powers, but payment of the above expenses by the corp'n. was not mentioned. After the resolution, but before any order for payment had been issued to the treasurer, pursuant to Municipal Corporations Act, 1835, c. 76, s. 59, certain rate-payers of the borough objected to the payment, on the ground that such a payment was not within the meaning of the Act, s. 92, which points out the way in which borough funds are to be applied. This section, after pointing out the purpose to which the borough fund is to be applied, further provided that, if the fund should be more than sufficient for the purposes aforesaid, the surplus should be applied, under the direction of the council, for the public benefit of the inhabitants & improvement of the borough. There was a surplus of the borough fund at the date of the resolution, but it was not nearly sufficient to pay the amount of the expenses. Subsequently, however, the surplus exceeded the amount; but the corporate accounts had not been made up, so that the precise surplus was not ascertained. On an application by the tramway co. for a mandamus to compel the council to issue an order to the treasurer of the corp'n. for payment of the expenses:—*Held*: the object to which the money was to be applied came within the meaning of the above cited part of s. 92 & the council had not exceeded its powers by disposing of the surplus in anticipation of its accrual; & the money being now in hand, although no accounts were, as yet, made up, the mandamus for the order to pay must go.—*R. v. LIVERPOOL CORPN.* (1873), 28 L. T. 500; 37 J. P. 773; 21 W. R. 674.

986. Making up salaries of employees — Volunteering for military service.—By a resolution of a corp'n. passed on Sept. 21, 1914, it was declared that any officer or servant of the corp'n. who might volunteer & be accepted for military service should during the war be paid such sums as, with the pay he received from the Govt., would make up his full salary or wages. An employee of the corp'n., on July 7, 1915, volunteered contrary to the wishes & without the consent of the managers of his department, for military service, & was accepted. The corp'n. refused to pay him the difference between his Army pay, & the salary he received in their service:—*Held*: the resolution of Sept. 21, 1914, was an offer which, on acceptance by the employee enlisting, became a contract, & if this contract was *ultra vires* originally, it became valid by the retrospective operation of Local Government (Emergency Provisions) Act, 1916 (c. 12).—*SHIPTON v. CARDIFF CORPN.* (1917), 87 L. J. K. B. 51; 116 L. T. 687; 15 L. G. R. 587.

(b) Other Cases.

987. Duty to supply water for ships & town & to scour haven—Conveyance to third party of mills & part of interest in leat—Effect of.—In the year 1584 an Act was passed, the objects of which were of a public nature, *viz.* to supply the ships in the harbour & the inhabitants of P. with water, etc. A hospital, founded in 1617, was endowed with certain lands, emanating from the corp'n. of P., & a very close connection was otherwise established between the two bodies. In 1653, in consideration of £1,400, part of a larger sum due from the corp'n. to the hospital, an estate in fee simple was granted by the corp'n. to the hospital of one-fourth part of certain mills, together with

one-fourth of the leat or water-course, constructed under the Act, running, coming, & going to all the mills:—*Held*: (1) the corp'n. had no right to apply to the use of the mills situate on the leat any water brought by it other than that which remained after the public purposes had been satisfied, & one-fourth only of the surplus water of the leat passed by the grant of 1653; (2) notwithstanding probable adequacy of consideration paid, a deed, dated in 1805, by which that interest of the hospital in the mills, leat, etc., was conveyed to the corp'n. by the hospital, was invalid, the hospital having been always treated & considered as dependent on the corp'n.—*A.-G. v. PLYMOUTH CORPN.* (1845), 9 Beav. 67; 15 L. J. Ch. 109; 8 L. T. O. S. 34; 50 E. R. 268.

988. Power to enlarge market — Acquisition of adjoining site.—Where a local authority was empowered by Act of Parliament to enlarge & improve the market place in a borough "with all proper works & conveniences connected therewith or belonging thereto," & for the purposes of the Act, to borrow money on the credit of the borough fund & to purchase lands:—*Held*: the purchase of a site near the place where the principal market of the borough was usually held, & the erection thereon of a new corn exchange was a lawful exercise of the powers conferred by the Act, for which money might be borrowed on the credit of the borough fund.—*A.-G. v. CAMBRIDGE CORPN.* (1873), L. R. 6 H. L. 303; 22 W. R. 37, H. L. *Annotation*:—*Mentd.* *Lyon v. Fishmongers' Co.* (1877), 42 J. P. 163.

989. Streets vested in corporation under Public Health Act, 1875 (c. 55), s. 149—Licence to private persons to lay pipes for trade purposes under street—Soil of streets vested in adjoining owners.—An ancient grant by the King of *illam villam, quicquid scilicet habemus in eadem villa* to the burgesses of a borough, in the absence of evidence in Domesday Book or elsewhere, that the streets of the borough were the property of the King, does not rebut the presumption that the soil of the streets is vested in the adjoining owners; & although under the above Act, s. 149, all streets & the pavements, stones, & other materials, & all buildings, implements, & other things provided for the purposes thereof, shall rest in & be under the control of the urban authority, a corp'n. has no power to licence private individuals to lay pipes for trade purposes in the macadam or made ground of the roadway.—*SALT UNION, LTD. v. HARVEY (J. P.) & Co.* (1897), 61 J. P. 375; 13 T. L. R. 297; 41 Sol. Jo. 386.

990. Prohibition against carrying on business of wharfingers on certain wharf—Letting adjoining land for timber yard—Increased rent for right of free access to wharf.—A corp'n. was empowered by private Act of Parliament to erect a wharf, wall & embankment provided the corp'n. should not carry on, or permit to be carried on, upon the wharf, wall & embankment the business of wharfingers or warehousemen. The corp'n. owned thirty-nine & a half acres adjoining & agreed to let a quarter of an acre to V., including the use in common with the corp'n., & any person authorised by them & under such reasonable regulations & restrictions as might be imposed by the corp'n., of the wharf of the corp'n., but not of any plant or appliances now or hereafter to be placed thereon, for the purpose of loading or unloading from or to craft, timber to be dealt with by him in the course of his business as a timberman & not as a wharfinger or warehouseman, free of all dues or charges. The rent paid was higher than it would have been had there not

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been access to the wharf. V. had used a part of the wharf which had not been constructed under the Act, but which had previously existed. It was alleged that letting land on terms that the lessee had free access to the wharf free of dues & charges was *ultra vires*:—*Held*: the corpn. had done nothing contrary to the proviso that they should not carry on, or permit to be carried on, the business of a wharfinger.—*A.-G. v. PLYMOUTH CORPN.* (1909), 100 L. T. 742; 73 J. P. 274; 25 T. L. R. 418; 7 L. G. R. 710, C. A.

991. Purchase of land by agreement for authorised purposes—Corporation entering into covenants restricting right to erect buildings for public benefit.]—When a corpn. purchases land by agreement for any of the purposes for which it is authorised to acquire land by the Public Health or other public Acts, or by its special local Acts, it is not *ultra vires* for the corpn. to enter into covenants with the vendor restricting the erection of buildings upon the land purchased, which it might erect under other powers given to it for the benefit of the public, provided that such restrictions do not prevent the user of the land for the particular purposes for which it was acquired.—*STOURCLIFFE ESTATES CO., LTD. v. BOURNEMOUTH CORPN.*, [1910] 2 Ch. 12; 79 L. J. Ch. 455; 102 L. T. 629; 74 J. P. 289; 26 T. L. R. 450; 8 L. G. R. 595, C. A.

See, further, COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., p. 120, Nos. 130, 131.

992. Agreement binding corporation to exercise powers in future in particular way—Extension of tramways.]—An agreement entered into between a municipal corpn. & a tramway co. for the construction of certain tramways contained a provision that in the event of the corpn. at any subsequent time desiring that further tramways should be constructed along a certain route, along which the co. had no power to construct tramways, the corpn. should call upon the co. to apply for powers to construct the same; that if such powers were obtained, the co. should pay the corpn. a certain fixed annual rent or wayleave in respect of those tramways; & that the corpn. would not give their consent to the construction of such tramways by others without first calling upon the co. to apply for powers:—*Held*: such an agreement was not *ultra vires* although it bound the corpn. to exercise their powers in the future in a particular way.—*A.-G. v. HASTINGS CORPN.* (1902), 67 J. P. 165; 19 T. L. R. 9; 1 L. G. R. 41.

993. Moneys of consolidated loans fund—Applied to payment of overdraft.]—A corpn. with statutory borrowing powers to be exercised with the consent of the Local Government Board were in the habit of borrowing money from their bank by way of overdraft before such consent had been obtained. These overdrafts extended over a number of years, and at one time amounted to £200,000. A considerable portion of this money, which they were entitled to borrow for specific purposes only, they used for general purposes.

In reduction of these overdrafts the bank, with the approval of the corpn., had applied certain moneys in their hands belonging to the consolidated loans fund contrary to the provisions of the Act of Parliament creating the fund:—*Held*: (1) the overdraft obtained from the bank for general purposes in respect of powers granted for specific purposes was illegal; (2) the application of money due to the consolidated loans fund in repayment of such overdrafts in question was

illegal.—*A.-G. v. WEST HAM CORPN.*, [1910] 2 Ch. 560; 80 L. J. Ch. 105; 103 L. T. 394; 74 J. P. 406; 26 T. L. R. 683; 9 L. G. R. 433.

994. Power to work tramways—Whether power to run omnibuses.]—A county council, incorporated under Local Government Act, 1888 (c. 41), s. 79, is a purely statutory body & has not under s. 2 the position & powers of a municipal or common law corpn. The statutory powers of the L. C. Council to purchase & work tramways do not empower it to work omnibuses in connection with the tramways, the omnibus business not being incidental to the tramway business. In an action brought by the A.-G. on the relation of rival omnibus proprietors:—*Held*: the council would be restrained by injunction from so acting *ultra vires*.—*LONDON COUNTY COUNCIL v. A.-G.*, [1902] A. C. 165; 71 L. J. Ch. 268; 86 L. T. 161; 66 J. P. 340; 50 W. R. 497; 18 T. L. R. 298, H. L.

Annotations:—*Consd. A.-G. v. Mersey Ry.*, [1907] 1 Ch. 81. *Refd. A.-G. v. Wimbledon House Estate Co.*, [1904] 2 Ch. 34; *A.-G. v. West Gloucestershire Water Co.*, [1909] 2 Ch. 338; *A.-G. v. Birmingham Tame & Rea District Drainage Board*, [1910] 1 Ch. 48. *Mentd. Vacher v. London Soc. of Compositors*, [1912] 3 K. B. 547.

995. — General parcels delivery apart from tramways.]—*A.-G. v. MANCHESTER CORPN.*, No. 972, *ante*.

See, further, TRAMWAYS & LIGHT RAILWAYS.

996. Power to supply electric energy—Supply of fittings & appliances for use of consumers.]—There is nothing in Electric Lighting Act, 1882 (c. 56), even when read in conjunction with the Electric Lighting Act, 1909 (c. 34), to justify undertakers, who have obtained powers to “supply” electric energy under a Provisional Order made under that statute, to engage in the sale, or hire, of apparatus for the use of the energy thus supplied by them. On the contrary, the powers bestowed upon them under the statute are completely exhausted the moment that they have supplied electric energy at the consumer’s terminals.—*A.-G. v. LEICESTER CORPN.*, [1910] 2 Ch. 359; 80 L. J. Ch. 21; 103 L. T. 214; 74 J. P. 385; 26 T. L. R. 568; 9 L. G. R. 185.

Annotations:—*Folld. A.-G. v. Sheffield Corpn.* (1912), 106 L. T. 367. *Refd. Kensington & Knightsbridge Electric Lighting Co. v. Notting Hill Electric Lighting Co.* (1918), 87 L. J. K. B. 565; *A.-G. v. Liverpool Corpn.* (1921), 38 T. L. R. 101.

997. — — —.]—A municipal corpn. incorporated by Royal Charter, who were the undertakers for the supply of electricity within the city of S., & who also were further empowered by a private Act to supply but not to manufacture electric motor & things for cooking, heating, & ventilating & for motive power, & to fix, “connecting with supply mains,” & to repair such apparatus, were alleged to have acted beyond their powers within their area in installing & repairing electric light, bells, fittings, & wires in buildings, & opening a depôt for the sale of electrical accessories, & outside their area by supplying motors & other electric accessories, installing fittings & wires in houses of non-consumers of their electric energy, & executing repairs to such motors, fittings, & installations:—

Held: (1) defts. had no power to carry on the trades or business mentioned; (2) the further powers conferred on defts. were not exercisable outside their limits of supply, & extended only to electric motors & apparatus used for the purposes specified in the private Act.—*A.-G. v. SHEFFIELD CORPN.* (1912), 106 L. T. 367; 76 J. P. 185; 28 T. L. R. 266; 56 Sol. Jo. 326; 10 L. G. R. 301.

Annotations:—*As to (1) Consd. Kensington & Knightsbridge Electric Lighting Co. v. Notting Hill Electric Lighting*

Co. (1918), 87 L. J. K. B. 565. *Distd. A.-G. v. Liverpool Corpn.*, [1922] 1 Ch. 211.

See, further, ELECTRIC LIGHTING & POWER.

Borrowing.—*See PUBLIC HEALTH & LOCAL ADMINISTRATION.*

Agreement to pay by instrument under seal—
For work done under contract not under seal.—
See No. 1165, post.

SUB-SECT. 3.—IMPLIED AUTHORITY TO DO INCIDENTAL ACTS.

998. General rule.—The doctrine of *ultra vires* as explained in *Ashbury Railway Carriage & Iron Co. v. Riche*, No. 922, *ante*, is to be maintained, but is to be applied reasonably, so that whatever is fairly incidental to those things which the Legislature has authorised by an Act of Parliament, ought not, unless expressly prohibited, to be held as *ultra vires*.—*A.-G. v. GREAT EASTERN RY. CO.* (1880), 5 App. Cas. 473; 49 L. J. Ch. 545; 42 L. T. 810; 44 J. P. 648; 28 W. R. 769, H. L.

Annotations:—*Consd. Guinness v. Land Corpn. of Ireland* (1882), 22 Ch. D. 349. *Apld. L. & N. W. Ry. v. Price* (1883), 11 Q. B. D. 485. *Apprvd. & Apld. Small v. Smith* (1884), 10 App. Cas. 119. I entirely adhere to what was said in *A.-G. v. Great Eastern Ry. Co.* that when you have got a main purpose expressed, & ample authority given to effectuate that main purpose, things which are incidental to it, & which may reasonably & properly be done & against which no express prohibition is found, may & ought *prima facie* to follow from the authority for effectuating the main purpose by proper & general means (LORD SELBORNE, C.). *Expld. Sheffield & South Yorkshire Permanent Bldg. Soc. v. Aizlewood* (1889), 44 Ch. D. 412. *Consd. L. C. C. v. A.-G.*, [1902] A. C. 165; *A.-G. v. Mersey Ry.*, [1907] 1 Ch. 81. *Expld. A.-G. v. Fulham Corpn.*, [1921] 1 Ch. 440. *Refd. A.-G. v. Shrewsbury (Kingsland) Bridge Co.* (1882), 21 Ch. D. 752; *Wenlock v. River Dee Co.* (1885), 10 App. Cas. 354; *Harris v. De Pinna* (1886), 33 Ch. D. 238; *Johns v. Balfour* (1889), 1 Meg. 191; *Foster v. L. C. & D. Ry.*, [1895] 1 Q. B. 711; *A.-G. v. L. & N. W. Ry.*, [1900] 1 Q. B. 78; *Re Kingsbury Collieries & Moore's Contract*, [1907] 2 Ch. 259; *Peel v. L. & N. W. Ry.*, [1907] 1 Ch. 5; *Metropolitan Water Board v. Solomon* (1908), 77 L. J. Ch. 517; *Amalgamated Soc. of Ry. Servants v. Osborne*, [1910] A. C. 87; *Vacher v. London Soc. of Compositors*, [1912] 3 K. B. 547; *Dundee Harbour Trustees v. Nicol*, [1915] A. C. 550; *County Hotel & Wine Co. v. L. & N. W. Ry. Co.*, [1918] 2 K. B. 251. *Mentd. Henderson v. Bank of Australasia* (1888), 40 Ch. D. 170; *A.-G. v. West Gloucestershire Water Co.*, [1909] 2 Ch. 338; *Re Woking Urban Council (Basingstoke Canal) Act*, 1911, [1914] 1 Ch. 300; *R. v. Bedfordshire County Council, Ex p. Sear*, [1920] 2 K. B. 465.

999. Grant of pension — To retired clerk.—
CLARKE v. IMPERIAL GAS LIGHT & COKE CO., No. 175, *ante*.

1000. — To family of deceased officer.—At an annual general meeting of a banking co., a resolution, of which sufficient notice had been given, was passed authorising the directors to grant a pension of £1,500 a year for five years to the family of a deceased officer of the co. On the motion by a proprietor to restrain the directors from carrying it into effect:—*Held*: the resolution was *intra vires*, as being in the course of carrying on the business of the co., & within the scope of such business.—*HENDERSON v. BANK OF AUSTRALASIA* (1888), 40 Ch. D. 170; 58 L. J. Ch. 197; 59 L. T. 856; 37 W. R. 332; 4 T. L. R. 734.

Annotations:—*Mentd. Re Quebrada Ry. Land & Copper Co.* (1889), 40 Ch. D. 363; *Evans v. Brunner, Mond*, [1921] 1 Ch. 359.

Reduction of pension.—*See No. 888, ante.*
See No. 1157, post.

SUB-SECT. 4.—CONSENT OF CORPORATORS TO ULTRA VIRES ACTS.

1001. Whether act made lawful—Diversion of money for unauthorised purposes.—Where a co. is

authorised by Act of Parliament to raise money for a specific purpose only, it is not competent to any majority of the shareholders of the co. to divert such money to another purpose against the will of a single shareholder; nor could unanimity amongst the shareholders make such a diversion lawful. *Qu*: Whether a co., having powers to construct several branch & extension rys., & to raise certain distinct sums of money for such respective works, such money being declared to be part of the general capital of the co., may or may not lawfully apply money in the execution of one undertaking, which they were empowered to raise for another.—*BAGSHAW v. EASTERN UNION RY. CO.* (1849), 7 Hare, 114; 18 L. J. Ch. 193; 13 L. T. O. S. 381; 13 Jur. 602; 68 E. R. 46; *affd.* (1850), 2 Mac. & G. 389, L. C.

Annotations:—*Consd. South Yorkshire Ry. & River Dun Co. v. G. N. Ry.* (1854), 7 Ry. & Can. Cas. 744; *Eastern Counties Ry. v. Hawkes* (1855), 5 H. L. Cas. 331. *Refd. Bostock v. North Staffordshire Ry.* (1855), 4 E. & B. 798; *Shrewsbury & Birmingham Ry. v. N. W. Ry.* (1857), 6 H. L. Cas. 113; *Taylor v. Chichester & Midhurst Ry.* (1867), L. R. 2 Exch. 356; *Riche v. Ashbury Ry. Carriage & Iron Co.* (1874), L. R. 9 Exch. 224. *Mentd. East Anglian Rys. v. Eastern Counties Ry.* (1851), 11 C. B. 775; *Re Joint-Stock Companies Winding-up Acts*, 1848 & 1849, *Re Madrid & Valencia Ry.* (1852), 16 Jur. 809.

1002. — Excessive borrowing.—(1) When by Act of Parliament a corpn. is empowered to borrow a certain sum of money a restriction against borrowing more will be implied.

(2) Where a corpn. is created by Act of Parliament, & by Act of Parliament restrictions as to the dealings with its property are imposed upon it, the assent of every individual member of the corpn. will not make valid as against the corpn. that which it was restrained from doing.—*WENLOCK (BARONESS) v. RIVER DEE CO.* (1883), 36 Ch. D. 675, n.; 57 L. T. 402, n., C. A.; *affd.* (1885), 10 App. Cas. 354, H. L.; *subsequent proceedings* (1887), 19 Q. B. D. 155, C. A.; (1887), 36 Ch. D. 674; *affd.* (1888), 38 Ch. D. 534, C. A.

Annotations:—*As to* (1) *Expld. Re Birkbeck Permanent Benefit Bldg. Soc.*, [1912] 2 Ch. 183. *Refd. General Auction Estate & Monetary Co. v. Smith*, [1891] 3 Ch. 432; *Putney Overseers v. L. & S. W. Ry.*, [1891] 1 Q. B. 440; *A.-G. v. L. C. C.*, [1901] 1 Ch. 781; *A.-G. v. De Winton*, [1906] 2 Ch. 106; *Corbett v. S. E. & C. Rys. Managing Committee*, [1906] 2 Ch. 12; *Amalgamated Soc. of Ry. Servants v. Osborne*, [1910] A. C. 87; *British South Africa Co. v. De Beers Consolidated Mines*, [1910] 1 Ch. 354; *Re Woking Urban Council (Basingstoke Canal) Act*, 1911, [1914] 1 Ch. 300; *Jenkin v. Pharmaceutical Soc. of Great Britain*, [1921] 1 Ch. 392. *As to* (2) *Refd. Balkis Consolidated Co. v. Tomkinson*, [1893] A. C. 396; *Home & Foreign Investment & Agency Co.*, [1912] 1 Ch. 72. *Generally, Mentd. Re Wrexham, Mold, & Connah's Quay Ry.*, *Ex p. North & South Wales Bank* (1899), 15 T. L. R. 209; *Sinclair v. Brougham*, [1914] A. C. 398; *A.-G. v. Liverpool Corpn.*, [1922] 1 Ch. 211.

1003. Estoppel of corporators — Afterwards seeking to set aside act.—Shareholders in a co. cannot lie by, sanctioning, or by their silence at least acquiescing in, an arrangement which is *ultra vires* of the co., watching the results: & if it be favourable & profitable to themselves, to abide by it & insist on its validity; but if it prove unfavourable & disastrous, then to institute proceedings to set it aside. Therefore, where shareholders complained of acts *ultra vires*, which they had acquiesced in for six years, relief was refused.—*GREGORY v. PATCHETT* (1864), 33 Beav. 595; 11 L. T. 357; 10 Jur. N. S. 1118; 13 W. R. 34; 55 E. R. 499.

Annotations:—*Mentd. Re National Bank of Wales*, [1899] 2 Ch. 629; *Bond v. Barrow Haematite Steel Co.*, [1902] 1 Ch. 353; *Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266.

Sect. 5.—Limitation of powers (ultra vires): Sub-sect. 5. Sect. 6: Sub-sect. 1.]

SUB-SECT. 5.—POSITION OF PERSONS DEALING WITH CORPORATIONS.

See, further, COMPANIES.

1004. Presumed to have dealt with corporation with full knowledge of its powers—Corporation formed under public Act.]—A co. incorporated by Act of Parliament, for making & maintaining a ry. & works, was empowered to raise money to be applied in discharging the costs incurred in obtaining the Act, & the remainder towards making & maintaining the ry. & works; & the profits of the co., after defraying the expenses of making, maintaining, & working the ry., were to be divided amongst the proprietors. The co., so incorporated, afterwards covenanted with plfts., a ry. co., to take a lease of their line, & to find the capital necessary for the construction of the branches & works authorised to be constructed by bills then pending in Parliament, & to pay the costs of preparing & promoting such bills:—*Held*: defts., having a limited authority only, & being a corpn. only for the purpose of making & maintaining the ry. sanctioned by the Act, could only apply their funds for the purposes provided by the statute; & such an agreement was illegal, though the object of it might have been the increase of the profit of their ry.

Where a person deals with a co. formed under a public Act of Parliament since the Act is a public Act accessible to all, & supposed to be known to all, such person must be presumed to have dealt with the co. with a full knowledge of their respective rights, whatever those rights may be (*JERVIS, C.J.*).—*EAST ANGLIAN RYS. CO. v. EASTERN COUNTIES RY. CO.* (1851), 11 C. B. 775; 7 Ry. & Can. Cas. 150; 21 L. J. C. P. 23; 18 L. T. O. S. 138; 16 Jur. 249; 138 E. R. 680.

*Annotations:—***Consd.** *Macgregor v. Dover & Deal Ry.* (1852), 18 Q. B. 618; *Bostock v. North Staffordshire Ry.* (1855), 4 E. & B. 798; *Eastern Counties Ry. v. Hawkes* (1855), 5 H. L. Cas. 331; *Norwich Corpn. v. Norfolk Ry.* (1855), 4 E. & B. 397; *Taylor v. Chichester & Midhurst Ry.* (1867), L. R. 2 Exch. 356. **Distd.** *Driver v. Kingston Highway Board* (1871), 24 L. T. 480. **Consd.** *A.-G. v. G. E. Ry.* (1879), 11 Ch. D. 449. **Refd.** *South Yorkshire Ry. & River Dun Co. v. G. N. Ry.* (1854), 7 Ry. & Can. Cas. 744; *Royal British Bank v. Turquand* (1856), 6 E. & B. 327; *Shrewsbury & Birmingham Ry. v. N. W. Ry.* (1857), 6 H. L. Cas. 113; *Bateman v. Ashton-under-Lyne Corpn.* (1858), 3 H. & N. 323; *Rogers v. Oxford, Worcester & Wolverhampton Ry.* (1858), 2 De G. & J. 662; L. B. & S. C. Ry. v. L. & S. W. Ry. (1859), 4 De G. & J. 362; *Hammersmith & City Ry. v. Brand* (1869), L. R. 4 H. L. 171; *Ashbury Ry. Carriage & Iron Co. v. Riche* (1875), L. R. 7 H. L. 653; *Evershed v. L. & N. W. Ry.* (1877), 3 Q. B. D. 134.

1005. Vendor of land—Whether bound to see that land sold to corporation strictly required for authorised purposes—Vendor acting bonâ fide & without knowledge of intention to misapply corporate funds.]—Where an Act creating a ry. co., or giving new powers to an existing co., authorises the purchase of lands for extraordinary purposes, a person who agrees to sell his land to the co. is not bound to see that it is strictly required for such purposes: if he does not know of any intention to misapply the funds of the co., but acts *bonâ fide* in the matter, he may enforce performance of the contract.—*EASTERN COUNTIES RY. CO. v. HAWKES* (1855), 5 H. L. Cas. 331; 24

L. J. Ch. 601; 25 L. T. O. S. 318; 3 W. R. 609; 10 E. R. 928, H. L.; *affg.* S. C. *sub nom.* *HAWKES v. EASTERN COUNTIES RY. CO.* (1852), 1 De G. M. & G. 737,

*Annotations:—***Consd.** *South Yorkshire Ry. & River Dun Co. v. G. N. Ry.* (1853), 9 Exch. 55. **Distd.** *Caledonian & Dumbartonshire Junction Co. v. Holensburgh Harbour Trustees* (1856), 27 L. T. O. S. 241. **Expld. & Distd.** *Bedford & Cambridge Ry. v. Stanley* (1862), 2 John. & H. 746. **Consd.** *Taylor v. Chichester & Midhurst Ry.* (1870), L. R. 4 H. L. 628; *A.-G. v. G. E. Ry.* (1879), 11 Ch. D. 449; *Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Rd. Permanent Bldg. Soc.*, [1920] 2 Ch. 144; *Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Rd. Permanent Bldg. Soc.*, [1921] 2 Ch. 438. **Refd.** *Stuart v. L. & N. W. Ry.* (1852), 15 Beav. 513; *Lindsey v. G. N. Ry.* (1853), 10 Hare, 664; *Preston v. Liverpool, Manchester & Newcastle-upon-Tyne Junction Ry.* (1853), 7 Ry. & Can. Cas. 704; *Shrewsbury & Birmingham Ry. v. L. & N. W. Ry.* (1853), 16 Beav. 441; *Norwich Corpn. v. Norfolk Ry.* (1855), 4 E. & B. 397; *Haynes v. Haynes* (1861), 1 Drew. & Sm. 426; *Maunsell v. Mid. G. W. Ry. (of Ireland) & G. N. & W. (of Ireland) Ry.* (1863), 8 L. T. 347; *Steele v. North Metropolitan Ry.* (1867), 2 Ch. App. 238, n.; *Ashbury Ry. Carriage & Iron Co. v. Riche* (1875), L. R. 7 H. L. 653. **Mentd.** *Flook v. S. W. Ry.* (1853), 1 Sm. & G. 142; *Shrewsbury & Birmingham Ry. v. L. & N. W. Ry. & Shropshire Union Rys. & Canal Co., L. & N. W. Ry. v. Shrewsbury & Birmingham Ry.* (1853), 22 L. T. O. S. 56; *Preston v. Liverpool, Manchester, etc. Ry.* (1856), 5 H. L. Cas. 605; *Bateman v. Ashton-under-Lyne Corpn.* (1858), 3 H. & N. 323.

1006. Lender—Whether bound to see whether restrictions as to borrowing exceeded.]—By the deed of settlement of a joint stock co., the directors were authorised to borrow, under the common seal of the co., such sums as should from time to time, by a resolution passed at a general meeting of the co. be authorised to be borrowed, not to exceed a certain sum. At a general meeting the directors were authorised to borrow such sums & at such interest for such periods as they might deem expedient, in accordance with the provisions of the deed of settlement & the Act of Parliament. The directors having borrowed £1,000 on bond, under the common seal of the co.:—*Held*: the co. were liable to repay the amount, whether the resolution was or was not a sufficient authority to the directors to borrow, for though parties dealing with joint stock cos. are bound to take notice of any limitation of the authority of the directors in the deed of settlement, yet, where the directors, as in this case, have power to borrow, the lenders of the money have a right to presume that the co. which put forward their directors as authorised to borrow, have taken every step requisite to empower them to do so.—*ROYAL BRITISH BANK v. TURQUAND* (1856), 6 E. & B. 327; 25 L. J. Q. B. 317; 2 Jur. N. S. 663; 119 E. R. 886, Ex. Ch.

*Annotations:—***Apprvd. & Apld.** *Agar v. Athenaeum Life Assce. Soc.* (1858), 3 C. B. N. S. 725. **Consd.** *Re Athenaeum Life Assce. Soc., Ex p. Eagle Insee.* (1858), 4 K. & J. 549. *Athenaeum Life Insee. v. Pooley* (1858), 28 L. J. Ch. 119. *Prince of Wales Assce. v. Harding* (1858), E. B. & E. 183. *Balfour v. Ernest* (1859), 5 C. B. N. S. 601. **Distd.** *Commercial Bank of Canada v. G. W. Ry. of Canada* (1865), 3 Moo. P. C. C. N. S. 295. **Consd.** *Totterdell v. Fareham Blue Brick & Tile Co.* (1866), L. R. 1 C. P. 674. **Expld. & Apld.** *Fountain v. Carmarthen Ry.* (1868), L. R. 5 Eq. 316. **Consd.** *Re Land Credit Co. of Ireland, Ex p. Overend, Gurney* (1869), 4 Ch. App. 460. **Distd.** *Re London, Hamburg & Continental Exchange Bank, Zulueta's Claim* (1870), 5 Ch. App. 444. **Consd.** *East Holyford Mining Co. v. Costelloe* (1871), 19 W. R. 1010. **Apprvd.** *Re Bank of Hindustan, China & Japan, Campbell's Case, Hippisley's Case, Alison's Case* (1873), 9 Ch. App. 1. **Distd.** *Re County Palatine Loan & Discount Co., Cartmell's*

PART IX. SECT. 5, SUB-SECT. 5.

1004 i. Presumed to have dealt with corporation with full knowledge of its powers—Corporation formed under public Act.]—Pltf. sued the officers & directors of an assocn., incorporated under R. S. 1887, c. 166, for the price of goods sold to it on credit, which, by above Act the assocn. was forbidden

to buy in that way:—*Held*: pltf. must be taken to have known of the statutory inability.—*STRUTHERS v. MACKENZIE* (1896), 28 O. R. 381.—**CAN.**

1004 ii. ———.]—*MACKEY & CO. v. TORONTO CITY CORPN.*, [1919] 3 W. W. R. 253; [1920] A. C. 208; 88 L. J. P. C. 204; 122 L. T. 13.—**CAN.**

h. Whether bound to acquaint themselves with effect of constitution.]—Persons in dealing with a corporate body are not bound to make themselves acquainted with the legal effect of every word contained in its constitution.—*KAIHU VALLEY RY. CO. v. KAURI TIMBER CO.* (1889), 11 N. Z. L. R.

Case (1874), 9 Ch. App. 691. **Consd.** Mahony v. East Holyford Mining Co. (1875), L. R. 7 H. L. 869. **Distd.** Irvine v. Union Bank of Australia (1877), 2 App. Cas. 366. **Consd.** Melbourne Banking Corp'n. v. Brougham (1878), 4 App. Cas. 156. **Appld.** County of Gloucester Bank v. Rudry Merthyr Steam & House Coal Colliery Co., [1895] 1 Ch. 629. **Refd.** Curteis v. Anchor Insee. (1857), 2 H. & N. 537; Colonial Bank of Australasia v. Willan (1874), L. R. 5 P. C. 417; Riche v. Ashbury Ry. Carriage & Iron Co. (1874), L. R. 9 Exch. 224; Yorkshire Ry. Wagon Co. v. Maclure (1881), 30 W. R. 288; Ward v. Royal Exchange Shipping Co., *Ex p.* Harrison (1887), 58 L. T. 174; *Re* Briton Medical & General Life Assocn. (1889), 5 T. L. R. 502; *Re* Hampshire Land Co., [1896] 2 Ch. 743; Duck v. Tower Galvanizing Co., [1901] 2 K. B. 314; Premier Industrial Bank v. Carlton Manufacturing Co. & Crabtree, [1909] 1 K. B. 106; Dey v. Pullinger Engineering Co., [1921] 1 K. B. 77. **Mentd.** Guest v. Poole & Bournemouth Ry. (1870), L. R. 5 C. P. 553.

1007. — Loan treated as valid—So far as money spent in discharge of legal liabilities.]

Where a co. borrows money *ultra vires*, the lender, so far as the money is applied in the discharge of legal debts & liabilities of the co., is entitled to have the loan treated as valid, but he is not subrogated to any securities or priorities of the creditors who are paid by means of his money.—*Re* WREXHAM, MOLD & CONNAH'S QUAY RY. CO., [1899] 1 Ch. 440; 68 L. J. Ch. 270; 80 L. T. 130; 47 W. R. 464; 15 T. L. R. 209; 43 Sol. Jo. 277; 6 Mans. 218, C. A.

Annotations:—**Consd.** *Re* Birkbeck Permanent Benefit Bldg. Soc., [1912] 2 Ch. 183; Reversion Fund & Insee. Co. v. Maison Cosway, [1913] 1 K. B. 384. **Refd.** Bannatyne v. MacIver, [1906] 1 K. B. 103; *Re* Harris Calculating Machine Co., Sumner v. The Co., [1914] 1 Ch. 920; Sinclair v. Brougham, [1914] A. C. 398. **Mentd.** *Re* Johnston Foreign Patents Co. (1904), 73 L. J. Ch. 617.

1008. — Whether bound to inquire how money applied.]—Where a co. has a general power to borrow money for the purposes of its business, a lender is not bound to inquire into the purposes for which the money is intended to be applied, & the misapplication of the money by the co. does not avoid the loan in the absence of knowledge on the part of the lender that the money was intended to be misapplied.—*Re* PAYNE (DAVID) & CO., LTD., YOUNG v. PAYNE (DAVID) & CO., LTD., [1904] 2 Ch. 608; 73 L. J. Ch. 849; 91 L. T. 777; 20 T. L. R. 590; 48 Sol. Jo. 572; 11 Mans. 437, C. A.

Annotations:—**Consd.** Sun Bldg. Soc. v. Western Suburban & Harrow Rd. Bldg. Soc., [1920] 2 Ch. 144. **Mentd.** Rainford v. Keith & Blackman Co. (1905), 74 L. J. Ch. 531.

SECT. 6.—OWNERSHIP OF PROPERTY.

SUB-SECT. 1.—NATURE OF OWNERSHIP.

1009. Nature of estate—Estate in fee simple—Unless limited.]—MARSH v. NEWMAN, No. 34, *ante*.

1010. Whether seisin in corporate body—Or in individual members.]—FULMERSTON v. STEWARD (1554), 1 Plowd. 101; 1 Dyer, 103 a; 75 E. R. 160.

Annotations:—**Refd.** Sutton's Hospital Case (1612), 10 Co. Rep. 1 a; Oxford's Case (1615), 1 Rep. Ch. 1. **Mentd.** Ive's Case (1597), 5 Co. Rep. 11 a; Sym's Case (1609), 8 Co. Rep. 51 a; Bonham's Case (1610), 8 Co. Rep. 113 b; Salisbury v. Ashley (1612), Palm. 194; Pells v. Brown (1620), Cro. Jac. 590; Gee v. Freedland (1626), Cro. Car. 47; Davies v. Kempe (1664), Cart. 2; Gardner v. Shelden (1671), 2 Keb. 781; Banker's Case (1695), Skin. 601; Dodd v. Acklom (1843), 7 Scott, N. R. 415; Doe d. Biddulph v. Poole (1848), 11 Q. B. 713.

1011. — Right of corporator to portion of rents or profits.]—A burgess receiving, by the allotment of the burgesses, a portion of the rent

of lands held by the borough, does not gain a settlement by estate.

The estate is in the corporate body; & it is immaterial whether the corp'n. allowed the pauper to enjoy the whole or a certain portion of the rents, or assigned to him the rent of a particular estate. The pauper had no right to enter upon the land or to make over his interest to another. He was entitled even to the rent only so long as the corp'n. pleased (LORD TENTERDEN, C.J.).

The possession of a right of common is insufficient. The pauper had no estate either legal or equitable (BAYLEY, J.).—*R. v. BELFORD* (1829), 10 B. & C. 54; 5 Man. & Ry. K. B. 174, 2 Man. & Ry. M. C. 608; 8 L. J. O. S. M. C. 38; 109 E. R. 371.

1012. — — — — —.]—The individual corporators of a corp'n. at common law, which is seised in fee simple of freehold lands, have no estate, either legal or equitable, in those lands, or any part of them, so as to confer the franchise for the county, albeit their individual shares in the profits derived by the co. from & out of such lands exceed £2 by the year each.—*ACLAND v. LEWIS* (1860), 9 C. B. N. S. 32; K. & G. 334; 30 L. J. C. P. 29; 3 L. T. 472; 25 J. P. 57; 7 Jur. N. S. 420; 9 W. R. 123; 142 E. R. 13.

Annotation:—**Mentd.** Thomas v. Wells (1864), 16 C. B. N. S. 508.

1013. — — — — — Corporator in occupation of part of property.]—In Lord B.'s hospital, the warden & bedesmen respectively occupy separate rooms for life, no bedesman has ever been removed, but a power of donation exists by the ordinances. The warden & bedesmen jointly manage the remainder of the property. The ordinances mention certain feoffees & their heirs, but none were ever known to exist:—*Held*: the property is held by the warden & bedesmen as joint tenants, except as to their rooms, in which they respectively have an equitable freehold life estate.—*ROBERTS v. PERCIVAL* (1864), 18 C. B. N. S. 36; Hop. & Ph. 121; 5 New Rep. 124; 34 L. J. C. P. 84; 11 L. T. 603; 11 Jur. N. S. 40; 13 W. R. 265; 144 E. R. 353.

Annotations:—**Consd.** Durant v. Kennett (1869), L. R. 5 C. P. 262. **Refd.** Daniels v. Allard (1887), Fox & S. Reg. 70. **Mentd.** Fryer v. Bodenham (1869), L. R. 4 C. P. 529; Hadfield's Case (1873), L. R. 8 C. P. 306.

1014. — — — — — Canon.]—FORD v. HARRINGTON, No. 53, *ante*.

1015. — — — — — Naval Knights of Windsor.]—Where a member of a corp'n. aggregate occupies property of the corp'n. for the purposes for which it was formed, his occupation is *prima facie* that of the corp'n.; but this presumption is rebuttable.

The Naval Knights of W. occupy separate houses in their college for life, subject to being removed for certain causes, the fee-simple of the houses being vested in the corp'n.:—*Held*: looking to the charter of incorporation & the character of the occupation, they do not occupy as owners or tenants so as to entitle them to the borough franchise, their occupation being that of the corp'n.—*DURANT v. KENNETT* (1869), L. R. 5 C. P. 262; 1 Hop. & Colt. 297; 39 L. J. C. P. 17; 21 L. T. 603; 34 J. P. 87; 18 W. R. 286.

Annotations:—**Folld.** Ford v. Harrington (1869), L. R. 5 C. P. 282. **Consd.** Fernie v. Scott (1871), L. R. 7 C. P. 202.

1016. — — — — —.]—The corp'n. of S. were for many years before Municipal Corpns. Act,

PART IX. SECT. 6, SUB-SECT. 1.

k. Whether ownership in corporate body—Or in individual members—agreed with others to subscribe \$4,000 towards a steamship

He was appointed master. The co. was incorporated by statute & pltf. received stock to the amount of his contribution. After some time, a new arrangement was entered into, by which pltf. was to supply the men, & provisions for the passengers

& crew, & sail her as commander:—*Held*: pltf. was not part owner of the ship, & could not exercise, independently of the corp'n., any power whatever over its property.—*GUILDFORD v. ANGLO-FRENCH S.S. CO.* (1881), 2 R. & G. 54; 1 C. L. T. 554.—**CAN.**

Sect. 6.—Ownership of property: Sub-sects. 1 & 2, A. & B.; sub-sect. 3, A. & B.; sub-sect. 4, A.]

1835 (c. 76), possessed of certain lands within the borough, which were thus dealt with. Each member of the council of the borough had two acres of such land for his life, which his widow after his decease continued to occupy, while a widow & a resident in the borough. The rest of the lands were held in allotments of one acre by the persons selected for that purpose by the mayor, & rents of various amounts were paid in respect of such occupation. In 1836 a bye-law was passed by the town council which provided that the lands should thenceforth be held & enjoyed in allotments of one acre each by poor & necessitous burgesses of the borough at rents to be fixed & ascertained by the council of the borough, & only such persons should be considered poor & necessitous as were declared to be so by the majority of a meeting of the council. It was also provided that if any burgess died in the occupation of such lands, & left a widow, such widow should continue to occupy, if a resident in the borough. One of the burgesses of S. had been declared by a meeting of the council to be a poor & necessitous burgess, & had been admitted to an acre of the land under an order of the council, which ordered that such acre should be delivered to him as tenant thereof to the council, & that he should pay 5s. per annum as & for rent until further notice:—*Held*: the interest of the burgess in the land to which he was so admitted did not amount to a freehold estate for life.—*FERNIE v. SCOTT* (1871), L. R. 7 C. P. 202; 1 Hop. & Colt. 718; 41 L. J. C. P. 20; 25 L. T. 836; 36 J. P. 72; 20 W. R. 236.

Annotation:—*Mentd.* *Spencer v. Harrison* (1879), 5 C. P. D. 97.

1017. — Or in head of corporation—Master of college.]—*PHILIPS v. BURY*, No. 23, *ante*.

1018. Whether ownership in corporate body—Or in individual members.]—*SOCIETY OF PRACTICAL KNOWLEDGE v. ABBOTT*, No. 7, *ante*.

1019. — Ship owned by British corporation—Corporators foreigners.]—B. corpn., as such, is the sole owner of the ships belonging to it, & as such sole owner is entitled to register them as British ships, notwithstanding that some foreigners may have shares in the corpn.; & that such individual members are not entitled by virtue of such shares to be the owners, in whole or in part, directly or indirectly, of any ship or vessel, belonging to the corpn. The individual members are in one sense interested in the vessels, but in no legal sense are they the owners. The corpn. must register as sole owner. B. Corpn. is the legal owner of the vessel, & we cannot notice any disqualification of individual members (*LORD DENMAN, C.J.*).—*R. v. ARNAUD* (1846), 9 Q. B. 806; 16 L. J. Q. B. 50; 8 L. T. O. S. 212; 10 J. P. 821; 11 Jur. 279; 115 E. R. 1485.

Annotation:—*Mentd.* *Continental Tyre & Rubber Co. (Great Britain) v. Daimler Co.*, [1915] 1 K. B. 893.

1020. Municipal corporation—Whether property held in trust for members.]—Municipal Corporations Act, 1835 (c. 76), created a public trust of the property of municipal corpn. & of the funds raised for the purposes of the Act, subject, like other property held in trust, to the jurisdiction of the ct. of Ch. Although the Act contained provisions for correcting abuses in respect of the borough property, there was nothing in it to exclude the ordinary jurisdiction of the ct. of Ch. to prevent breaches of trust:—*Held*: a bond

given by the town-council of a borough, to secure compensation out of the borough fund to an officer, for the profits of offices, some of which he continued to hold, was a breach of trust & illegal.

Qu.: whether compensation can, under the Act, be given for the profits of an office which the officer voluntarily resigned.—*PARR v. A.-G.* (1842), 8 Cl. & Fin. 409; 8 E. R. 159; *sub nom.* *A.-G. v. PARR*, 6 Jur. 245, H. L.

Annotation:—*Consd.* *A.-G. v. Poole Corpn.* (1845), 9 Jur. 318.

1021. ——*Primâ facie* a municipal corpn. has full power to dispose of all its property, like a private individual, & it lies on the person alleging the contrary to establish a trust. A pleading is to be taken most strongly against the pleader, & a general allegation of debt, being a trustee cannot support a bill, unless there are facts alleged showing the trust.—*EVAN v. AVON CORPN.* (1860), 29 Beav. 144; 30 L. J. Ch. 165; 3 L. T. 347; 6 Jur. N. S. 1361; 9 W. R. 84; 54 E. R. 581.

Annotation:—*Refd.* *Watson v. Hythe B. C.* (1906), 70 J. P. 153.

Ownership of property by corporations as trustees.]—*See* Sub-sect. 2, *post*.

SUB-SECT. 2.—TRUST OWNERSHIP.

A. In General.

1022. Incapacity of corporation to hold as trustee—Uses not defeated but attach on estate.]—Where an estate was devised to a body corporate, which could not take by Stat. Mortmain, in trust:—*Held*: the uses were not defeated by this deficiency of the trustee but attached upon the estate the law raised, & the heir-at-law became a trustee to the uses of the will.—*SONLEY v. CLOCKMAKERS' CO. (MASTER, ETC.)* (1780), 1 Bro. C. C. 81.

Joint trusteeship—With individuals—Validity of appointment.]—*See* No. 920, *ante*.

1023. — With corporation—Right to bring ejectment—Poor Relief Act, 1819 (c. 12).]—Where lands have been held jointly by the churchwardens & overseers of a parish & by the corpn. of a borough in which they lie, the latter holding as trustees, not on any special trust but for general parochial purposes, the churchwardens & overseers may bring ejectment for such lands as vested in them by the above Act, s. 17.—*DOE d. EDNEY v. BENHAM, DOE d. EDNEY v. BILLIT* (1845), 7 Q. B. 976; 14 L. J. Q. B. 342, 343; 5 L. T. O. S. 408; 10 J. P. 38, 39; 9 Jur. 662; 115 E. R. 756.

Annotations:—*Refd.* *Rumball v. Munt* (1846), 10 Jur. 539; *St. Nicholas, Deptford v. Sketchley* (1846), 17 L. J. M. C. 17.

1024. Duty to account—Jurisdiction of court.]—*A.-G. v. DUBLIN CORPN.* (1827), 1 Bli. N. S. 312; 4 E. R. 888, H. L.

Annotations:—*Consd.* *A.-G. v. Liverpool Corpn.*, *A.-G. v. Aspinall* (1837), 7 L. J. Ch. 51; *A.-G. v. Eastlake* (1853), 11 Hare, 205. *Refd.* *Ludlow Corpn. v. Greenhouse* (1827), 1 Bli. N. S. 83; *A.-G. v. Carlisle Corpn.* (1828), 2 Sim. 437; *A.-G. v. East Retford Corpn.* (1838), 3 My. & Cr. 484; *Armitstead v. Durham* (1848), 11 Beav. 556; *Nightingale v. Goulbourn* (1848), 2 Ph. 594; *Re St. Botolph Without Bishopsgate Parish Estates* (1887), 35 Ch. D. 142. *Mentd.* *Beaumont v. Oliveira* (1869), 4 Ch. App. 309; *Goodman v. Saltash Corpn.* (1882), 7 App. Cas. 633; *Re Christchurch Inclosure Act* (1888), 38 Ch. D. 520.

B. Charitable Trusts.

Capacity for.]—*See* CHARITIES, Vol. VIII., pp. 369, 370.

Incapacity for.]—*See* CHARITIES, Vol. VIII., p. 382, Nos. 1968, 1969.

PART IX. SECT. 6, SUB-SECT. 2.—A.

1. Administration of trust — In

*accordance with desire of creator of trust.]—*The corpn. in the administration of a trust should apply the subject

of the trust for the purposes which the donor desired.—*LASCELLES v. M'SWAIN* (1894), 6 Q. L. J. 44.—*AUS.*

Creation of.]—See CHARITIES, Vol. VIII., pp. 242–247, 255–258, 261–264.

Modification of.]—See CHARITIES, Vol. VIII., pp. 335, 336.

Whether resulting trust.]—See CHARITIES, Vol. VIII., pp. 333, 334.

Management of.]—See CHARITIES, Vol. VIII., pp. 355–366.

Liability of corporation as trustee.]—See CHARITIES, Vol. VIII., pp. 377–382, 411.

Jurisdiction of court over—Generally.]—See CHARITIES, Vol. VIII., pp. 376, 386, 388–390.

— Appointment of corporation as trustee.]—See CHARITIES, Vol. VIII., pp. 372, 373.

— Removal of corporation as trustee.]—See CHARITIES, Vol. VIII., p. 374.

SUB-SECT. 3.—MORTMAIN.

A. In General.

1025. Application of Mortmain Acts—General rule.]—Statutes of Mortmain only forbid corpn. to hold that which in its nature is perpetual. Even if they did apply to an estate tail in a rent, the estate would pass, though it would be forfeited.—VIGERS v. ST. PAUL'S (DEAN) (1849), 14 Q. B. 920; 19 L. J. Q. B. 84; 14 L. T. O. S. 446; 14 Jur. 1017; 117 E. R. 353, Ex. Ch.

1026. — Taking husbandry lease.]—The taking of a husbandry lease *bond fide* by a religious house, is not within Statute of Mortmain.—JESUS COLLEGE, OXFORD v. GIBBS (1834), 1 Y. & C. Ex. 145; 4 L. J. Ex. 42; 160 E. R. 59; *subsequent proceedings* (1835), 1 Y. & C. Ex. 445.

*Annotation:—*Mentd. Phelps v. Prew (1854), 3 E. & B. 430.

undertakers for the regulation of the oyster fishery in their river, & they subsequently took a lease for fourteen years of certain parts of the foreshore to which the Act applied. Deft. had a right of oyster fishery in the harbour, & from time immemorial he & other fishermen were in the

from contamination & to render them fit for use, & the acts of deft. did not constitute any occupation of the spot by him, but were merely incidental

was necessary for the oyster fishery. In an action by the corpn. as such lessees for the alleged trespass in so depositing the oysters on the foreshore:—*Held*: neither Mortmain Act, 1882 (c. 42) nor Municipal Corporations Act, 1882 (c. 50), s. 107, prevented the corpn. as such from acquiring a short leasehold & as the acquisition of the leasehold afforded a reasonable facility for carrying out the purposes of their local Act, its acceptance was, not *ultra vires* & they could sue under it.—TRURO CORPN. v. ROWE, [1902] 2 K. B. 709; 71 L. J. K. B. 974; 87 L. T. 336; 66 J. P. 821; 51 W. R. 68; 18 T. L. R. 820, C. A.

*Annotation:—*Mentd. Foster v. Warblington U. C., [1906] 1 K. B. 648.

— Assurance for charitable purposes.]—See CHARITIES, Vol. VIII., pp. 265–284.

PART IX. SECT. 6, SUB-SECT. 3.—A.

m. Effect of Mortmain Acts—On conveyance of lands.]—A conveyance of lands to a corpn. not empowered by statute to hold lands is voidable only & not void under the Statutes of Mortmain, & the lands can be forfeited by the Crown only.—MCDIARMID v.

HUGHES (1889), 16 O. R. 570.—CAN.

PART IX. SECT. 6, SUB-SECT. 4.—A.

n. By bank—In violation of charter—Good title.]—A corpn. might have a good title to property acquired in violation of its charter.—LONDON CHARTERED BANK OF AUSTRALIA v.

Effect of Mortmain Acts—On devise of land to corporation in trust.]—See No. 1022, *ante*.

B. Exemptions from Restrictions on Assurances in Mortmain.

1028. By charter—Power to accept & take real estate.]—A power for a corpn. to accept & take, & for persons to give, for its benefit, real estate, notwithstanding Stats. of Mortmain, & so far as they are not restrained by law, is a power for the corpn. to take land, provided the grant is made in the form prescribed by Stats. of Mortmain.

A subsisting charter of incorporation is valid until it is impeached & disturbed; & the rights of parties under it are to be dealt with by the ct., irrespectively of what might be the result of future proceedings by the A.-G. or the Crown to set it aside.—ROBINSON v. LONDON HOSPITAL (GOVERNORS) (1853), 10 Hare, 19; 22 L. J. Ch. 754; 68 E. R. 821.

*Annotations:—*Distd. *Re* Verrall, National Trust for Places of Historic Interest or Natural Beauty v. A.-G., [1916] 1 Ch. 100. Mentd. Simmons v. Rose (1856), 6 De G. M. & G. 411; Calvert v. Armitage (1863), 1 Hem. & M. 446; Perring v. Trail (1874), L. R. 18 Eq. 88.

By public Act.]—See CHARITIES, Vol. VIII., pp. 284, 286, Nos. 595–599, 623–629.

By private Act.]—See CHARITIES, Vol. VIII., p. 284, Nos. 600–604.

By custom.]—See CHARITIES, Vol. VIII., p. 282, Nos. 574–577.

SUB-SECT. 4.—ACQUISITION AND HOLDING OF PROPERTY.

A. Land.

Cannot take effect.]—In the case of the President of Corpus Christi College, Oxford, if the master or president, by his will devised any land to his college, & died:—*Held*: such devise was void; for at the time when the devise should take effect, the college was without a head, & so not capable of receiving it.

hold an estate for a
CASE (1600), Duke, 139.

See, further, CHARITIES, Vol. VIII., p. 369.

1031. By churchwardens or overseers—Under Poor Relief Act, 1819 (c. 12)—Power of any one of them to take possession—Without concurrence of rest.]—Where lands are vested in churchwardens & overseers of a parish as a *quasi* corpn., under the above Act, s. 17, & the interests of the parish require possession of land to be taken, or similar acts done, any one of the churchwardens or overseers may do it without the concurrence of the rest.—GANVILL v. UTTING (1845), 9 Jur. 1081.

See, further, CHARITIES, Vol. VIII., p. 370.

1032. By local education authority—Authority in borough council—Education Act, 1902 (c. 42).]—*Re* LEEDS INSTITUTE OF SCIENCE, ART & LITERATURE & LEEDS CITY COUNCIL, [1909] 1 Ch. 500; 78 L. J. Ch. 321; 100 L. T. 468; 73 J. P. 201; 25 T. L. R. 297; 7 L. G. R. 912.

See, further, EDUCATION.

HAYES (1871), 2 V. R. (Law) 104.—AUS.

o. By college—Of lands required for college buildings—Under 26 Vict. c. 31.]—BECHER v. WOODS (1866), 16 C. P. 29.—CAN.

p. Holding beyond period allowed by statute—Rights of Crown.]—Where a

Sect. 6.—Ownership of property: Sub-sect. 4, A. & B.; sub-sect. 5, A.]

1033. Land of riparian owner—Rights & obligations of corporation purchasing.]—A co. which purchases the land of a riparian owner stands in the same situation as he did with respect to the water rights connected with that land.

A canal co. was established by certain Acts of Parliament. The Acts gave the canal proprietors rights as to taking water from streams within the distance of 2,000 yards, for the purpose of making & maintaining the canal. They purchased a mill on a stream, from which stream they had the right to take water. In this way they became riparian owners. As such they were entitled to the flow of water from brooks & streams running into the stream, subject only to the rights which other riparian owners at the upper part of the stream might lawfully exercise. The directors of a waterworks co. purchased a mill on the upper part of the same stream, & so became riparian as the owner of that mill had been. They not only used water for the purposes & in the manner allowed by law to every riparian owner, but collected it into a permanent reservoir for the supply of an adjacent town, & claimed, as their legal right, such a user of it:—*Held*: this use of the water by the directors of the waterworks co. was not a reasonable use of the stream, such as could justifiably be made by an upper riparian owner, & the canal proprietors, who were also riparian owners, whose flow of water was thereby affected, were entitled to come into equity, & obtain an injunction to restrain this use of the water.—*SWINDON WATERWORKS CO. v. WILTS & BERKS CANAL NAVIGATION CO.* (1875), L. R. 7 H. L. 697; 45 L. J. Ch. 638; 33 L. T. 513; 40 J. P. 117; 24 W. R. 284, H. L.

Annotations:—*Consd.* *Owen v. Davies*, [1874] W. N. 175; *Bonner v. G. W. Ry.* (1883), 24 Ch. D. 1; *Roberts v. Gwyrfai District Council*, [1899] 2 Ch. 608; *McCartney v. Londonderry & Lough Swilly Ry.*, [1904] A. C. 301. *Mentd.* *Ormerod v. Todmorden Mill Co.* (1883), 11 Q. B. D. 155.

1034. Copyholds.]—A corpn. cannot hold lands by copy of ct. roll, as the consequences would be to deprive the lord as well of suit & service as of his fines (*SHADWELL, V.-C.*).—*A.-G. v. LEWIN* (1837), 8 Sim. 366; *Coop. Pr. Cas.* 51; 6 L. J. Ch. 204; 1 J. P. 123; 1 Jur. 234; 59 E. R. 145.

Annotations:—*Refd.* *Gouldsworth v. Knights* (1843), 11 M. & W. 337; *Doe d. Edney v. Benham, Doe d. Edney v. Billett* (1845), 7 Q. B. 976; *Re Hackney Charities* (1864), 28 J. P. 692. *Mentd.* *Re Paddington Charities* (1837), 7 L. J. Ch. 44; *St. Nicholas, Deptford v. Sketchley* (1847), 8 Q. B. 394.

1035. Right of common—Power to prescribe for.]—(1) A corpn. may prescribe for common in gross for cattle levant & couchant within the town, but not for common in gross without number.

(2) A corpn. may make a grant or prescribe for the individual members.

(3) A corpn. does not lose its franchise by the change of its name.—*MEILLOR v. SPATEMAN* (1609), 1 Saund. 343; 85 E. R. 495; *sub nom.* *MILLER v. SPATEMAN*, 2 Keb. 570; *sub nom.* *MELLER v. STAPLES*, 1 Mod. Rep. 6.

Annotations:—*As to* (1) *Refd.* *Hardy v. Hollyday* (1765), 4 Term Rep. 718, n.; *R. v. Pasmore* (1789), 3 Term Rep. 199; *Johnson v. Barnes* (1872), L. R. 7 C. P. 592. *As to* (2) *Refd.* *R. v. Churchill* (1825), 4 B. & C. 750; *R. v. Joint Stock Cos.' Registrar* (1847), 10 Q. B. 839. *As to* (3) *Refd.* *Colchester Corpn. v. Seaber* (1766), 3

corpn. is empowered by statute to hold lands for a definite period, without any provision as to reverter, & holds beyond the period, only the Crown can take advantage of it.—*MCDIARMID v. HUGHES* (1889), 16 O. R. 570.

—CAN.

q. By foreign corporation—Unlicensed.]—*NORTH WYOMING LAND CO. v. BUTLER* (1915), 8 W. W. R. 340; 23 D. L. R. 274 25 Man. L. R. 288.—CAN.

Burr. 1866. *Generally, Refd.* *Parry v. Thomas* (1850), 5 Exch. 37; *Austin v. St. Matthew, Bethnal Green* (1874), 43 L. J. C. P. 100; *Goodman v. Saltash Corpn.* (1882), 7 App. Cas. 633; *McCartney v. Londonderry & Lough Swilly Ry.*, [1904] A. C. 301; *Bourne & Hollingsworth v. Marylebone B. C.* (1908), 72 J. P. 129. *Mentd.* *Weekly v. Wildman* (1698), 1 Ld. Raym. 405; *Ashby v. White* (1703), 2 Ld. Raym. 938; *A.-G. v. Gauntlett* (1829), 3 Y. & J. 93; *Bowen v. Jenkin* (1837), 6 Ad. & El. 911; *Richards v. Fry* (1838), 7 Ad. & El. 698; *Cox v. Glue* (1848), 5 C. B. 533; *Thruscott v. Martin* (1849), 18 L. J. Ex. 291; *Dunraven v. Llewellyn* (1850), 15 Q. B. 791; *Davies v. Williams* (1851), 16 Q. B. 546; *Embrey v. Owen* (1851), 6 Exch. 353; *Bonomi v. Backhouse* (1859), E. B. & E. 646; *Constable v. Nicholson* (1863), 14 C. B. N. S. 230; *Carr v. Lambert* (1865), 3 H. & C. 499; *Harrop v. Hirst* (1868), L. R. 4 Exch. 43; *Robertson v. Hartopp* (1889), 43 Ch. D. 484; *Hammerton v. Dysart*, [1916] 1 A. C. 57.

See, further, COMMONS, Vol. XI., pp. 12, 32, Nos. 101, 420, 421.

1036. Power to take short lease—Of foreshore—For maintenance of oyster fishery.]—*TRURO CORPN. v. ROWE*, No. 1027, *ante*.

Power to acquire land compulsorily.]—*See COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI.*

B. Property other than Land.

1037. Chattels generally.]—In the case of a sole corpn. or body politic, whether created by charter or prescription, as bishop, parson, vicar, master of a hospital, etc., no chattel, either in action or in possession, shall go in succession, but the exors. or administrators of the bishop, parson, etc., shall have them, but no more than the heir of a private man can have them; for succession in a body politic is inheritance in case of a body private. It is otherwise in a corpn. aggregate of many, as dean & chapter, mayor & commonalty, & the like, for there, in judgment of law they never die. Wherefore the Chamberlain of L. being a sole corpn., his successor could not have the recognisance acknowledged to his predecessor; yet the successor should have it, for in this case the corpn. of the Chamberlain was by custom, & the same custom which has created & made him a corpn. in succession as to this special purpose concerning orphanage, has enabled his successor to take such recognisances, obligations, etc., which were made to his predecessor, & such custom is grounded upon great reason, for the exors. or administrators of the Chamberlain ought not to intermeddle with such recognisances, obligations, etc., which by the custom, are taken in the corporate capacity of the Chamberlain, & not in his private capacity; but a bishop, parson, etc., or any sole corpn. which are bodies politic by prescription, cannot take a recognisance or obligation but only to their private, & not in their politic capacity, for there wants such custom to take a chattel in their politic or corporate capacity.—*FULWOOD'S CASE* (1591), 4 Co. Rep. 64 b; 76 E. R. 1031.

Annotations:—*Refd.* *Lyn v. Wyn* (1665), O. Bridg. 122; *Plummer v. Whitcot* (1676), 2 Mod. Rep. 119; *Rennell v. Lincoln* (1827), 7 B. & C. 113; *Mirehouse v. Rennell* (1832), 8 Bing. 490; *Graves v. Colby* (1838), 9 Ad. & El. 356; *Power v. Banks*, [1901] 2 Ch. 487. *Mentd.* *Hoe's Case* (1600), 5 Co. Rep. 89 b; *Lampet's Case* (1612), 10 Co. Rep. 46 b; *Foster v. Jackson* (1615), Hob. 52; *Duncombe v. Wingfield* (1617), Hob. 254; *Child v. Baylie* (1619), 2 Roll. Rep. 129; *Kent v. Steward & Scott* (1634), Cro. Car. 358; *Baker v. Wills* (1837), Cro. Car. 476; *Seaman v. Warman* (1675), Freem. K. B. 306; *Dighton v. Greenvil* (1690), 2 Vent. 321; *Gurnett v. Wood* (1739), 7 Mod. Rep. 302; *Goodtitle d. Gurnall v. Wood* (1740), Willes, 211; *Ryall v. Rowles* (1750), 1 Ves. Sen. 348; *Colonial Bank v. Whinney* (1885), 30 Ch. D. 261.

PART IX. SECT. 6, SUB-SECT. 4.—B.

r. Shares—In another corporation.]—*CANADA LIFE ASSURANCE CO. v. PEEL GENERAL MANUFACTURING CO.* (1879), 26 Gr. 477.—CAN.

1038. Franchise—For benefit of members.]—A franchise might be vested in a corp'n. for the benefit of the members of it, for the breach of which they might bring an action (POWELL, J.).—WINTON CORPN. v. WILKS (1705), 2 Ld. Raym. 1129; 1 Salk. 203; 92 E. R. 249.

Annotation :—*Refd.* London Chamberlain v. Compton (1826), 7 Dow. & Ry. K. B. 597.

1039. Debt—Bequeathed by will—May be recovered.]—Where a person gives a debt by his will to a corp'n., they may recover it in the ecclesiastical ct.—A.-G. v. PYLE (1738), 1 Atk. 435; 26 E. R. 278; *sub nom.* A.-G. v. MONTAGUE, West temp. Hard. 587, L. C.

Annotation :—*Mentd.* Bliscoe v. Jackson (1887), 35 Ch. D. 460.

1040. Customary fine on alienation of land.]—Bill held to lie in respect of landcheap, a customary fine on alienation of land, claimed by custom in the Borough of M.—MALDEN CORPN. v. COATES (1819), 4 Madd. 447; 56 E. R. 770.

1041. Easement—Necessity for deed—Agreement between railway companies as to running powers.]—In 1848 the E. L. Ry. Co. agreed with defts. that a station on defts.' line should be used equally by both cos., but should be subject to the bye-laws of defts., & that a committee of three from each board should be appointed to arrange the working of the traffic, etc.; that the cost & maintenance of the station & the working should be borne by the two cos. equally; that defts. should afford to the E. L. Co. facilities for access to the G. G. Docks, & that the E. L. Co. should give up a piece of land to defts.; that defts. should have the right of running with their engines, etc., on the E. L. line between G. G. & L., & that the E. L. Co. should have the same right over defts.' line between G. G. & N. H., paying in either case 66 per cent. of the gross receipts to the co. whose line was used: & that each co. should provide station accommodation for the other at N. H. & L. respectively for three years as therein mentioned. The E. L. line became vested in pl'tfs., as lessees for 999 years. Disputes arose between the cos., which ended in defts. preventing the pl'tfs. from running their engines, etc. on the line between G. G. & N. H., & giving them a formal notice to determine the agreement. On motion, an injunction was granted to restrain defts. from obstructing pl'tfs. running their engines, etc., over that part of the defts.' line mentioned in the agree-

could not be determined without the consent of both parties, & was not a mere license revocable at the will of either. (2) An agreement to grant an easement of this nature to a corporate body need not be by deed, & might be permanent, although it was to the co. only, & not to the co. & their successors.—GREAT NORTHERN RY. CO. v. MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO. (1851), 5 De G. & Sm. 138; 18 L. T. O. S. 344; 16 Jur. 146; 64 E. R. 1053.

Annotations :—*Consd.* Llanelly Ry. & Dock Co. v. L. & N. W. Ry. (1873), 8 Ch. App. 942. *Mentd.* Waring & Gillow v. Thompson (1912), 29 T. L. R. 154.

See, generally, EASEMENTS & PROFITS à PRENDRE; RAILWAYS & CANALS.

1042. By prescription—Right of common—For benefit of individual members.]—MELLOR v. SPATEMAN, No. 1035, *ante*.

1043. —.]—No corp'n. can prescribe which has not existed immemorially, & where a corp'n. does prescribe it must appear that it has so

existed.—PITTS v. GAINCE & FORESIGHT (1700), 1 Ld. Raym. 558; Holt, K. B. 12; 1 Salk. 10; 91 E. R. 10.

Annotations :—*Mentd.* Hooper v. Reeve (1817), 1 Moore, C. P. 407; Newcastle v. Clark (1818), 2 Moore, C. P. 666; Branscomb v. Brydges (1823), 2 Dow. & Ry. K. B. 256; Parker v. Bailey (1824), 4 Dow. & Ry. K. B. 215; Moreton v. Harden (1825), 4 B. & C. 223; Moore v. Robinson (1831), 1 L. J. K. B. 4; Hansworth v. Fowkes (1833), 2 L. J. K. B. 72; Muskett v. Hill & Tozer (1839), 5 Bing. N. C. 694; M'Mahon v. Lennard (1858), 6 H. L. Cas. 970.

1044. — Right to pew.]—JACOB v. DALLO (1704), 6 Mod. Rep. 230; 12 Mod. Rep. 233; 7 Mod. Rep. 8; 2 Ld. Raym. 755; 2 Salk. 551; 87 E. R. 981.

Annotations :—*Refd.* Chester's Case (1699), 5 Mod. Rep. 433; Byerley v. Windus (1826), 5 B. & C. 1. *Mentd.* Sandon v. Jervis (1858), 27 L. J. Q. B. 279.

— **Rights of common.]—***See* COMMONS & RIGHTS OF COMMON, Vol. XI., p. 32.

By custom—Rights of common.]—*See* COMMONS & RIGHTS OF COMMON, Vol. XI., p. 36.

1045. By corporation sole.]—Apart from statute or special custom personal property cannot be vested in a corp'n. sole. It will pass to the exors. or administrators & not to the successors of the corp'n. sole (COZENS-HARDY, J.).—POWER v. BANKS, [1901] 2 Ch. 487; 70 L. J. Ch. 700; 85 L. T. 376; 66 J. P. 21; 49 W. R. 679; 17 T. L. R. 621.

Annotations :—*Mentd.* *Re* Jenkins & Randall's Contract, [1903] 2 Ch. 362; *Re* Bourne, Bourne v. Bourne, [1906] 1 Ch. 113.

SUB-SECT. 5.—ALIENATION OF PROPERTY.

A. In General.

1046. General rule.]—SUTTON'S HOSPITAL CASE, No. 3, *ante*.

1047. —.]—A corp'n. consisting of a mayor & commonalty or of bailiffs, burgesses, etc., can by their common seal grant their lands, etc., for life or years or in fee so as to bind their successors.—SMITH v. BARRETT & CLIFFORD (1663), 1 Sid. 161; 82 E. R. 1032.

Annotation :—*Mentd.* Furlong v. Thornigold (1701), 12 Mod. Rep. 533.

1048. —.]—General right of corpns., of whatever nature, at law to alienate their lands, held in fee, subject as to ecclesiastical corpns. to the restraining statutes; & no

corpns., holding to charitable uses. *Qu.* : whether such a jurisdiction prevails in other cases upon an application to purposes clearly not corporate.—COLCHESTER CORPN. v. LOWTEN (1813), 1 Ves. & B. 226; 35 E. R. 89, L. C.

Annotations :—*Consd.* Davis v. Leicester Corp'n., [1894] 2 Ch. 208. *Refd.* A.-G. v. Wilson (1840), Cr. & Ph. 1. *Mentd.* Clifton Dartmouth Hardness Corp'n. v. Holdsworth (1844), 13 L. J. Ch. 178; Luke v. South Kensington Hotel Co. (1877), 7 Ch. D. 789.

Sale by corporation as trustee of charity.]—*See* CHARITIES, Vol. VIII., pp. 355–359.

Land compulsorily acquired—Purchase-money paid into court—Payment of income of interim investments to corporation sole.]—*See* COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., p. 243, No. 1044.

1049. Restrictions on alienation—13 Eliz. c. 10—Annuity.]—HUMPHREY v. POWEL (1614), 1 Brownl. 182; 123 E. R. 742.

Leases.]—*See* No. 1078, *post*.

PART IX. SECT. 6, SUB-SECT. 5.—A.

s. Whether bye-law by corporation authorising sale of its land is necessary

—*To make agreement to sell effective.]—*HOUGHTON LAND CORPN. v. INGHAM (1914), 28 W. L. R. 826; 18 D. L. R.

660, 682; 29 W. L. R. 522; 6 W. W. R. 1275; 24 Man. L. R. 497; 10 W. W. R. 1252.—CAN.

Sect. 6.—Ownership of property: Sub-sect. 5, B. (a), (b), (c) &

B. Leases.

(a) Power to grant.

1050. General rule.]—SUTTON'S HOSPITAL CASE, No. 3, ante.

1051. —.]—SMITH v. BARRETT & CLIFFORD, No. 1047, ante.

1052. —.]—Leases granted by deans & chapter for long terms of years not in conformity with the disabling & restraining stats. are not void but voidable only.

P., a lessee, being in possession, & the dean & chapter of C. being possessed of the reversion expectant upon his term, of the manor of W., in June, 1786 granted certain building leases for 99 years, from Michaelmas 1786, of certain premises, part of the manor, at several yearly rents of £14, payable to the dean & chapter & P. respectively. Rent was regularly paid to & accepted by successive deans down to 1856. In 1849, on the surrender by plffs. of the existing lease of the manor, the dean & chapter re-demised the manor for 21 years to plffs., "except & reserved out of this demise unto the dean & chapter & their successors, all such rents & sums of money & other right & interest, benefit & advantage which hath been or are or shall be reserved to them in & by any building leases for long terms of years of any part of the several lands & tenements hereby demised," etc. "to have hold & enjoy the site & courtlodge & all other

before excepted, & subject to the building leases":—*Held*: the demise to plffs. was subject to all leases *de facto* granted, & plffs. did not acquire any right to avoid the building lease of 1786.—**PENNINGTON v. CARDALE (1858), 3 H. & N. 656; 27 L. J. Ex. 438; 31 L. T. O. S. 301; 6 W. R. 837; 157 E. R. 631.**

Annotations:—Consd. Magdalen Hospital v. Knotts (1879), 4 App. Cas. 324. Refd. Hughes v. Palmer (1865), 19 C. B. N. S. 393.

1053. Churchwardens—Under Poor Relief Act, 1819 (c. 12), s. 17.]—Churchwardens only, cannot execute leases, as a body corporate, of parish lands, under the above Act, s. 17.

Where the occupier of a house paid rent to churchwardens, & the latter afterwards demised the house by lease for a term to A., with notice to the tenant that he must consider A. as his landlord:—*Held*: in an action for use & occupation, the tenant might impeach the lease, & show that the lessee had no title derived from the churchwardens.—**PHILLIPS v. PEARCE (1826), 5 B. & C. 433; 8 Dow. & Ry. K. B. 43; 108 E. R. 162.**

Annotation:—Distd. Doe d. Higgs v. Cockell (1834), 6 C. & P. 525.

1054. —.]—Where lands were vested in trustees for the benefit of a parish church:—

officers for the time being might recover possession & ejectment upon a demise in their names, under the above Act, s. 17.—**DOE d. JACKSON v. HILEY (1830), 10 B. & C. 885; 5 Man. & Ry. K. B. 706; 3 Man. & Ry. M. C. 105; 8 L. J. O. S. M. C. 105; 109 E. R. 677.**

Annotations:—Folld. Doe d. Higgs v. Terry (1835), 4 Ad. & El. 274. Distd. Re Paddington Charities (1837), 7 L. J. Ch. 44. Consd. A.-G. v. Lewin (1837), Coop. Pr. Cas. 51; Allason v. Stark (1838), 9 Ad. & El. 255; Alderman v. Neate (1839), 4 M. & W. 713; Gouldsworth v. Knights (1843), 11 M. & W. 337; Rumball v. Munt (1846), 8 Q. B. 382; St. Nicholas, Deptford v. Sketohley (1847), 8 Q. B. 394. Refd. Re Stratford Bridge Improvement Act, Ex p. Annesley (1836), 2 Y. & C. Ex. 350; Doe d. Robinson v.

Hird (1843), 1 L. T. O. S. 58; A.-G. v. Stephens (1855), 1 Jur. N. S. 1039; Re Hackney Charities (1864), 4 New Rep. 530; Haigh v. West, [1893] 2 Q. B. 19.

1055. —.]—In ejectment on the demise of the churchwardens & overseers of a parish, laid after the passing of the above Act, of which s. 17 vests all real property belonging to the parish in the churchwardens & overseers in succession, as a corpn., the lessors of pltf. proved that deft., ever since the passing of the Act, & for many years before, had paid rent to the churchwardens of the parish for the time being, & that the late churchwardens & overseers, who came into office after the statute passed, had given him notice to quit. Deft. produced a lease for years, by T. & J., therein described as churchwardens of the parish, to W., made before the Act, in consideration of the surrender of a former lease; & also a lease for a term of years, yet unexpired, made before the statute, by M. & C., described as churchwardens

tive, through whom deft. claimed, in consideration of the surrender of the lease first mentioned. In the last-mentioned lease the premises were described as belonging to the parish church, & the rent was reserved payable to the churchwardens & their successors. On a special case, stating these facts:—*Held*: the property appeared to be parish property; the leases passed no legal interest; & the property, since the Act, was in the churchwardens & overseers in succession, who were entitled to treat deft. as tenant from year to year, & to recover the premises upon giving notice to quit. *Distd. Doe d. Higgs v. Cockell (1834), 6 C. & P. 525.*

Ad. & El. 274; 1 Har. & W. 547; 5 Nev. & M. K. B. 556; 3 Nev. & M. M. C. 385; 5 L. J. M. C. 27; 111 E. R. 790.

Annotations:—Folld. Doe d. Hobbs v. Cockell (1836), 4 Ad. & El. 478. Distd. Allason v. Stark (1838), 9 Ad. & El. 255. Apld. Rumball v. Munt (1846), 8 Q. B. 382. Consd. St. Nicholas, Deptford v. Sketohley (1847), 8 Q. B. 394. Refd. Doe d. Robinson v. Hird (1843), 1 L. T. O. S. 58; Haigh v. West, [1893] 2 Q. B. 19. Mentd Graves v. Colby (1838), 9 Ad. & El. 356.

1056. —.]—Effect of consent of vicar & majority of parish.]—In ejectment by churchwardens & overseers, on demises laid after the above Act, it appeared that defts., before & since the Act, had paid rent to the successive churchwardens, & that the late churchwardens & overseers, appointed since the Act, had given a proper notice to quit. Defts. produced a lease, made before the statute, for 59 years, to parties under whom they claimed, purporting to be made with the consent of the vicar, the majority of the aldermen & burgesses of the borough of R. & of others the inhabitants of the parish, whose names were subscribed to a memorandum on the back of the lease expressing such consent. The churchwardens were the demising parties, & the rent was made payable to them & their successors for the time being. The premises were described as

case stating these facts:—*Held*: the consent expressed as above, the premises must be taken to have been parish property, demised by the churchwardens as such: & consequently the lease passed no legal interest in the term, & the present churchwardens & overseers might treat the lessees as tenants from year to year.—**DOE d. HOBBS v. COCKELL (1836), 4 Ad. & El. 478; 111 E. R. 866; sub nom. DOE d. HIGGS v. COCKELL, 6 Nev. & M. K. B. 179; 3 Nev. & M. M. C. 581; 5 L. J. M. C. 81.**

Annotation:—Refd. St. Nicholas, Deptford v. Sketohley (1847), 8 Q. B. 394.

PART IX. SECT. 6, SUB-SECT. 5.—
B. (a).

1050 i. General rule.]—A lease or

agreement for a lease by a corpn. in excess of the statutory powers conferred upon it is wholly void.—**SIMPSON**

v. DUNEDIN DRILL-SHED COMRS. (1885), 3 N. Z. L. R. 402.—N.Z.

Charitable corporation.]—See CHARITIES, Vol. VIII., pp. 362, 363.

Restrictions on—18 Eliz. c. 10.]—See No. 1049, ante, No. 1078, post.

(b) *Parties and Consents.*

See, generally, DEEDS & OTHER INSTRUMENTS; LANDLORD & TENANT.

1057. Parties—Corporation—Not members thereof.]—A. & B., lessors, brought an action against the lessee, for breach of a covenant to repair in an indenture of lease made between D., since deceased, therein described as master, & C. D., & two other persons since deceased, therein named & described as governors, of a certain hospital, & deft. The demise was by the “master & governors,” & the covenants to & by the lessors, were respectively to & for the “master & governors & their successors”: “in witness whereof the master & governors have hereunto affixed their common seal.” One seal was affixed as the common seal of the lessors, none of whom signed the indenture; & the execution by deft. was under his hand & seal. Deft. pleaded that the indenture was not signed by the lessors or their agent, nor was there any demise so signed:—*Held*: (1) the seal affixed on the lessors’ part was not the seal, & the deed was not the deed of the individual lessors. (2) The want of execution by them was not, under the circumstances stated on the record, such a failure of consideration as to be an answer to the action. (3) Deft. was entitled to judgment, because it appeared by the record that the demise was by a corpn., & the ct. could not judicially notice the fact, which was admitted, that no such corpn. existed.

Qu.: whether Stat. of Frauds, s. 1, applies to demises under seal.—*COOCH v. GOODMAN* (1842), 2 Q. B. 580; 2 Gal. & Dav. 159; 11 L. J. Q. B. 225; 6 Jur. 779; 114 E. R. 228.

Annotations:—*As to* (2) *Reid*. *Doe d. Marlow v. Wiggins* (1843), 4 Q. B. 367; *Pitman v. Woodbury* (1848), 3 Exch. 4; *Doe d. Landsell v. Gower* (1851), 17 Q. B. 589; *Wheatley v. Boyd* (1851), 7 Exch. 20. *Generally, Reid*. *Maugham v. Sharpe* (1864), 17 C. B. N. S. 443. *Mentd*. *Morgan v. Pike* (1854), 14 C. B. 473.

Whether seisin of property in corporation or in members, *see sub-sect. 1, ante*.

— **Misdescription of—Mistake in name of corporation.]—See Part I., Sect. 4, sub-sect. 5, B., ante.**

Consent—Of charity commissioners.]—See CHARITIES, Vol. VIII., pp. 360, 361, Nos. 1577, 1598.

See, generally, DEEDS & OTHER INSTRUMENTS; LANDLORD & TENANT.

1058. Lease by churchwardens & overseers—Signed by one overseer only—Without authority or assent of other overseers.]—In ejectment for parish lands by the churchwardens & overseers of P. it became necessary to show a lease in writing in order to defeat the operation of Real Property Limitation Act, 1833 (c. 27), s. 8, & a document not under seal dated after Poor Relief Act, 1819 (c. 12), was put in, by which the churchwardens & overseers of P. professed to let the lands in question. The document, if a lease, was within the exception in the Stat. of Frauds; but it was signed by one of the overseers only & by the assistant overseer. The overseer did not profess to sign for himself & the other parish officers:—*Held*: if the signing by one of the parish officers

without a statement that he did so for himself & the others would have been good if the others had given authority to the one overseer to act for them, or if he had in fact acted for them & they had subsequently assented to his having so acted, the document could not be considered a lease in writing by the churchwardens & overseers without an admission or evidence of such authority or assent.—*DOE d. LANSDELL v. GOWER* (1851), 17 Q. B. 589; 21 L. J. Q. B. 57; 15 J. P. 816; 16 Jur. 100; 117 E. R. 1406; *sub nom.* *DOE d. LUNSDALL v. GOWER*, 18 L. T. O. S. 135.

Annotation:—*Reid*. *Hodgson & Harland v. Hooper* (1860), 6 Jur. N. S. 911.

(d) *Sealing.*

See, generally, DEEDS & OTHER INSTRUMENTS; LANDLORD & TENANT.

1059. Necessity for—Agreement for lease.]—The signing of any contract for leasing by the master & fellows of the college, unless under the college seal, not binding on the college.—TAYLOR v. DULWICH HOSPITAL (1720), 1 P. Wms. 655; 2 Eq. Cas. Abr. 198, pl. 2; 24 E. R. 556.

Annotations:—*Consd.* *Wilmot v. Coventry Corpn.* (1835), 1 Y. & C. Ex. 518. *Reid*. *Ludlow Corpn. v. Charlton* (1840), 6 M. & W. 815. *Mentd.* *Watson v. Hemsworth Hospital* (1807), 14 Ves. 324; *Mill v. Hawker* (1874), L. R. 9 Exch. 309.

1060. —.]—WINNE v. BAMPTON (1747), 3 Atk. 473; 26 E. R. 1072.

Annotation:—*Consd.* *Wilmot v. Coventry Corpn.* (1835), 1 Y. & C. Ex. 518.

1061. —.]—The lessors of pltf. being a corpn. could only make a lease by deed under the corpn. seal (LORD KENYON).—FURLEY d. CANTERBURY CORPN. v. WOOD (1794), 1 Esp. 197, N. P.

Annotations:—*Mentd.* *Doe d. Hall v. Benson* (1821), 4 B. & Ald. 588; *Den d. Peters v. Hopkinson* (1823), 3 Dow. & Ry. K. B. 507.

1062. — Lease of tolls.]—Where a corpn. by a verbal agreement with a pauper leased to him the tolls of a market for above £10 a year:—*Held*: he could not gain a settlement thereby, as no interest could pass from a corpn. but under their seal: therefore he had no more than a mere licence to collect the toll.—R. v. CHIPPING NORTON (1804), 5 East, 239; 1 Smith, K. B. 502; 102 E. R. 1061.

Annotation:—*Consd.* *Stafford Corpn. v. Till* (1827), 4 Bing. 75.

1063. — —.]—Where five persons, as members of a managing committee of a corpn. who were proprietors of a bridge & the tolls thereof, demised the toll-house & tolls to a pauper, for one year, reserving a rent to the corpn. & a power of re-entry, but the demise was not under the corpn. seal, but only under the seals of the five individual members:—*Held*: the pauper did not gain a settlement by occupying the toll-house & tolls above 40 days, & his having paid rent for the same made no difference, the annual value of the toll-house without the tolls not exceeding £5.—R. v. NORTH DUFFIELD (INHABITANTS) (1814), 3 M. & S. 247; 105 E. R. 602.

Annotation:—*Consd.* *Stafford Corpn. v. Till* (1827), 12 Moore, C. P. 260.

1064. — —.]—KIDDERMINSTER CORPN. v. HARDWICK, No. 1163, post.

Agreement for renewal.]—See Nos. 1076, 1143, post.

—.]—See, generally, Part I., Sect. 5, sub-sect. 2, ante.

— As regards contracts.]—See Part X., Sect. 2, post.

PART IX. SECT. 6, SUB-SECT. 5.—
B. (d).

1059 i. Necessity for—Agreement for lease.]—A statute empowered a corpn. to make leases of the corporate pro-

perty, under their common seal, for a certain term in possession, & at the highest rent; & provided that all leases made in any other manner should be null & void:—*Held*: the statute did not preclude them from entering

into an agreement for a lease, provided it was without delay carried into effect by the execution of leases in compliance with the statute.—*STEVENS'S HOSPITAL, DUBLIN v. DYAS* (1863), 15 L. Ch. R. 405; 15 Ir. Jur. 411.—*IR.*

Sect. 6.—Ownership of property: Sub-sect. 5, B. (d), (e), (f), (g) & (h), C. & D.; sub-sect. 6, A., B., C., D., E. & F.]

1065. Affixing of seal—By majority of chapter—Resident at time.]—HASCARD v. SOMANY, No. 797, ante.

].—See, generally, Part I., Sect. 5, sub-sect. 3, ante.

Absence of seal—Tenant in occupation.]—See Nos. 1067–1069, 1071, 1169, post.

(e) Rent.

1066. Reservation of—To “treasurer or trustees”—Power to reserve rent to “treasurer of trustees.”]—PEARSE v. MORRICE, No. 959, ante.

As regards property held by corporation as trustees of charity.]—See CHARITIES, Vol. VIII., p. 362.

(f) Tenant in Occupation under Informal Instrument.

1067. Whether implied tenancy from year to year created—Absence of seal.]—By indenture between B. & C., bailiffs, & D., E., & F., aldermen, with the assent of the burgesses of the borough of M. of the one part, & S. of the other part, the bailiffs, aldermen, & burgesses demised lands to S. for years, to be holden of the bailiffs, aldermen, & burgesses, & the deed was executed by B. C. D. E. & F., but not sealed with the corpn. seal. S. paid rent to the bailiffs as chief officers of the borough:—*Held*: their servant might make cognisance for taking a distress under a demise by the corpn. notwithstanding a notice had been given by the aldermen, one of whom was a party to the indenture, to pay the rent to them, for the payment of rent to the bailiffs admitted a tenancy from year to year under the corpn.—WOOD v. TATE (1806), 2 Bos. & P. N. R. 247; 127 E. R. 621.

Annotations:—Consd. R. v. North Duffield (1814), 3 M. & S. 247; Stafford Corpn. v. Till (1827), 4 Bing. 75. Follid. Eccl. Comrs. v. Merrall (1869), L. R. 4 Exch. 162. Consd. Kidderminster Corpn. v. Hardwick (1873), L. R. 9 Exch. 13. Mentd. Malcomson v. O’Dea (1863), 10 H. L. Cas. 593.

1068. ——— Right to sue for use & occupation.]—If it be necessary to proceed upon a demise in the case of a corpn. it must be by deed, but where there has been use & occupation the contract may be contained in letters.—SOUTHWARK BRIDGE CO. v. SILLS, RAMSAY & SILLS (1826), 2 C. & P. 371, N. P.

Annotation:—Refd. Beverley v. Lincoln Gas Light & Coke Co. (1837), 6 Ad. & El. 829.

].—A corpn. aggregate & occupation

the tenant has held premises under them & paid rent, even though the permission to use & occupy the land was not given under deed.—STAFFORD CORPN. v. TILL (1827), 4 Bing. 75; 12 Moore, C. P. 260; 5 L. J. O. S. C. P. 77; 130 E. R. 697.

Annotations:—Appld. Beverley v. Lincoln Gas Light & Coke Co. (1837), 6 Ad. & El. 829. Consd. London & Birmingham Ry. v. Winter (1840), 1 Cr. & Ph. 57; Clarke v. Cuckfield Union Grdns. (1852), Bail Ct. Cas. 81. Refd. East

PART IX. SECT. 6, SUB-SECT. 5.— B. (f).

1068 i. Whether implied tenancy from year to year created—Absence of seal—Right to sue for use & occupation.]—Deft. corpn., which had occupied premises under an oral agreement & paid rent for a year, continued in possession after the year & paid rent for the time actually in possession:—*Held*: the corpn. were not liable as tenants from year to year but only for use & occupation.—GARLAND MANUFACTURING CO. v. NORTHUMBERLAND PAPER & ELECTRIC CO. (1899), 31 O. R. 40.—CAN.

t. Agreement for lease—Absence of seal—Part performance.]—Where a corpn. makes an agreement for a lease not under seal & the lessee enters into possession & pays rent, there is sufficient part performance to make the agreement binding.—SIMPSON v. DUNEDIN DRILL-SHED COMRS. (1885), 3 N. Z. L. R. 402.—N.Z.

a. Absence of seal—Liability of lessee for rent.]—An instrument was executed by the agent of an incorporated bank without the corporate seal under which the lessees entered & occupied, but before the expiration of

London Waterworks Co. v. Bailey (1827), 4 Bing. 283; Fishmongers’ Co. v. Robertson (1843), 5 Man. & G. 131; Finlay v. Bristol & Exeter Ry. (1852), 7 Exch. 409; Lowe v. L. & N. W. Ry. (1852), 18 Q. B. 632; Eccl. Comrs. v. Merrall (1869), L. R. 4 Exch. 162; Kidderminster Corpn. v. Hardwick (1873), L. R. 9 Exch. 13. Mentd. Doe d. Pennington v. Taniero (1848), 12 Q. B. 998; Malcomson v. O’Dea (1863), 10 H. L. Cas. 593.

1070. ———.]—DOE d. PENNINGTON v. TANIÈRE, No. 1169, post.

1071. ——— Right to sue for breach of covenant to repair.]—Resps., who are a corpn., by a lease not under their corporate seal, let applt. into possession of premises, & he occupied & paid the reserved rent during the term, & held over after its expiration for two years at the same rent, when the tenancy was determined by notice to quit given by resps. By one of the terms of the lease the tenant was to put, & keep, & deliver up the premises in tenantable repair. In an action by resps. for dilapidations in breach of the applt.’s covenant to repair:—*Held*: although the lease was void *ab origine* for want of the corporate seal, yet applt. having occupied & paid rent under it, & having held over at the same rent, an implied tenancy from year to year was created, to which the covenant to repair was a term in the agreement that was applicable, & resps. were entitled to maintain the action.—ECCLESIASTICAL COMRS. v. MERRALL (1869), L. R. 4 Exch. 162; 38 L. J. Ex. 93; *sub nom.* MERRALL v. ECCLESIASTICAL COMRS. FOR ENGLAND, 20 L. T. 573; 17 W. R. 676.

Annotations:—Refd. Kidderminster Corpn. v. Hardwick (1873), L. R. 9 Exch. 13; Melbourne Banking Corpn. v. Brougham (1878), 4 App. Cas. 156.

1072. ——— Lease not in accordance with statutory leasing powers.]—DOE d. PENNINGTON v. TANIÈRE, No. 1169, post.

1073. Lease of tolls—Absence of seal—Right to sue for use & occupation.]—A corpn. aggregate may maintain *assumpsit* for the use & occupation of tolls, although they did not grant the tolls to the occupier by any instrument under their common seal.—CARMARTHEN CORPN. v. LEWIS (1834), 6 C. & P. 608, N. P.

Annotations:—Refd. Fishmongers’ Co. v. Robertson (1843), 5 Man. & G. 131; Finlay v. Bristol & Exeter Ry. (1852), 7 Exch. 409.

1074. Agreement for lease—Absence of seal—Specific performance decreed.]—CROOK v. SEAFORD CORPN., No. 1207, post.

(g) Renewal.

See, generally, LANDLORD & TENANT.

1075. Whether corporation bound to renew—On two lives falling in—Covenant to renew on one life falling in.]—Under a covenant in a corporation lease to renew, upon the falling in of one life for ever there is no equity to extend it to the case where two are suffered to fall in, although a compensation is offered.—BAYLEY v. LEOMINSTER CORPN. (1792), 3 Bro. C. C. 529; 1 Ves. 476; 29 E. R. 683, L. C.

Annotations:—Mentd. Eaton v. Lyon (1798), 3 Ves. 690; Maxwell v. Ward (1824), M’Cle. 458.

the term demised, the premises were destroyed by fire, & the lessees omitted to give notice of abandonment:—*Held*: lessees liable for rent during the residue of the term.—FINLAYSON v. ELLIOTT (1874), 21 Gr. 325.—CAN.

PART IX. SECT. 6, SUB-SECT. 5.— B. (g).

b. Whether corporation bound to renew.]—DROGHEDA CORPN. v. HOLMES (1855), 5 H. L. Cas. 460; 10 E. R. 979.—IR.

c. ———.]—M’SWEENEY v. DRAPES, [1905] 1 I. R. 186, 199.—IR.

By charitable corporation.]—See CHARITIES, Vol. VIII., pp. 361, 362.

1076. Agreement for renewal—Absence of seal—Specific performance refused—Unless expenditure incurred in anticipation of renewal.]—An agreement was entered in the books of Dulwich College for renewal of a lease at an increased rent with usual covenants by the college & a lease was prepared by the Master containing new covenants. The Master refused to set the corporate seal to any other lease but this, & pltf.'s solicitor prepared a second indenture which he sent to the college but which was not sealed. Pltf. had incurred expenditure in repairs of the premises in full confidence of a renewal of the lease, as had been customary, & rent at the increased rate had been paid & received by the college :—*Held* : specific performance of the agreement would be decreed.—**MAXWELL v. DULWICH COLLEGE** (1783), 4 L. J. Ch. 138.

Annotation :—**Consd.** *Carter v. Ely* (1835), 7 Sim. 211.

1077. ———— .]—**OXFORD CORPN. v. CROW**, No. 1143, *post*.

Necessity for contracts to be under seal, *see* Part X., Sect. 2, *post*.

(h) Avoidance.

1078. Under 13 Eliz. c. 10—Lease for less than twenty-one years—No rent reserved.]—In *ejectione firmæ* pltf. declared upon a lease made by the wardens & fellows of All Souls College. It was found by special verdict, that O. warden of the college, & the fellows, etc., leased to pltf., to have & to hold from the feast of the Annunciation next following to the end of twenty years, & made a letter of attorney to one to enter into the manor, & to seal & deliver the deed of the lease in their names to pltf., who by force thereof entered into part of the demised premises, & there did seal & deliver the same, etc. But it was not found that any rent was reserved thereupon, & if this lease were good, then the jury found for pltf., but if not, then for deft.

If such a lease should be void, then great mischief would fall to the college, for whose benefit 13 Eliz. c. 10 was made, for if such lease be made rendering a small rent, then if before the defect be found the rent was in arrear, the college could not have remedy for the rent (**ANDERSON, J.**). Such a lessee might have an action of trespass against a stranger who entereth upon the land, which proves that the lease is not void, but voidable (**PERIAM, J.**).—**CARTER & CLAYCOLES CASE** (1590), 1 Leon. 306 ; 74 E. R. 278.

Compare No. 1049, *ante*.

1079. Lease by one joint holder of office to other joint holder.]—If an aggregate corpn. consists of two bailiffs & burgesses, etc., the two bailiffs make but one office, & if a lease is made by one of them in his political capacity to the other it is void.—**SALTER v. GROSVENOR** (1724), 8 Mod. Rep. 303 ; 88 E. R. 216.

1080. Dissolution of corporation.]—**A.-G. v. GOWER (LORD)** (1740), 9 Mod. Rep. 224 ; Barn. Ch. 145 ; 88 E. R. 412, L. C.

Annotations :—**Refd.** **A.-G. v. Wilson** (1812), 18 Ves. 518. **Mentd.** **A.-G. v. Magwood** (1811), 18 Ves. 315 ; **Brine v. Featherstone** (1813), 4 Taunt. 869.

Dissolution of corporations generally, *see* Part XVI., *post*.

1081. Incorporating charter declared void.]—**PIPPARD v. DROGHEDA CORPN.**, No. 324, *ante*.

Lease by corporation as trustee of charity.]—*See* CHARITIES, Vol. VIII., pp. 360–363.

C. Charges.

Power of statutory corporation to borrow on mortgage of undertaking.]—*See* Nos. 957, 958, *ante*.

See No. 1087, *post*.

1082. Right to charge future property—Under power to charge whole or any part of property.]—Under a power to charge the whole or any part of its property a corpn. can effectually charge its future property.—**ANDERSON v. BUTLER'S WHARF CO., LTD.** (1879), 48 L. J. Ch. 824.

Annotation :—**Mentd.** **Shillito v. Biggart**, [1903] 1 K. B. 683.

D. Easements.

See, generally, EASEMENTS & PROFITS À PRENDRE.

1083. Right of support—Acquisition against ecclesiastical corporation—Prescription Act, 1832 (c. 71), s. 2.]—In the case of two ancient adjoining buildings the owner of the one can claim an easement of support from the other, & the acquisition under sect. 2 of the above Act, of such an easement is not affected by the circumstance of the servient tenement being property belonging to an ecclesiastical corpn.—**LEMAITRE v. DAVIS** (1881), 19 Ch. D. 281 ; 51 L. J. Ch. 173 ; 46 L. T. 407 ; 46 J. P. 324 ; 30 W. R. 360.

Annotations :—**Consd.** **Simpson v. Godmanchester Corpn.** (1895), 64 L. J. Ch. 837. **Refd.** **Tone v. Preston** (1883), 24 Ch. D. 739 ; **Selby v. Whitbread**, [1917] 1 K. B. 736.

1084. Right to divert river over fields—Acquisition against corporation with public duties to perform—Duty to maintain & repair banks of river.]—**GREYKE v. HATFIELD CHASE LEVEL CORPN.** (1896), 12 T. L. R. 383 ; 40 Sol. Jo. 531.

Grant of easement over land compulsorily acquired.]—*See* COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., pp. 118, 119, 121, 131, Nos. 117–123, 139, 197.

Grant of easement to corporation.]—*See* No. 1041, *ante*.

SUB-SECT. 6.—LIABILITIES AFFECTING PROPERTY.

A. Estate Duty.

See ESTATE AND OTHER DEATH DUTIES.

B. Legacy Duty.

See ESTATE AND OTHER DEATH DUTIES.

C. Succession Duty.

See ESTATE AND OTHER DEATH DUTIES.

D. Corporation Duty.

See REVENUE.

E. Income Tax.

See COMPANIES ; INCOME TAX.

F. Rates.

See LITERARY AND SCIENTIFIC INSTITUTIONS. RATES AND RATING.

Sect. 6.—Ownership of property: Sub-sect. 6, G., H., I. & J. Sect. 7. Part X. Sect. 1: Sub-sects. 1, 2 & 3.]

G. Inhabited House Duty.

See INHABITED HOUSE DUTY.

H. Land Tax.

See LAND TAX.

I. Stamp Duty.

See REVENUE.

J. Miscellaneous Duties and Liabilities.

See HIGHWAYS, STREETS AND BRIDGES; PUBLIC HEALTH AND LOCAL ADMINISTRATION; REVENUE.

SECT. 7.—LIABILITY AS PRINCIPAL UNDER WORKMEN'S COMPENSATION ACTS.

See MASTER & SERVANT.

Part X.—Contracts.

SECT. 1.—POWER OF CORPORATION TO CONTRACT.

SUB-SECT. 1.—IN GENERAL.

Whether contract ultra vires.]—See Nos. 922–926, 928, 299, 932, 937, 938, ante.

1085. General rule.]—Generally speaking corpsns. are as much bound by their contracts as individuals, where the seal is affixed in a manner binding on them; and where a corpns. is created by Act of Parliament for particular purposes, with special powers, their contract will bind them unless it appears by the express provisions of the stat. creating the corpns., or by necessary & reasonable inference from its enactments, that the contract was *ultra vires*, or that the legislature meant that such a contract should not be made.—*BATEMAN v. ASHTON-UNDER-LYNE CORPN.*, No. 926, *ante*.

1086. Churchwardens & overseers—Whether power to bind successors—Personal liability.]—Churchwardens and overseers, having no common seal, cannot bind themselves as a corporate body.—*FURNIVALL v. COOMBS*, No. 20, *ante*.

Continuity & succession generally, *see* Part I., Sect. 3, *ante*.

1087. Contract without specific statutory authority—Implied covenant to repay in mortgage.]—A railway co. which by their Acts of Parliament were empowered to borrow money on mtgee., borrowed money of H. By the mortgage deed, which was in the appointed form, the co., in consideration of the sum lent, assigned to H. the undertaking, & all the estate, etc., of the co. therein, to hold to H. until the sum, with interest, was satisfied; & added the words, "the principal sum to be paid on Jan. 1, 1851." The co. did not pay it when due. By the local Act applicable to the case, 7 & 8 Vict. c. lxxxv., it was provided in s. 49, that the co. might fix the period for the repayment of the principal sum & interest; & in such case they were to cause the period to be inserted in the mortgage deed, on the expiration of which period the principal & interest should be paid to the party entitled to the mtgee. Sect. 52 stated, that if the principal & interest were not

paid within six months after the same had become payable, & after demand thereof in writing, the mtgee. might sue for the same, or if his debt amount to £5,000 he might alone, & if not of that amount, he might, in conjunction with other creditors whose debts with his amount to £10,000, require the appointment of a receiver:—*Held*: (1) the mortgage deed on its face imported a covenant by the co. to pay the money; (2) where a corpns. was created for certain purposes, with power to sue & be sued, & to borrow money for the completion of those purposes, & to secure the repayment of such money by an instrument, which on its face imports a covenant for repayment, if money be so borrowed & so secured, & not duly repaid, an action might be maintained against the co. on a breach of the covenant, although there were no specific statutory provisions enabling the co. to bind themselves by such covenant, & giving a right of action against them; consequently, H. might maintain an action against the co. on the mortgage deed, although he had not made any demand in writing. (3) Sect. 52 of the local Act, in accordance with Companies Clauses Consolidation Act, 1845 (c. 16), s. 52, did not give a right of action for the principal money, but only recognised it as already existing, & provided that when there had been a default in payment for six months & a demand in writing, the lender might either sue or have a receiver appointed.—*EASTERN UNION RY. CO. v. HART* (1852), 8 Exch. 116; 22 L. J. Ex. 20; 19 L. T. O. S. 314; 17 Jur. 89, Ex. Ch.

Annotations:—As to (1) Consd. Coleman v. Llanelly Ry. & Dock Co. (1867), 17 L. T. 86. As to (2) Reid. Bolchow v. Herne Bay Pier Co. (1852), 1 E. & B. 74. Generally, Reid. Attree v. Howe (1878), 9 Ch. D. 337; Re Parker, Wignall v. Park, [1891] 1 Ch. 682.

1088. Bond on stay of proceedings—Removal of action from county court.]—A corpns. on removing a cause by *certiorari* from a county ct. may execute a bond with sureties for the costs, & the registrar is bound to receive it.—*Re YOUNG v. BROMPTON, ETC., WATERWORKS CO.* (1861), 1 B. & S. 675; 31 L. J. Q. B. 14; 26 J. P. 118; 8 Jur. N. S. 176;

PART X. SECT. 1, SUB-SECT. 1.

1085 i. General rule.]—A corpns. is fully capable of binding itself by any contract, except when the statutes by which it is created or regulated expressly or by necessary implication prohibit such contract.

Objection cannot be made on the *ultra vires* doctrine to a contract by a co. who wish to alter one of the branches of its rail-road, & are about to apply to Parliament for authority to do so, engaging to purchase land from a

neighbouring proprietor if they should obtain their Act.—*SCOTTISH NORTH-EASTERN RY. CO. v. STEWART* (1859), 3 Macq. 382.—*SCOT.*

m. Agreements contrary to public policy—To abstain from exercising franchises.]—An agreement by a corpns. to abstain from exercising franchises granted for the promotion of the convenience of the public is invalid as being contrary to public policy & cannot be enforced by the courts.—*MONTREAL PARK & ISLAND RY. CO.*

v. CHATEAUGUAY & NORTHERN RY. CO. (1904), 35 S. C. R. 48.—*CAN.*

n. Contracts entered into before incorporation.]—The mere transfer by a committee of property held in trust for an institution before incorpn., to the corpns. after incorpn., does not render the latter liable upon contracts entered into with the governing body of the institution before incorpn.—*GUMMOW v. SWAN HILL DISTRICT HOSPITAL* (1872), 3 V. R. (Law) 251.—*AUS.*

121 E. R. 865; *sub nom.* R. v. KENT COUNTY COURT REGISTRAR, *Re* YOUNG v. BROMPTON, CHATHAM, ETC., WATERWORKS CO., 5 L. T. 310; *sub nom.* R. v. ROCHESTER COUNTY COURT REGISTRAR, 10 W. R. 57.

1089. Indenture of apprenticeship—Power of corporation to execute.]—A contract of apprenticeship is not invalid by reason of the fact that the master to whom the apprentice is bound is a corpn.—BURNLEY EQUITABLE CO-OPERATIVE & INDUSTRIAL SOCIETY v. CASSON, [1891] 1 Q. B. 75; 60 L. J. M. C. 59; 63 L. T. 652; 55 J. P. 166; 39 W. R. 124; 7 T. L. R. 41.

Power to borrow.]—See Part IX., Sect. 5, sub-sect. 2, B. (c); see, also, COMPANIES; LOCAL GOVERNMENT; PUBLIC HEALTH & LOCAL ADMINISTRATION.

Power to mortgage.]—See Nos. 957, 958, *ante*.

SUB-SECT. 2.—POWERS AND LIABILITIES OF INDIVIDUAL CORPORATORS.

1090. Contract with corporation—Not contract with individual corporators.]—It would be contrary to principle to hold that a contract with a corporation is equivalent to a contract with individual members of a corporation (LINDLEY, L.J.).—*Re* WEYMOUTH & CHANNEL ISLANDS STEAM PACKET CO., [1891] 1 Ch. 66; 60 L. J. Ch. 93; 63 L. T. 686; 39 W. R. 49; 7 T. L. R. 67; 2 Meg. 366. C. A.

Annotations:—*Re*ld. Welton v. Saffery, [1897] A. C. 299; Hong-Kong & China Gas Co. v. Glen, [1914] 1 Ch. 527.

Mentd. *Re* Wakefield Rolling Stock Co., [1892] 3 Ch. 165.

1091. Contract by majority—Churchwardens & overseers—Under Poor Relief Act, 1722 (c. 7)—Binding on remainder.]—Under the above Act, which enabled the churchwardens & overseers, with the consent of major part of the parishioners, to contract for the providing for the poor, it is not necessary that all the churchwardens & overseers should concur; the contract of a majority of them will bind the rest.—R. v. BEESTON (1789), 3 Term Rep. 592; 100 E. R. 750.

Annotations:—*Consd.* Blacket v. Blizzard (1829), 9 B. & C. 851. *Re*ld. Marsh v. Davies, Tebbutt & Evans (1848), 12 J. P. 297. *Mentd.* R. v. Westbury (1844), Dav. & Mer. 605.

—**Personal liability.]**—See No. 20, *ante*.

1092. Contract by single trustee under turnpike Act—On behalf of remainder—Valid.]—Any five or more trustees under a turnpike Act, being authorised to make turnpikes, with such suitable out-buildings & conveniences as they thought necessary on the intended line of road, the owner of the soil next adjoining a toll-house, erected in pursuance of the Act, contracted with one of the trustees on behalf of the rest to sink a well for the convenience of the toll-house, the expense to be borne by each party equally:—*Held*: (1) the sinking of the well was within the scope & authority of the trustees; (2) the contract entered into by one of them on behalf of the rest was valid; (3) the action to recover a moiety of the expense of the well was well brought in the name of the clerk of the trustees; (4) the consent of the trustees through the medium of one, that the well should be sunk, was a good consideration to support the action.—NEWMAN v. FLETCHER (1822), 1 Dow. & Ry. K. B. 202.

PART X. SECT. 1, SUB-SECT. 2.

a. Contract by majority—Absent or dissenting members not personally liable.]—It was enacted that the powers & authorities given to a corpn. might be exercised by a majority at a duly constituted meeting; & that all orders & proceedings of the majority should

have the same effect as if done by the whole corpn.:—*Held*: this did not make absent or dissenting members personally liable upon contracts entered into by a majority.—BOWER v. GRIFFITH (1868), 16 W. R. 540.—IR.

PART X. SECT. 1, SUB-SECT. 3.

p. Not evidence of contract—Resolution

1093. Acquiescence by some members of corporation—Variations in building contract—Rights of corporation not affected.]—Where a contract made with pltf., a builder, for erecting a workhouse, contained a clause authorising the guardians to make variations in the plan of the work during their progress without vacating the contract, the extra cost occasioned by such variations to be paid to pltf. by valuations, but no allowance for additional work, unless ordered in writing; pltf. made alterations & additions under the direction of the architects & with the approval of the acting guardians, but without a written order:—*Held*: such a suit could not be maintained. The acquiescence of some members of a corporate body cannot affect the rights of the body.—KIRK v. BROMLEY UNION GUARDIANS (1848), 2 Ph. 640; 3 New Mag. Cas. 20; 17 L. J. Ch. 127; 11 L. T. O. S. 429; 12 Jur. 85; 41 E. R. 1090, L. C.

Annotations:—*Consd.* Jackson v. North Wales Ry. (1848), 1 H. & Tw. 75. *Re*ld. Nixon v. Taff Vale Ry. (1848), 7 Hare. 136; Mid. G. W. Ry. of Ireland v. Johnson (1858), 8 H. L. Cas. 798; Russell v. Da Bandeira (1862), 13 C. B. N. S. 149; Hunt v. Wimbledon L. B. (1878), 3 C. P. D. 208. *Mentd.* Monckton v. A.-G. (1852), 19 L. T. O. S. 278; Padwick v. Hurst (1854), 23 L. J. Ch. 657; Ogden v. Fossick (1862), 4 De G. F. & J. 426; *Re* Brighton Club & Norfolk Hotel Co (1865), 35 Beav. 204; Crampton v. Varna Ry. (1872), 7 Ch. App. 562.

See, generally, BUILDING CONTRACTS, ENGINEERS & ARCHITECTS, Vol. VII., pp. 382–385.

1094. Promise by chairman—To see contractor paid—For work done for board—Liability of chairman.]—The words “Go on & do the work & I will see you paid,” may, according to surrounding circumstances, import either a primary or a collateral undertaking. Accordingly, when a contractor sought to make the chairman of a local board primarily liable upon an order, in those words, to construct certain drainage works which were in contemplation by the local board, it being evident that the reluctance of the promisee to do the work proceeded not from any doubt as to the solvency of the board, but from the difficulty of obtaining a formal contract with a public body:—*Held*: pltf. ought not to be non-suited. For although the materials with which the works were constructed had been ordered by the board of pltf. for that purpose, & supplied by him before the alleged contract with deft., & although pltf. constructed the works under the general superintendence of the surveyor to the board, & applied to the board for payment on their completion, yet there was evidence in support of a contract of primary liability, & the circumstances relied on by deft. were, at the most, evidence for the jury in support of an opposite contention.—LAKEMAN v. MOUNTSTEPHEN (1874), L. R. 7 H. L. 17; 43 L. J. Q. B. 188; 30 L. T. 437; 22 W. R. 617, H. L. *Annotations*:—*Mentd.* Wildes v. Dudlow (1874), L. R. 19 Eq. 198; Guild v. Conrad (1894), 63 L. J. Q. B. 721.

—*See, also*, Nos. 1203, 1204, *post*.

Liability on bills of exchange.]—See Sect. 6, *post*.

SUB-SECT. 3.—ENTRIES IN CORPORATION BOOKS.

1095. Not evidence of contract.]—Time is, to a great extent, of the essence of a contract entered into with an ecclesiastical corpn. Therefore, where A. agreed to take a concurrent lease of a

entered entered in the mayor & city clerk, is not evidence of a contract that will satisfy Stat. Frauds.—PONTON v. WINNIPEG CITY (1907), 17 Man. L. R. 496; 41 S. C. R. 18.—CAN.

Sect. 1.—Power of corporation to contract: Sub-sects. 3, 4 & 5. Sect. 2: Sub-sects. 1 & 2.]

dean & chapter & to pay the fine in Jan., but was not ready with the money in Mar. following, a bill filed by him for a specific performance was dismissed with costs. An entry in the books of a corp'n. of the terms of an agreement entered into by them does not bind them, although it is signed by a majority of the members.—**CARTER v. ELY (DEAN & CHAPTER)** (1834), 7 Sim. 211; 4 L. J. Ch. 132; 58 E. R. 817.

1096. —.]—The entry in the books of a corp'n., of an application to purchase lands, of the price of or charge for such lands, & of the receipt of a sum of money from the applt.:—**Held**: not evidence of a contract binding on the corp'n.—**LIVESEY v. LIVESEY** (1839), 9 L. J. Ch. 73.

Resolution of corporation—Not under seal.]—
See No. 980, ante.

SUB-SECT. 4.—FORMALITIES OF CONTRACT.

1097. Requisite to valid contract.]—**RIDLEY v. PLYMOUTH GRINDING & BAKING CO.**, No. 29, *ante*.

1098. —.]—A railway co. was incorporated by an Act of Parliament, one section of which enacted that the directors should have power to use the common seal on behalf of the co., & that all contracts relating to the affairs of the co., signed by three directors, in pursuance of a resolution of a ct. of directors, should be binding on the co. The following section enacted that the directors should have full power to employ all such managers, officers, agents, clerks, workmen, & servants as they should think proper. By a resolution of the board of directors, signed by their chairman, pltf. was appointed agent to negotiate with another railway for the lease of the line:—**Held**: the contract was not binding on the co., it not having been sealed, or executed with the required formalities.—**COPE v. THAMES HAVEN DOCK & RY. CO.** (1849), 3 Exch. 841; 6 Ry. & Can. Cas. 83; 18 L. J. Ex. 345; 154 E. R. 1085.
Annotations:—**Consd.** **Diggle v. London & Blackwall Ry.** (1850), 5 Exch. 442. **Mentd.** **R. v. M. S. & L. Ry.** (1854), 1 Jur. N. S. 419.

1099. —.]—**Re GENERAL PROVIDENT ASSURANCE CO., LTD.**, No. 1181, *post*.

See Nos. 1204, 1205, 1211, post.

SUB-SECT. 5.—MUTUALITY.

1100. Whether mutuality before condition performed.]—**FISHMONGERS' CO. v. ROBERTSON**, No. 1138, *post*.

1101. Whether action maintainable—Where no mutuality—Ratification of contract after breach.]—

q. Where power to contract by resolution entered on minutes.]—Where a corp'n. has power to contract by resolution, a resolution which is entered on the minutes & sealed with the seal of the corp'n., renders the sealing of a letter informing the other party of the resolution, a matter of form only & not of substance.—**BUTLER & MCLORD v. SASKATOON**, [1918] 1 W. W. R. 297; 11 Sask. L. R. 1; 38 D. L. R. 480.—**CAN.**

PART X. SECT. 1, SUB-SECT. 5.

r. Whether action maintainable—Where no mutuality.]—**HOUGHTON LAND CORPN. v. INGHAM** (1914), 28 W. L. R. 826; 18 D. L. R. 660, 682; 29 W. L. R. 522; 6 W. W. R. 1275; 24 Man. L. R. 497; 10 W. W. R. 1252.—**CAN.**

s. Unsealed contract—By trading

corporation—Not void for want of mutuality.]—A contract by a trading corp'n. to ship all goods consigned to them at V. by pltf.'s steamers, is not void for want of mutuality by reason of not being under the corporate seal.—**CANADIAN PACIFIC NAVIGATION CO. v. VICTORIA PACKING CO.** (1889), 3 B. C. R. 490.—**CAN.**

PART X. SECT. 2, SUB-SECT. 1.

t. General rule—In agreements relating to land.]—It is a general principle that a corp'n. aggregate cannot be bound by agreements relating to real property, except under seal, though there are cases where a corp'n. may be bound by a resolution of the governing body, even in case of a sale or purchase of land, as where the corp'n. has agreed by resolution to purchase

KIDDERMINSTER CORPN. v. HARDWICK, No. 1163, *post*.

1102. — Mutuality before seal affixed.]—**DARTFORD UNION GUARDIANS v. TRICKETT & SONS**, No. 1106, *post*.

1103. Rectification of mistake—Contract under seal.]—In 1914 a correspondence took place between pltf., who was a surveyor, & the clerk of the guardians of deft. union, with a view to pltf. acting as valuer for the guardians at an arbitration between them & the B. Union, arising out of the dissolution of the A. Union, the transfer of its property & liabilities to the B. Union, & the inclusion in deft. union of S., a parish hitherto in the A. Union. In the opinion of the ct. the pltf. throughout the correspondence believed & intended that he was to be remunerated on Ryde's scale on the basis of the value of the whole of the properties of the A. Union, while the guardians believed & intended that the scale was to be applied only to the interest of their union in those properties. The contract for employment of pltf. as valuer was originally drawn in the sense understood & intended by him; but the draft was altered to the sense understood & intended by the guardians, & in that form it was executed by the pltf. & sealed with the seal of the guardians:—**Held**: (1) Pltf.'s mistake had been induced innocently by the guardians, & he was entitled to rescission of the agreement; (2) pltf. was entitled to remuneration on a *quantum meruit*. **Qu.**: whether an agreement under the seal of a local authority, & requiring their seal for its validity, can be rectified.—**FARADAY v. TAMWORTH UNION** (1916), 86 L. J. Ch. 436; 81 J. P. 81; 15 L. G. R. 258.

SECT. 2.—WHEN SEAL REQUIRED.

SUB-SECT. 1.—IN GENERAL.

1104. General rule.]—**DOE d. PENNINGTON v. TANIÈRE**, No. 1169, *post*.

1105. —.]—By an Act of Parliament incorporating a ry. co., the directors were authorised to use the common seal, & all contracts in writing relating to the affairs of the co., which should be signed by any three of the directors, were to be binding on the co. The co., after having been established for some time, resolved to change the system of locomotion, & by their secretary, entered into an agreement, not under seal, with a contractor, that he should execute the works. He accordingly commenced the works, but before they were completed he was dismissed by the co.:—**Held**: he could not recover the value of the work done.

A corp'n. cannot contract except by their common seal, & though there are excepted cases, this

it & has entered into possession.—**JENNETT v. SINCLAIR** (1875), 1 R. & C. 392.—**CAN.**

a. — — —.]—**NELSON CENTRAL BOARD OF EDUCATION v. ROBERTS**, 1 J. R. N. S. 117.—**N.Z.**

b. — — — Mortgage under Land Titles Act, 1894.]—A mtge. under Land Titles Act, 1894, if executed by a corp'n., must be under its common seal.—**Re YORKTON BUTTER & CHEESE MANUFACTURING ASSOCN.** (1899), 6 Terr. L. R. 471.—**CAN.**

c. — — — All contracts of municipal corporation—Municipal Act, 1892, s. 82.]—The above sect. providing that each municipal corp'n. shall have a corporate seal which shall be affixed to all contracts by virtue of an order of its council, is imperative, & applies

is not one of them, for the work done was neither a matter of necessity, nor of that sort of convenience which required immediate action. Here the work was considerable, & the time for its performance was also considerable. The parties never intended to deal as on an implied contract such as a corpⁿ. may, under certain circumstances, enter into without their seal. A corpⁿ. is not bound on all occasions to contract by seal: for purposes of convenience, amounting to necessity, or in cases where instant assistance is required, so that there may not be time to comply with the form of putting a seal, it may be dispensed with (POLLOCK, C.B.).

Corpn. must contract under their corporate seal, that being the only way by which the governing body of a corpn. can properly express the mind of the corpn. There are exceptions, all of which may be classed under one or two heads : (1) when the acts done are such as the corpn. by its very constitution is appointed to do, as in the case of trading corpn.s., whose duty, by their very appointment, being to draw bills of exchange, they may do so without affixing their common seal. (2) When the acts are required for convenience, management & comfort. Where the acts are either trivial in their nature & of frequent occurrence, so that the doing of them in the usual way would be inconvenient or absurd ; or such that an overruling necessity requires them to be done at once ; in such cases the corpn. may proceed by parol, instead of affixing the seal according to the proper & regular course (ALDERSON, B.).—*DIGGLE v. LONDON & BLACKWALL RY. CO.* (1850), 5 Exch. 442 ; 6 Ry. & Can. Cas. 590 ; 19 L. J. Ex. 308 ; 15 L. T. O. S. 208 ; 14 Jur. 937 ; 155 E. R. 193.

Annotations :—**Consd.** *Clarke v. Cuckfield Union Grdns.* (1852), 21 L. J. Q. B. 349; *Finlay v. Bristol & Exeter Ry.* (1852), 7 Exch. 409. **Distd.** *Lowe v. L. & N. W. Ry.* (1852), 7 Ry. & Can. Cas. 524; *Pauling v. L. & N. W. Ry.* (1853), 8 Exch. 867. **Consd. & Distd.** *Henderson v. Australian Royal Mail Steam Navigation Co.* (1855), 5 E. & B. 409. **Consd.** *South of Ireland Colliery Co. v. Waddle* (1868), 16 W. R. 756. **Refd.** *Homersham v. Wolverhampton Waterworks Co.* (1851), 6 Exch. 137; *Smith v. Hull Glass Co.* (1852), 11 C. B. 897.

1106. Effect of sealing contract.]—The contracts of corps. with the proper seal affixed are in like position to those of private persons; so that where a contract with their common seal affixed is sent by a corpn. to the other party to the agreement to be signed & is so signed; or having been first signed by the other party an alteration is made in its terms by the corpn. which are assented to by the other party, & the corpn. seal is subsequently affixed, such contract is good.

Pltfs., a corpn., required & advertised for

to all contracts of the corpn.—UNITED TRUST CO. v. CHILLIWACK CORPN. (1896), 5 B. C. R. 128.—CAN.

d. — — — — —.]—PAISLEY v.
CHILLIWACK CORPN. (1896), 5 B. C. R.
132.—CAN.

6. ——— Municipal Act, R. S. 1914, c. 192.]—By above Act all powers of a municipal corpn. are to be exercised by the council, by bye-law, under the seal of the corpn. The mayor of T. instructed applts. to prepare a report as to the commercial & financial aspect of a contemplated purchase by resp. corpn. of undertakings of public utility carried on in the city. Applts., whose employment was not authorised by a bye-law, prepared an interim report, which was printed by order of the council. Applts. sued resp. corpn. to recover for the work done by them:—*Held*: applts. could not maintain the action in the absence of a bye-law in accordance with above Act.—**MACKEY & Co. v. TORONTO CITY**

CORPN., [1920] A. C. 208, P. C.—CAN.

1. ——— Except in special cases.]—The exceptions to the rule that a municipal corpn. can only act by its seal are in regard to: (1) insignificant matters of everyday occurrence or matters of convenience amounting almost to necessity; (2) where the consideration has been fully executed; (3) contracts in the name of the corpn. made by agents or representatives who are authorised under the seal of the corpn. to make such contracts. A settlement come to in respect to certain claims against it, & in respect of which depts. council passed a resolution accepting it, was not binding on debt. corpn. as not coming within any of the exceptions to the general rule.—**LESLIE v. MALAHIDE TOWNSHIP CORPN.** (1907), 15 O. L. R. 4; 10 O. W. R. 199.—**CAN.**

PART X. SECT. 2. SUB-SECT. 2.

g. College council—Professor—Scul

between 300 & 500 tons of granite spalls for workhouse purposes to be delivered by a particular day. Defts. sent in a tender which was accepted. The usual form of contract used by pltfs. was sent to defts. Two days later defts. sent back the contract signed by them, agreeing to deliver the quantity by the day fixed, but adding the words "weather & other circumstances permitting." Four days later pltfs. wrote to defts. acknowledging the receipt of the signed contract, but pointing out that they (pltfs.) had erased the words "other circumstances." On the same day defts. wrote to pltfs. that they had put the order in hand. Four days later pltfs. affixed their common seal to the contract. Defts. did not execute any part of their contract by the day specified, alleging that want of ships & stress of weather had prevented them from so doing. After a month's delay pltfs. were obliged to purchase granite spalls at a higher price than that tendered by defts., & brought their action for damages for breach of the agreement:—*Held*: as defts. had assented to the alteration in the contract made by pltfs., there was mutuality between the parties at the time the seal was affixed, & consequently pltfs. were entitled to succeed in their action.—DARTFORD UNION GUARDIANS *v.* TRICKETT & SONS (1888), 59 L. T. 754; 53 J. P. 277; *affd.* (1889), 5 T. L. R. 619, C. A.

See, also, Nos. 923, 925, 926, 928, ante.

Necessity for seal.]—See Part I., Sect. 5, sub-sect. 2, ante.

— **Leases.**]—*See* Part IX., Sect. 6, sub-sect. 5, B. (d).

SUB-SECT. 2.—APPOINTMENT OF OFFICERS.

1107. For ordinary services—Seal not required.]

—The King cannot create a forfeiture by letters patent. A justification to trespass for seizing a ship as forfeited, by authority of a corpⁿ., must show that the authority was given by a deed by its common seal. A corpⁿ. might employ one in ordinary services without deed, as to be butler.—*HORNE v. IVY* (1670), 1 Mod. Rep. 18; 2 Keb. 567, 604; 1 Sid. 441; 1 Vent. 47; 86 E. R. 697.

Annotations:—*Consd.* East London Water Works Co. v. Bailey (1827), 4 Bing. 283; *Smith v. Birmingham Gas Co.* (1834), 1 Ad. & El. 526. *Refd.* *Beverley v. Lincoln Gas Light & Coke Co.* (1837), 6 Ad. & El. 829. *Mentd.* *Berrington d. Dormer v. Parkhurst* (1736), *Lee temp. Hard.* 162.

1108. Municipal corporation—Re-appointment of town clerk—At increased salary—Seal required.]—

A resolution, on the re-appointment of a town clerk by a corpn. after 5 & 6 Will. 4, c. 76, to increase

not required—Necessary contract.—A contract of employment entered into by the council with a professor need not be under seal, the contract being necessary, & incidental to the purpose for which the council was created.—*TUBBS v. AUCKLAND UNIVERSITY COLLEGE COUNCIL* (1907), 27 N. Z. L. R. 149.—N.Z.

h. Loan society — Clerk — Seal required.—A resolution passed by defts., incorporated under 37 Vict. c. 50, that pltf. be engaged for the society's office as a clerk, "at three months, on trial at a salary of \$800 per annum":—**Held:** the contract, so far as executory, must be under defts. corporate seal.—**HUGHES v. CANADA PERMANENT LOAN & SAVINGS SOCIETY** (1876), 39 U. C. R. 221.—**CAN.**

k *Railway company — Civil engineer—Seal required.*—Pltf., a civil engineer, was engaged by defts. as provisional engineer, but, his contract

Sect. 2.—When seal required: Sub-sects. 2 & 3.]

his salary in compensation for the loss of former emoluments, is not valid unless executed under seal. Such reappointment cannot, therefore, be proved by an entry of it in the minutes of the town council.—*R. v. STAMFORD CORPN.* (1844), 6 Q. B. 433; 3 L. T. O. S. 281; 9 J. P. 359; 8 Jur. 909; 115 E. R. 165.

Annotations:—*Consd.* *Dyke v. St. Pancras Board of Grdns.* (1872), 27 L. T. 342. *Refd.* *R. v. Bristol & Exeter Ry.* (1845), 3 Ry. & Can. Cas. 777; *R. v. Prest* (1851), 15 Jur. 554.

1109. Local board—Clerk & surveyor—Public Health Act, 1848 (c. 63)—Seal not required.]—*SMITH v. HIRST*, No. 1124, *post*.

1110. Urban authority—Medical officer.]—*EATON v. BASKER*, No. 1125, *post*.

1111. Board of Guardians—Rate collector—Seal required.]—Pltf. was appointed collector of the poor rates of the parish of W. by the guardians of a poor law union, by an instrument not under seal, but in accordance with an order of the Poor Law Commissioners, which was made under Poor Law Amendment Act, 1834 (c. 76), s. 46, & was rendered valid by Poor Rate Act, 1839 (c. 84). He collected the poor rates for several years:—*Held*: the guardians, being a corpn. were not liable in an action for the salary of pltf., because his appointment was not under seal, & also because the salary was payable out of the poor rates of the particular parish to which his appointment applied, & not out of the funds of the union.—*SMART v. WEST HAM UNION GUARDIANS* (1855), 10 Exch. 867; 24 L. J. Ex. 201; 24 L. T. O. S. 277; 19 J. P. 454; 3 W. R. 284; 3 C. L. R. 696; 156 E. R. 692; *affd.* on other grounds (1856), 11 Exch. 867, Ex. Ch.

Annotations:—*Consd.* *Lawford v. Billericay R. C.*, [1903] 1 K. B. 772. *Refd.* *Henderson v. Australian Royal Mail Steam Navigation Co.* (1855), 24 L. J. Q. B. 322; *Hunt v. Wimbledon L. B.* (1878), 3 C. P. D. 208; *Young v. Royal Leamington Spa Corpn.* (1883), 8 App. Cas. 517.

Medical officer—Seal required.]—*Qu.*: whether the guardians of a poor-law union are liable on a parol contract entered into by the board with a medical officer.—*HYETT v. CHELTENHAM UNION GUARDIANS* (1850), 15 L. T. O. S. 507.

1113. ———.]—The appointment by a corpn., such as a board of poor law guardians, of a person to be medical officer to the corpn. for any fixed or definite period of time, ought to be under seal.

D., being a candidate for the post of medical officer to the H. infirmary, the appointment to which was in the hands of depts., as poor law guardians of St. P., a resolution, passed at a meeting of the infirmary committee, was approved of & adopted at a board meeting of the guardians on Dec. 6, "That D. be appointed medical officer for three months, at & for a sum of £100 & board & rations": & on Dec. 9, D. received a letter from the clerk to the guardians, announcing to him his appointment, & inclosing a copy of the above resolution. On Jan. 7, D. entered upon his duties as medical officer, & fulfilled them up to Mar. 25, when the three months expired, & he received £100 salary for that period of service. He continued on in the office, nothing being said or done on either side until Apr. 6, when a resolution

of employment was not under seal:—*Held*: pltf. was an important official, & his engagement was not binding upon the corpn.—*ARMSTRONG v. PORTAGE, WESTBOURNE & NORTH WESTERN RY. CO.* (1884), 1 Man. L. R. 344.—*CAN.*

1. School board—Teacher—Seal required.—9 Vict. c. 20.]—In an action by a teacher against the school trustees

appointed by 9 Vict. c. 20, setting out a special agreement to retain pltf. in the employment of a teacher for one year, at a certain salary, etc., & also upon a parol agreement, for wrong fully, & without cause turning pltf. away, & preventing him thereby from earning his salary:—*Held*: the declaration in both cases was bad in not

was passed by the infirmary committee, "That the medical officer & other officers whose engagements expired at Lady-day should be employed monthly, at the several salaries assigned to them by the guardians." This monthly appointment was approved of by the Poor Law Board until the infirmary should be transferred to the management of the C. L. District Board, which transfer it was expected would take place about Midsummer, but which did not, in fact, happen until Michaelmas.

On May 24, at a meeting of the infirmary committee, a written notice from the board of guardians, signed by their clerk, was handed by the chairman of the committee to D., that his appointment of medical officer would terminate on June 24, the chairman at the same time verbally telling him that the notice was formal only, and that, if the infirmary were not transferred by June 24, the notice would go for nothing.

On June 23, D. was informed by an official letter from the clerk to the guardians that his successor had been elected by the guardians, & would commence his duties about noon June 24. Thereupon D. retired from the office under protest against his illegal dismissal, & brought an action against the guardians to recover £100 for salary, & an equivalent for board & rations, for three months, in lieu of three months' notice:—*Held*: pltf. had failed, for want of a contract under seal, to show a contract binding upon the corpn. to employ him beyond the time for which he had been actually employed & paid by them; &, not being a case of an executed consideration or of a contract with a trading corpn., it did not come within either of those exceptions to the general rule which requires contracts with corps. to be under seal.—*DYKE v. ST. PANCRAS BOARD OF GUARDIANS* (1872), 27 L. T. 342; 36 J. P. 375.

Annotations:—*Consd.* *Austin v. St. Mathew, Bethnal Green Grdns.* (1874), 29 L. T. 807. *Apld.* *Wood v. East Ham U. D. C.* (1907), 71 J. P. 129.

1114. — Clerk to workhouse master—Seal required.]—The clerk to the master of a workhouse is not an inferior servant, nor is his nomination a matter of immediate necessity, & therefore his appointment by a board of guardians being a corporation by Union & Parish Property Act, 1835 (c. 69), s. 7, ought to be under their common seal.—*AUSTIN v. BETHNAL GREEN GUARDIANS* (1874), L. R. 9 C. P. 91; 43 L. J. C. P. 100; 29 L. T. 807; 38 J. P. 248; 22 W. R. 406.

Annotations:—*Consd.* *Wells v. Kingston-upon-Hull* (1875), L. R. 10 C. P. 402. *Apld.* *Wood v. East Ham U. D. C.* (1907), 71 J. P. 129. *Refd.* *Lloyd v. Bermondsey Grdns.* (1913), 108 L. T. 716.

See Sect. 5, sub-sect. 1, A. (c), *post*.

1115. School board—Architect—Elementary Education Act, 1870 (c. 75)—Seal not required.]—The term "necessary officer" in Elementary Education Act, 1870 (c. 75), s. 35, includes an architect. Therefore where pltf. was appointed architect to a school board by resolution entered on the minutes & signed & countersigned in accordance with sched. 3, par. 7 of the Act, the instructions given him being entered, signed, & countersigned in like manner:—*Held*: pltf. was entitled to recover his fees for work done in pursuance of instructions notwithstanding the fact that the board had not entered into a contract with him under their corporate seal.—*SCOTT v.*

averring the agreement to have been made with depts. by their corporate seal.—*QUIN v. SCHOOL TRUSTEES* (1850), 7 U. C. R. 130.—*CAN.*

m. ——— Seal not required.]—*ALEXANDER v. SCHOOL DISTRICT TRUSTEES* No. 7 (1891), 30 N. B. R. 597. *CAN.*

CLIFTON SCHOOL BOARD (1884), 14 Q. B. D. 500 ; Cab. & El. 435 ; 52 L. T. 105 ; 33 W. R. 368 ; 1 T. L. R. 187.

See Nos. 983, 1098, *ante* ; Nos. 1116, 1119, *post*.

Appointment of officers of local authorities.]—See LOCAL GOVERNMENT.

Appointment of officers of municipal corporations.]—See LOCAL GOVERNMENT.

Appointment of officers under express provisions in special Acts.]—See Nos. 1145, 1146, *post*.

Delegation of authority for particular purpose—Whether seal required.]—See Part XIII.

SUB-SECT. 3.—APPOINTMENT OR RETAINER OF SOLICITOR.

1116. Seal required.]—The retainer or appointment of an attorney by a corp'n. must be by common seal, & where a town-clerk, duly appointed by seal acted also as attorney of the corp'n. in various suits :—*Held* : there being no appointment under seal he could not recover the amount of his bill of costs from the corp'n. though his proceedings as such attorney were authorised by resolutions of the town council.—ARNOLD v. POOLE CORPN. (1842), 2 Dowl. N. S. 574 ; 4 Man. & G. 860 ; 5 Scott, N. R. 741 ; 12 L. J. C. P. 97 ; 7 J. P. 227 ; 7 Jur. 653 ; 134 E. R. 354.

Annotations :—*Folld*. R. v. Stamford Corp'n. (1844), 6 Q. B. 433. *Consd*. Clarke v. Cuckfield Union Grdns. (1852), 21 L. J. Q. B. 349 ; Henderson v. Australian Royal Mail Steam Navigation Co. (1855), 5 E. & B. 409. *N.F.* Mallam v. Oxford City Grdns. (1859), 23 J. P. Jo. 467. *Consd*. Dyte v. St. Pancras Board of Grdns. (1872), 27 L. T. 342. *Reid*. Hall v. Swansea Corp'n. (1844), 5 Q. B. 526 ; Paine v. Strand Union Grdns. (1846), 8 Q. B. 326 ; Lamprell v. Billericay Union (1849), 3 Exch. 283 ; R. v. Prest (1851), 15 Jur. 554 ; R. v. Francis (1852), 21 L. J. Q. B. 304 ; R. v. Greene (1852), 16 Jur. 663 ; R. v. Fox (1860), 2 L. T. 281 ; Eccl. Comrs. v. Merrall (1869), L. R. 4 Exch. 162 ; Wells v. Kingston-upon-Hull Corp'n. (1875), 23 W. R. 562 ; Phelps & Woodforde v. Upton Snodsbury Highway Board (1885), 1 T. L. R. 425 ; Lawford v. Billericay R. C., [1903] 1 K. B. 772. *Mentd*. Browne v. Barker, [1913] 2 K. B. 553.

1117. Town clerk acting as solicitor—Without retainer as such under seal—Costs not recoverable.]—ARNOLD v. POOLE CORPN., No. 1116, *ante*.

1118. ——— Professional costs paid by corporation—No misapplication of borough funds.]—R. v. PREST, No. 983, *ante*.

1119. Corporation bound by acts of solicitor—No retainer under seal.]—An attorney authorised to appear for a party in a suit has incidentally authority to refer it without any fresh authority to that effect & the attorney, having appeared for the corp'n., to the knowledge of the directors, the corp'n. were bound by his acts as attorney, though he was not authorised to appear by any authority under seal.—FAVIELL v. EASTERN COUNTIES RY. Co. (1848), 2 Exch. 344 ; 6 Dow. & L. 54 ; 17 L. J. Ex. 297 ; 154 E. R. 525.

Annotations :—*Mentd*. Smith v. Troup (1849), 7 C. B. 757 ; Hodgkinson v. Fernie (1857), 3 C. B. N. S. 189 ; Chambers v. Mason (1858), 5 C. B. N. S. 59 ; Kirk & Randall v. East & West India Dock Co. (1886), 55 L. T. 245 ; Neale v. Gordon-Lennox (1902), 71 L. J. K. B. 536 ; May v. Mills (1914), 30 T. L. R. 287.

1120. Retainer by superseded corporation—Adopted by successors—Binding on successors—

Although not sealed by them.]—"The guardians of the poor within the city of Oxford," a body consisting of certain *ex officio* guardians & of guardians to be elected by the different parishes in O., were incorporated by 11 Geo. 3, c. 14, s. 1. In Nov., 1853, they agreed with the University of Oxford & some of the Colleges & Halls, that an Act of Parliament should be applied for, to subject certain College & University property to rates, & to admit representatives for the University & Colleges to the Board of Guardians. On Nov. 24, 1853, pl'tfs., a firm of attorneys at Oxford, were retained by the then Guardians, under their corporate seal, as their solrs. "in the matter of the College rating, & soliciting the bill for that purpose through Parliament." Pl'tfs. accepted the retainer, & together with the solrs. for the University & Colleges, applied for & obtained, in 1854, stat. 17 & 18 Vict. c. cxxix. Sect. 1 of this Act repealed 11 Geo. 3, c. 14, & sect. 2 provided for the election of a new corporate board of guardians for Oxford, by the city University, Colleges & Halls ; such board to consist of, *inter alios*, "eleven guardians for the parishes, one to be elected for each parish." By arrangement between the then Guardians & the University, before the Act passed, sect. 31 was inserted in it ; which sect., after reciting that the University, Colleges & Halls maintained that certain land & buildings of theirs were exempted by law from liability to poor rate, & that the Vice-Chancellor of the University of the one part, and "the Guardians of the Poor of the several parishes" of the other, had agreed that a case should be stated to be prepared by their respective solrs., for the opinion of the ct. of Q. B. on the question of such exemption enacts that the ct. shall hear such case, when stated, & that its decision thereupon "shall be final & binding upon the parties, & the costs attending the same shall be borne by the respective parties, & those incurred by the University, Colleges & Halls shall be paid by them, & those incurred by the Guardians shall, when duly taxed, be paid out of the funds under their control." The guardians of the poor of the several parishes in Oxford, as such, had not, before or since the passing of this Act, any funds under their control. Defts. were duly elected the new Board of Guardians under the Act, & had since acted & levied rates, as such. Defts. paid pl'tfs.' costs of procuring & passing the Act. A special case was, in pursuance of sect. 31, settled, approved & signed by the University solr. & pl'tfs. in communication with defts. At a meeting of defts., on Nov. 20, 1856, a resolution was passed, recognising pl'tfs. as defts.' solrs. in reference to the special case. On June 12, 1857, the Q. B. gave judgment on the case ; & defts. had since levied rates on such of the University & College property as the ct. held to be ratable. In the following Nov. defts.' clerk wrote to pl'tfs. for their bill of costs in the matter of the special case, & defts. delivered it in Dec. At a meeting of defts. on Feb. 3, 1859, a resolution was passed for payment of this bill. On a case stated, in an action by pl'tfs. to recover the amount of this bill from defts. :

10 P. R. 339.—CAN.

o. What may be appointment under seal.]—In conformity with a resolution of the mayor & council, the municipal clerk, by a letter under the corporate seal addressed to solrs., informed them that they had been appointed to be the "legal advisers" of the corporation :—*Held* : this might be insisted upon as an appointment under seal.—DRAKE & JACKSON v. VICTORIA CORPN. (1884), 1 B. C. R., pt. II., 165.—CAN.

PART X. SECT. 2, SUB-SECT. 3.

1116 i. Seal required.]—The appointment of a solr. to act for an incorporated town should be under seal.—LAURENCE v. TRURO TOWN (1894), 26 N. S. R. 231.—CAN.

1116 ii. ———.]—Solrs. who began an action in the name of a public school board were retained for the board by a special committee appointed by resolution of the board, not under the corporate seal :—*Held* : not proper

authority from the school board to the solrs. to bring the action.—BARRIE PUBLIC SCHOOL BOARD v. BARRIE TOWN (1899), 19 P. R. 33.—CAN.

n. Where corporation authorised to appoint & dismiss officers at pleasure—Seal not required.]—Where a corp'n. has power to appoint officers & dismiss them at pleasure :—*Held* : the appointment of a solr. need not be under the corporate seal.—CLARKE v. UNION FIRE INSURANCE CO., CASTON'S CASE (1883),

Sect. 2.—When seal required: Sub-sects. 3 & 4.]

—*Held*: defts., & not the Guardians of the Poor of the several parishes in Oxford, were liable to pl'tfs.' claim; & the action was maintainable, although defts. had not affixed their seal to the resolution of Nov. 20, 1856.—**MALLAM v. OXFORD GUARDIANS** (1859), 2 E. & E. 192; 23 J. P. Jo. 467; 121 E. R. 73.

1121. To oppose bill in Parliament—Seal required.]—The retainer of an attorney by a corpn. to oppose a bill in Parliament on their behalf must, in order to be valid, be under their common seal.—**SUTTON v. SPECTACLE MAKERS' CO.** (1864), 4 New Rep. 98; 10 L. T. 411; 12 W. R. 742.

1122. ———.]—A highway board passed a resolution directing their clerk to take the necessary steps to oppose, on behalf of the board, a bill in Parliament which contained provisions contrary to the Railway Clauses Acts, & which would have prejudicially affected certain of the highways within their district. In pursuance of such resolution the clerk to the board instructed the pl'tfs., a firm of solrs., to oppose the bill. In an action by the pl'tfs. to recover their costs of such opposition from the board:—*Held*: the purpose for which they had been retained was not incidental to the purpose for which the highway board was incorporated, & as they had not been retained under the seal of the board, they had no right of action against the board.—**PHELPS & WOODFORD v. UPTON SNODSBURY HIGHWAY BOARD** (1885), 1 Cab. & El. 524; 49 J. P. 408; 1 T. L. R. 425.

Appointment under express provision in special Act.]—See Nos. 1145, 1146, *post*.

Ratification under seal—Work partly performed.]—See No. 1165, *post*.

Validity of appointment not under seal—Seal dispensed with.]—See Nos. 1145, 1146, *post*.

See, generally, SOLICITORS.

SUB-SECT. 4.—CONTRACTS UNDER PUBLIC HEALTH ACTS.

1123. General rule—Public Health Act, 1848 (c. 63).]—The above Act requires that in the case of non-corporate districts, a seal shall be made for the use of the board, & all contracts exceeding in value £10 shall be in writing, & sealed with the seal of such local board:—*Held*: the directions of the statute as to the seal were imperative, & no action would lie on a contract above £10 not under seal.—**FREND v. DENNETT** (1858), 4 C. B. N. S. 576; 27 L. J. C. P. 314; 23 J. P. 56; 4 Jur. N. S. 897; 140 E. R. 1217; *subsequent proceedings* (1861), 5 L. T. 73.

Annotations:—**Consd.** **Hunt v. Wimbledon L. B.** (1878), 3 C. P. D. 208; **Young v. Royal Leamington Spa Corpn.** (1883), 8 App. Cas. 517; **Hoare v. Kingsbury U. C.**, [1912] 2 Ch. 452. **Mentd.** **Bateman v. Ashton-under-Lyne** (1858), 3 H. & N. 323.

1124. ———.]—By the above Act, s. 149, it was enacted that whenever the consent, sanction, approval, or authority of the local board was required, the same should in case of a non-corporate district be in writing & under their seal & the hands of five or more of them:—*Held*: this did not mean that every act of the local board should be under their hands & seal, but such only as sanctioned the acts of others; & therefore the appointments of the clerk & surveyor to the board need not be so under their hands & seal, & a resolution of the board directing their officers to take certain steps need not be under the hands &

seal of the board.—**SMITH v. HIRST** (1870), 23 L. T. 665; 35 J. P. 247.

1125. ——— Public Health Act, 1875 (c. 55).]—Sect. 174 of the above Act, which directed a contract, made by an urban authority to be under their common seal, if "the value or amount exceeds £50," applies only to a contract, to which the parties at the time of entering into it contemplate that it shall exceed that sum.

Scarlet fever having broken out, an urban sanitary authority appointed a committee under s. 200 of the above Act. A medical man agreed verbally with the committee on behalf of the urban sanitary authority, to attend the patients at the rate of 5s. 3d. per tent per day, & attended until the amount due was nearly £100:—*Held*: (1) the committee men were not liable to pay the medical man; (2) although more than £50 became due, it was not a contract "whereof the value or amount exceeds £50," within the meaning of the above Act, because at the time of entering into it, the parties had not ascertained that it would exceed £50, & the urban sanitary authority were liable to the medical man.—**EATON v. BASKER** (1881), 7 Q. B. D. 529; 50 L. J. Q. B. 444; 44 L. T. 703; 45 J. P. 616; 29 W. R. 597, C. A.

Annotations:—*As to* (2) **Distd. Melliss v. Shirley & Freemantle L. B. of Health** (1885), 54 L. J. Q. B. 408. **Consd.** **Spencer, Whatley & Underhill v. Southall-Norwood U. D. C.** (1905), 69 J. P. 308.

1126. ———.]—The provision in the above Act, s. 174, requiring every contract made by an urban authority whereof the value exceeds £50 to be in writing & sealed with the common seal of such authority, is mandatory, not directory, & applies notwithstanding, that the urban authority is a corpn. independently of the Act, & the contract was made by their agent appointed under their common seal, & has been performed by the other contracting party.—**YOUNG & CO. v. ROYAL LEAMINGTON SPA CORPN.** (1883), 8 App. Cas. 517; 52 L. J. Q. B. 713; 49 L. T. 1; 47 J. P. 660; 31 W. R. 925, H. L.

Annotations:—**Consd.** **Tunbridge Wells Improvement Comrs. v. Southborough L. B.** (1888), 60 L. T. 172; **Lawford v. Billericay R. C.**, [1903] 1 K. B. 772; **Baker v. Holme Cultram U. C.** (1915), 85 L. J. K. B. 799; **Mackay v. Toronto City Corpn.**, [1920] A. C. 208. **Refd.** **Bournemouth Comrs. v. Watts** (1884), 14 Q. B. D. 87; **Scott v. Clifton School Board** (1884), 14 Q. B. D. 500; **British Insulated Wire Co. v. Prescott U. D. C.**, [1895] 1 Q. B. 463; **Southill Upper U. C. v. Wakefield R. C.**, [1905] 2 Ch. 516; **Spencer, Whatley & Underhill v. Southall-Norwood U. D. C.** (1905), 69 J. P. 308; **Hoare v. Kingsbury U. C.**, [1912] 2 Ch. 452. **Mentd.** **L. & N. W. Ry. & G. W. Ry. v. Price** (1883), 52 L. J. Q. B. 754.

1127. ——— Application to all contracts by urban authority—Under any power created by Public Health Act, 1875 (c. 55).]—Sect. 174 of the above Act is not limited to contracts made for work to be done for or goods to be supplied to an urban authority, but applies to every contract made by an urban authority under any of the powers created by that Act.

Pl'tf. deposited plans with defts. for erecting thirty-six houses on his land, which was in defts.' district & on one side adjoined a narrow highway, & at the instance of defts. altered his plans, & signed an agreement purporting to be made between himself & defts., whereby he agreed to remove his boundary fence & to throw a strip of land into the highway the whole length of his frontage so as to widen the highway to a uniform width of forty feet, & defts. in consideration of his so doing agreed at their expense to make up & adopt the strip of land as a highway. Matters proceeded on the footing that the agreement was binding on both parties. Pl'tf. built his houses, & fulfilled his part of the agreement & gave possession of the strip of land to defts. who took possession of it,

but did not make it up or adopt it as a highway. To an action by pltf. to compel defts. specifically to perform their part of the agreement defts. pleaded that the agreement could not be enforced against them because as the fact was, it was not sealed by them nor signed by any one on their behalf, & they relied on the provisions of the above Act, & also on the Statute of Frauds:—*Held*: the agreement was a contract to widen a highway made by defts., not as a highway authority under the powers vested in them by above Act, s. 154; (2) as the contract had been partly performed, the Statute of Frauds afforded no defence to the action; (3) defts. were not in any way estopped from relying on the fact that the contract was not under seal & therefore was not binding upon them.

—*HOARE v. KINGSBURY URBAN COUNCIL*, [1912] 2 Ch. 452; 81 L. J. Ch. 866; 107 L. T. 492; 76 J. P. 401; 56 Sol. Jo. 704; 10 L. G. R. 829.

Annotation:—As to (1) *Refd.* *Douglass v. Rhyl U. C.*, [1913] 2 Ch. 407.

1128. — Contract over £50 in value—Plans prepared by architect—On instructions of corporation's surveyor.—Public Health Act, 1848 (c. 63), s. 86, & Public Health Act, 1875 (c. 55), s. 174, enact without any words of prohibition that "every contract made by a Local Board or by an Urban Authority whereof the value or amount exceeds £50 shall be in writing & sealed with the common seal of such authority:—*Held*: notwithstanding that the jury found that the Local Board authorised their surveyor to procure the plans & ratified his act, that new offices were necessary for the purposes of defts., & pltf.'s plans were necessary for the erection of them yet the contract could not be enforced by reason of the non-compliance with the statutory requirements.—*HUNT v. WIMBLEDON LOCAL BOARD* (1878), 4 C. P. D. 48; 48 L. J. Q. B. 207; 40 L. T. 115; 43 J. P. 284; 27 W. R. 123, C. A. *Annotations*:—*Consd.* *Eaton v. Basker* (1881), 7 Q. B. D. 529. *Apprvd.* *Young v. Royal Leamington Spa Corp.* (1883), 8 App. Cas. 517. *Apld.* *Phelps & Woodforde v. Upton Snodsbury Highway Board* (1885), Cab. & El. 524. *Refd.* *Bournemouth Comrs. v. Watts* (1884), 14 Q. B. D. 87; *Hoare v. Lewisham Corp.* (1901), 85 L. T. 281

U. D. C. (1905), 69 J. P. 308; *Hodge v. Matlock Bath & Scarthin Nick U. D. C. & Nuttall* (1910), 75 J. P. 65. *Mentd.* *Soothill Upper U. C. v. Wakefield R. C.* (1904), 74 L. J. Ch. 708.

1129. — Agreement to adopt & dedicate road—Petition under seal reciting agreement.—A petition was presented by pltf. & defts. to the Local Government Board, stating on agreement whereby pltf. were to transfer to defts. certain land forming part of pltf.'s district, on condition that defts. should adopt a certain road & dedicate it as a public highway. The agreement referred to was not under seal, but the petition was sealed with the common seals of the pltf. & defts. The cost of completing the road was estimated at over £50. On action for specific performance of the agreement:—*Held*: (1) under Public Health Act, 1875 (c. 55), the agreement must be under seal, & the petition, though under seal, was not a deed, & therefore was not a contract under seal within the sect.; (2) if the deed were valid, the local authority had no power to enter into an agreement for the dedication of a road or street as a highway.—*TUNBRIDGE WELLS IMPROVEMENT COMRS. v. SOUTHBOROUGH LOCAL BOARD* (1888), 60 L. T. 172; 5 T. L. R. 107.

1130. — Agreement to widen highway—Part performance by plaintiff.—*HOARE v. KINGSBURY URBAN COUNCIL*, No. 1127, *ante*.

1131. — Employment of parliamentary agent—Costs recoverable under special Act.—Parliamentary agents sued an urban district council for an amount above £50, costs incurred in carrying

a local bill through Parliament. This contract of agency was not under seal. The local Act provided that: "All the costs charges & expenses preliminary to & of & incidental to the preparing, applying for, obtaining & passing of this Act . . . shall be paid by the council & out of the district fund," etc.:—*Held*: pltf. could not recover on the contract made for carrying out the purposes of Public Health Act, 1875 (c. 55), as it was not under seal in accordance with sect. 174 of that Act, nor on a *quantum meruit*, but that they could recover on the action of debt created by the local Act.—*BAKER v. HOLME CULTRAM URBAN COUNCIL*, (1915), 85 L. J. K. B. 799; 80 J. P. 241; 14 L. G. R. 209.

See, also, No. 1098, *ante*.

1132. Exception to rule—Contract over £50 in value—Adopted by corporation—No misapplication of borough funds.—*R. v. NORWICH CORPN.*, No. 978, *ante*.

See, also, Part X., Sect. 5, sub-sect. 1, A. (d), &

1133. — Contract over £50 in value—Waiver by corporation.—In an action by a local authority to recover from deft. his proportion of the cost of sewerage, paving, etc., a street under the powers of Public Health Act, 1875 (c. 55), s. 150, it appeared that part of the work, to an amount exceeding £50, had been done by contractors employed by the local authority, but that no written contract under the common seal of the authority had been made with them as provided by s. 174:—*Held*: deft. was nevertheless liable.

The objection, if valid, would have been an objection to the apportionment, which could only be raised in the time & manner provided by s. 257 (*SMITH, J.*).

I think that although s. 174, might have given pltf. a defence in an action brought by the contractors, they were not bound to avail themselves of this defence, & that they were as much justified in not setting it up as they would have been in declining to plead Stat. Limitations (*HAWKINS, J.*).—*BOURNEMOUTH COMRS. v. WATTS* (1884), 14 Q. B. D. 87; 54 L. J. Q. B. 93; 51 L. T. 823; 49 J. P. 102; 33 W. R. 280; 1 T. L. R. 142.

Annotations:—*Refd.* *Brooks, Jenkins v. Torquay Corp.*, [1902] 1 K. B. 601. *Mentd.* *Derby Corp. v. Grudgings* (1894), 10 R. 565.

1134. — Agreement by way of compromise & settlement of claims.—Where an urban authority enters into a contract in writing sealed with the common seal of such authority, pursuant to Public Health Act, 1875 (c. 55), ss. 173, 174, with a contractor for the construction by him of sewerage works, & the contract contains the usual power for the engineer, who has the control & supervision of the works, to vary, alter, enlarge, or diminish any of them, all variations & alterations coming within the terms of the power conferred on the engineer can be validly made without being under the common seal of the urban authority. An agreement between an urban authority & a contractor employed to construct works for them, as a compromise & in full settlement of all claims by him against the urban authority, is not a contract within s. 173 of the above Act necessary for carrying that Act into execution, so as to require it to be sealed with the common seal of the urban authority under s. 174; & therefore, such agreement, though not under seal, is capable of being enforced against the urban authority.—*WILLIAMS v. BARMOUTH URBAN DISTRICT COUNCIL* (1897), 77 L. T. 383, C. A.

Annotations:—*Apld.* *Hunt v. Acton U. D. C.* (1908), 72 J. P. 345. *Refd.* *Leicester Grdns. v. Trollope* (1911), 75 J. P. 197.

Sect. 2.—When seal required: Sub-sects. 4, 5 & 6.
Sect. 3: Sub-sect. 1.]

1185. ——— Urban council acting as Improvement commissioners — Employment of Engineer.]—Defts. as the successors of the Rhyl Improvement Comrs., who were constituted a body corporate with a common seal by the Rhyl Improvement Act, 1852, with which was incorporated Commissioners Clauses Act, 1847, were proposing to buy, repair, & extend the Rhyl pier under special powers in the Rhyl Improvement Acts, & definitely employed the pltf., an engineer & expert in pier & harbour work, to make a certain valuation & estimates required by the Local Government Board, to which body defts., under powers in their special Acts, had applied for sanction to borrow the money necessary for the proposed scheme. There was no contract under the seal of defts. relative to the employment of pltf., but he made the valuation & estimates of which defts. had the benefit & made use. Ultimately the scheme was not proceeded with. In an action by pltf. to recover his fees:—

Held: (1) the provisions of s. 174 of Public Health Act, 1875 (c. 55), did not apply to the contract in question; (2) the principle of the decision in *Lawford v. Billericay Rural Council*, No. 1193, *post*, applied; (3) pltf. was entitled to payment upon a *quantum meruit*.—**DOUGLASS v. RHYL URBAN DISTRICT COUNCIL**, [1913] 2 Ch. 407; 82 L. J. Ch. 537; 109 L. T. 30; 77 J. P. 373; 29 T. L. R. 605; 57 Sol. Jo. 627; 11 L. G. R. 1162.

Variation of contracts.]—See No. 1134, *ante*, No. 1137, *post*.

Ratification — Before work completed.] —See No. 1164, *post*.

Appointment of officers.]—See Part X., Sect. 2, sub-sect. 2, *ante*.

SUB-SECT. 5.—VARIATION OF CONTRACTS.

Building contract for corporation—Extra work—No fresh contract under seal.]—See BUILDING CONTRACTS, ENGINEERS & ARCHITECTS, Vol. VII., p. 378, Nos. 181, 182, 183, 194.

— Variations accepted by corporation—No fresh contract under seal.]—See BUILDING CONTRACTS, ARCHITECTS & ENGINEERS, Vol. VII., p. 372, No. 161.

1136. Contract giving power to corporation's engineer to vary—Seal not required for variations.]—WILLIAMS v. BARMOUTH URBAN DISTRICT COUNCIL, No. 1134, *ante*.

1137. Modification of architect's original scheme—Part of original contract under seal.]—Deft. council invited certain architects, including pltf., to submit designs for a building, which the council proposed to erect, in accordance with a set of conditions issued by the council under their seal, with the intention of selecting the best of the designs submitted. The conditions gave particulars of the accommodation required, but no further guidance as to the expense to which the

council proposed to go; stated that an assessor had been appointed to assist the council in considering the designs submitted; stated that the council desired to & probably would employ the architect whose design was placed first by the assessor to carry out the building, but that they did not bind themselves so to do; & stated that the architect employed by the council would be paid for his services on a certain scale. Pltf.'s designs were placed first by the assessor, & he was then employed by the council, without any further formal agreement, to prepare working drawings of the building, & other work in connection with the scheme. In due course tenders for the erection of the building were obtained, of which the lowest was for some £80,000. The council were, however, unable to obtain the necessary sanction to the raising of a loan for the purpose of carrying out the scheme; & they thereupon employed pltf. to prepare designs & drawings of a building to cost some £35,000 in substitution for the building originally designed. After payments made by the council to pltf. in respect of his service under the £80,000 scheme had been disallowed & surcharged by the auditor on the ground that there was no contract under seal between the council & pltf., a formal sealed agreement was executed providing for the payment to pltf. of remuneration on the scale referred to in the conditions in respect of his services in connection with the £80,000 scheme. Pltf. now sued for remuneration amounting to some £800 in respect of his services in connection with the £35,000 scheme; & the council defended on the ground that there was no contract between them & pltf. under their seal such as to satisfy the requirements of sect. 174 of Public Health Act, 1875 (c. 55):—**Held:** (1) the £35,000 scheme was a mere modification of the £80,000 scheme & not a new & independent scheme, & pltf.'s employment on the £35,000 scheme was consequently covered by the conditions originally issued by the council, & as those conditions were under seal the provisions of sect. 174 with regard to the sealing of contracts were satisfied.—**HUNT v. ACTON URBAN DISTRICT COUNCIL** (1908), 72 J. P. 345; 6 L. G. R. 957.

SUB-SECT. 6.—OTHER CASES.

1138. Contract to withdraw opposition to bill—Seal required.]—A declaration in *assumpsit* by a corpn. stated that defts. had presented a petition to the House of Commons for leave to bring in a bill for draining certain slob or waste lands in I., the introduction of which bill was opposed by pltf., & also by A., & that by a certain agreement made between B. on behalf of the pltf., of the first part, C. on behalf of A. on the second part, & defts. of the third part, it was agreed that pltf. & A. should withdraw all opposition to the bill; that the clauses therein should be settled by the solrs. of the parties, in order that the bill might be as perfect & beneficial as it could be made; that pltf. & A. should use all reasonable means &

PART X. SECT. 2, SUB-SECT. 5.

p. Original contract required to be under corporate seal—Seal requisite for variation.]—WALLACE BELL CO. v. MOOSE JAW CITY (1912), 21 W. L. R. 871; 2 W. W. R. 752.—CAN.

PART X. SECT. 2, SUB-SECT. 6.

q. Resolution to give compensation for damage—Seal required.]—A tenant of a corpn. claimed compensation for

damage to the leased land caused by the corpn.: the corpn. passed a resolution making the lessee an allowance out of his rent:—**Held:** the resolution, not being under seal, did not bind the corpn.—**ST. JOHN'S CORPN. v. WILMOT** (1853), 2 All. 565.—CAN.

r. Resolution to acquire land & pay therefor in debentures—Seal required.]—Pltf. offered a corpn. land, the price thereof to be payable in debentures. The corpn. resolved to

accept the offer, & a copy of the resolution was enclosed to pltf. by the corpn. clerk, without any instructions or directions to that effect:—**Held:** the resolution did not constitute a contract, & a document under the seal of the corpn. was necessary.—**JENNETT v. SINCLAIR** (1876), 1 R. & C. 392.—CAN.

s. Agreement in bye-law to pay interest on investment—Seal required.]—Defts. were sued on a bye-law made by

cc 2

Sect. 3.—When seal dispensed with: Sub-sects. 1, 2 & 3.]

debt will lie against them to recover that sum, although there be no contract under seal.

A private Act incorporating a gaslight co. enacted that the costs of obtaining the Act should be paid out of the money subscribed in preference to all other payments. The attorney who obtained the Act sued the co. in debt, upon the Act, for his costs:—*Held*: the action was maintainable without setting out any deed.—*TILSON v. WARWICK GAS LIGHT CO.* (1825), 4 B. & C. 962; 7 Dow. & Ry. K. B. 376; 4 L. J. O. S. K. B. 53; 107 E. R. 1317.

Annotations:—*Folld. Carden v. General Cemetery Co.* (1839), 5 Bing. N. C. 253. *Apld. Campion v. King* (1842), 6 Jur. 35. *Consd. Edwards v. Bates* (1844), 2 Dow. & L. 299. *Distd. Pardoe v. Price* (1847), 16 M. & W. 451. *Folld. Hitchins v. Kilkenny Ry.* (1850), 9 C. B. 536. *Distd. Wyatt v. Metropolitan Board of Works* (1862), 11 C. B. N. S. 744. *Apld. Re Kensington Station Act* (1875), L. R. 20 Eq. 197. *Consd. Re Skegness & St. Leonard's Tram. Co., Ex p. Hanly* (1889), 58 L. J. Ch. 737. *Apld. Baker v. Holme Cultram U. C.* (1915), 85 L. J. K. B. 799. *Reid. Bush v. Martin* (1863), 2 H. & C. 311; *Sansom v. St. Leonard, Shoreditch* (1869), L. R. 4 C. P. 654. *Mentd. Addison v. Preston Corpn.* (1852), 16 Jur. 643.

1146. — Power to appoint solicitor.]—Where, by the Act of incorporation of a railway co., the directors were empowered to appoint & displace any of the officers of the co.:—*Held*: the appointment of an attorney to the co. need not be under seal.—*R. v. CUMBERLAND JJ.* (1848), 5 Ry. & Can. Cas. 332; 5 Dow. & L. 431, n.; 17 L. J. Q. B. 102; 10 L. T. O. S. 377; 12 Jur. 1925; 12 J. P. Jo. 118.

Architect to school board.]—See No. 1115, *ante*.

SUB-SECT. 2.—MATTERS OF URGENCY OR FREQUENT OCCURRENCE.

1147. General rule.]—*DIGGLE v. LONDON & BLACKWALL RY. CO.*, No. 1105, *ante*.

1148. What are—Gas company—Supply of gas to consumer.]—The City of London Gas Light & Coke Co. may maintain *assumpsit* for gas supplied to the occupiers of a wharf; & it is not necessary in such a case, that there should have been any contract by deed executed by the co.—*CITY OF LONDON GAS-LIGHT & COKE CO. v. NICHOLLS* (1826), 2 C. & P. 365, N. P.

Annotations:—*Consd. Beverley v. Lincoln Gas Light & Coke Co.* (1837), 6 Ad. & El. 829. *Reid. Clarke v. Cuckfield Union* (1852), Ball Ct. Cas. 81.

1149. — — —.]—*CHURCH v. IMPERIAL GAS LIGHT & COKE CO.*, No. 169, *ante*.

See, also, No. 1166, *post*.

BRUNSWICK MARINE ASSURANCE CO. (1849), 1 All. 398.—CAN.

1. — Power under Joint Stock Companies Act, Con. Stat. Man. c. 9, div. 7.—To appoint manager.]—Defts., a company chartered under the Joint Stock Companies Act, C. S., c. 9, div. 7, through its officers who usually made such contracts, hired by parol agreement pltf. to manage their elevator & business at M.:—*Held*: the contract need not have been under seal if made by an officer in general accordance with his powers "under the bye-laws or otherwise."—*McEDWARDS v. OGILVIE MILLING CO.* (1887), 4 Man. L. R. 1.—CAN.

PART X. SECT. 3, SUB-SECT. 2.

g. What are—Cancellation of bond—By president & directors of bank.]—A bond may be cancelled by the president & directors of a banking corp., without the corporate seal.—*BANK OF UPPER CANADA v. WIDMER* (1822), 2 O. S. 256.—CAN.

h. — Renting of rector's house by churchwardens.]—An action against

churchwardens for the use & occupation of a house rented by their predecessors for the rector:—*Held*: corporate seal unnecessary.—*MAYNARD v. GAMBLE* (1863), 13 C. P. 56.—CAN.

k. — Agreement to attach debts.]—The officers of a ry. co. indebted to a bank, arranged for the bank to garnish debts due to the co.:—*Held*: the officers of co. had authority to enter into such agreement, without the corporate seal.—*HAMILTON & PORT DOVER RY. CO. v. GORE BANK* (1873), 20 Gr. 190.—CAN.

l. — Investment & loan company—To keep alive insurance on mortgaged property.]—If a mortgagee co. through their manager undertake with the mtgor. to keep alive an insurance on the mtged. property & to take steps towards carrying out such undertaking it is not necessary in such case that the co.'s undertaking should be under seal, the matter being one of frequent occurrence & a necessary part of the routine business of an investment & loan co.—*CAMPBELL v. CANADIAN CO-OPERATIVE INVESTMENT*

1150. — Licence to use municipal graving dock.]—A municipal corp. being the owners of a graving dock, permitted the use of it to shipowners for the purpose of repairing their ships upon certain terms specified in a series of regs. Under these it was necessary for the shipowner to enter the name of his vessel in a book kept by the Borough Treasurer & pay an entrance fee, & the use of the dock was granted in the order of priority of application, & each vessel was required to take her turn at the time of which notice was given to the owner. Certain charges were made for dockage, & it was required that they be paid before the vessel left the dock. The gates of the dock were under the control of an officer of the corp. who opened & closed them for the docking & undocking of the vessels. The use of blocks & shores, the property of the corp., was permitted to the vessels in the dock, but the shipowners were made responsible for them, & also for cleaning out the dock daily to the satisfaction of the officer of the corp. Pltf. duly entered a vessel & paid the entrance fee, but defts. admitted another vessel in the turn which properly belonged to pltf. Upon an action for damages in respect of the breach of contract in not giving pltf.'s ship her turn in order:—*Held*: being a matter of frequent occurrence & of daily necessity, the case came within the recognised exceptions to the rule that a corp. could only contract under its common seal, & this contract, though not under seal, was nevertheless binding on defts.—*WELLS v. KINGSTON-UPON-HULL CORPN.* (1875), L. R. 10 C. P. 402; 44 L. J. C. P. 257; 32 L. T. 615; 23 W. R. 562.

Annotations:—*Consd. Kerrison v. Smith*, [1897] 2 Q. B. 445; *Bourne & Hollingsworth v. Marylebone B. C.* (1908), 72 J. P. 129. *Mentd. Webber v. Lee* (1882), 9 Q. B. D. 315.

Not appointment of clerk by guardians.]—See No. 1114, *ante*.

SUB-SECT. 3.—CONTRACTS IN MATTERS ESSENTIAL TO PURPOSE OF TRADING CORPORATION.

1151. General rule—Contract executed or executory.]—*CHURCH v. IMPERIAL GAS LIGHT & COKE CO.*, No. 169, *ante*.

1152. — Advertisements—Dock company.]—Where pltf., the proprietor of a weekly publication, brought an action against the co., for advertisements inserted in the publication, an objection was raised that it was not shown the authority to insert them was under seal; but the objection was overruled.—*HARTWELL v. THAMES HAVEN*

Co. (1907), 5 W. L. R. 153; 16 Man. L. R. 464.—CAN.

m. — Not purchase of fire engine—By municipal corporation.]—The purchase of a fire engine by a municipal corp. is not a matter of such minor importance or daily occurrence as should be binding on the corp. without the formality of a seal.—*SIRSBY v. DUNVILLE VILLAGE* (1883), 8 A. R. 524.—CAN.

PART X. SECT. 3, SUB-SECT. 3.

n. General rule.]—A contract by a trading corp. dealing with a subject within the scope of the object of its memorandum of assocn. need not be under its corporate seal.—*CANADIAN PACIFIC NAVIGATION CO. v. VICTORIA PACKING CO.* (1889), 3 B. C. R. 490.—CAN.

o. —.]—A corp. is bound by its unsealed contracts entered into *bond fide* in the course of its ordinary business within the scope of the objects for which it was incorporated.—*FAIRCHILD CO. v. HAMMOND* (1903), 7 Terr. L. R. 20.—CAN.

Dock & Ry. Co. (1842), cited in 4 Man. & G. 883.

1153. — Agreement with master of ship—To bring home unseaworthy ship.]—Wherever a contract is essential to the purposes & object of a trading corp., it may be enforced against them, although it be not under seal. The Australian Mail Steam Navigation Co., which was constituted a trading corp. by charter for the purpose of maintaining a communication by steam & other vessels for carrying passengers, etc., between Great Britain & Australia, in the performance & for the more effectual prosecution of the objects of their charter, & by a resolution of the directors duly entered into as required by the charter, made a parol agreement with pltf., that in consideration of his going to S., to bring home one of their ships, which was supposed to be unseaworthy, & un-insurable, they would pay his passage out to S., & allow him a remuneration for his services; this contract being entered into by the co. & performed by pltf. for the express purpose of preserving the ship, & maintaining the communication & carriage of passengers, etc., between Great Britain & Australia:—*Held*: pltf. having performed his part of the agreement, the co. were liable to pay him, notwithstanding that the contract was not under seal.—*HENDERSON v. AUSTRALIAN ROYAL MAIL STEAM NAVIGATION CO.* (1855), 5 E. & B. 409; 24 L. J. Q. B. 322; 25 L. T. O. S. 234; 20 J. P. 132; 1 Jur. N. S. 830; 3 W. R. 571; 3 C. L. R. 1181; 119 E. R. 533.

Annotations:—*Consd.* Reuter v. Electric Telegraph Co. (1856), 6 E. & B. 341; South of Ireland Colliery Co. v. Waddle (1868), L. R. 3 C. P. 463. *Refd.* Bateman v. Mid-Wales Ry. (1866), L. R. 1 C. P. 499; Nicholson v. Bradley Union Grdns. (1866), 7 B. & S. 774.

1154. — Supply of ale to steamships.]—A corp. may sue on a contract, though not under seal, the subject matter of which is ancillary to the object for which the corp. was established.

Pltfs., a corp. by charter, bought, by parol contract, of defts. ale for use of passengers on board pltfs.' vessel & paid for it. The ale proved unfit for use:—*Held*: the contract, though not under seal, being executed, defts. were liable to pltfs. in damages.—*AUSTRALIAN ROYAL MAIL STEAM NAVIGATION CO. v. MARZETTI* (1855), 11 Exch. 228; 24 L. J. Ex. 273; 3 C. L. R. 1179; 156 E. R. 814.

Annotations:—*Refd.* Haigh v. North Bierley Union (1858), E. B. & E. 873; South of Ireland Colliery Co. v. Waddle (1868), L. R. 3 C. P. 463. *Mentd.* Osborne v. Hart (1871), 19 W. R. 331.

1155. — Supply of pumping engine & plant—To colliery company.]—The directors of a colliery co., incorporated under the Companies Act, 1862 (c. 29), entered into a contract with deft. for the purchase of a pumping engine for their mines, by the terms of which they were to pay £500 of the price on shipment of the engine, & the balance by bills on delivery. The contract was not under seal, & after payment of the £500 deft. refused to deliver the engine. In an action on the contract for not delivering:—*Held*: this co. being in the

nature of a trading co. & the subject-matter of the contract being directly within the scope of the purposes for which the co. was incorporated, the contract was binding, notwithstanding that it was not under seal.—*SOUTH OF IRELAND COLLIERY CO. v. WADDLE* (1868), L. R. 3 C. P. 463; 37 L. J. C. P. 211; 18 L. T. 405; 16 W. R. 756; *affd.* on other grounds (1869), L. R. 4 C. P. 617, Ex. Ch. *Annotations*:—*Refd.* Wells v. Kingston-upon-Hull (1875), L. R. 10 C. P. 402; Hunt v. Wimbledon L. B. (1878), 3 C. P. D. 208.

1156. — Contracts incidental to supply of electricity—By council supplying electricity.]—Deft. council, who had statutory powers for the supply of electricity in their borough, being about to increase the voltage at which they supplied electricity, made, through officials, a contract with pltfs. partly in writing & partly verbal to the effect that, if pltfs. would adapt an electric light installation that they were about to provide in their premises to the increased voltage instead of the lower voltage, thus saving the council expense in connection with the change of voltage, the council would supply electricity to pltfs.' premises at the increased voltage by a certain date. Pltfs. fitted their installation for the higher voltage accordingly; but, when the date for the supply arrived, it was found that the council were unable to supply electricity at the higher voltage & the council then agreed, through an official, that if pltfs. would suitably alter their installation, which they did, the council would supply them with electricity at the lower voltage within a limited time. The council, however, failed so to do. In an action brought by pltfs. against the council under these circumstances for damages for breach of contract, the jury found that it was necessary that contracts of the kind in question should be made in order to carry into effect the purposes of the council as electric light suppliers:—*Held*: the action was maintainable although the contracts were not under the seal of the council.—*BOURNE & HOLLINGSWORTH v. ST. MARYLEBONE BOROUGH COUNCIL* (1908), 72 J. P. 129; 24 T. L. R. 322; 6 L. G. R. 406; *reversd.* on other grounds, 72 J. P. 306, C. A.

1157. Exception to rule—Grant of pension.]—The retiring pension of a military officer of the East India Co. does not, upon his bkpcy. pass to his assignees in bkpcy. The grant of such a pension is not a matter relating to the co.'s trade, & is therefore not binding unless made under its common seal.—*GIBSON v. EAST INDIA CO.* (1839), 5 Bing. N. C. 262; 1 Arn. 493; 7 Scott, 74; 8 L. J. C. P. 193; 3 Jur. 56; 132 E. R. 1105.

Annotations:—*Consd.* *Ex p.* Napier (1852), 18 Q. B. 692; Innes v. East India Co. (1856), 17 C. B. 351; Marchant v. Lee Conservancy Board (1873), L. R. 8 Exch. 290. *Apld.* *Re Tufnell* (1876), 3 Ch. D. 164; Grant v. Secretary of State for India (1877), 2 C. P. D. 445. *Distd.* Booth v. Trail (1883), 12 Q. B. D. 8. *Refd.* Paine v. Strand Union (1846), 8 Q. B. 326; Secretary of State for India v. Sahaba (1859), 13 Moo. P. C. C. 22; *Re Keely, Ex p.* Hawker (1872), 20 W. R. 322; Salaman v. Secretary of State for India, [1906] 1 K. B. 613; The Raphael v. Brandy (1911), 80 L. J. K. B. 1067.

Supply of cheese.]—S. were a co. incorporated under C. S. c. 63, & 24 Vict. c. 19, for the manufacture & sale of cheese. A written & signed agreement was entered into between C., pltfs.' secretary & salesman, & M., on behalf of defts., for the sale of the whole of pltfs.' cheese, at prices named:—*Held*: pltfs. being a trading corp., & the contract one specially relating to the objects & purposes of co., it was binding upon them, though not under seal.—*ALBERT CHEESE CO. v. LEEHING* (1880), 31 C. P. 272.—*CAN.*

q. — Tender for building con-

tract—By manager of corporation. Pltfs., a trading corp., sent defts. a tender in writing for the erection of a school-house for \$45,000, & with it a cheque for \$2,000 "as a guarantee of good faith." The tender was accepted by defts.; but after negotiations, pltfs. declined to do the work unless paid a larger price than \$45,000. The tender was not under pltfs.' corporate seal, but was signed by the managing director with the name of co. & his designation. The managing director had authority to send in the tender:—*Held*: the tender was valid although the corp. did not make it under their corporate seal.—*BRANDON*

CONSTRUCTION CO. v. SASKATOON SCHOOL BOARD (1912), 21 W. L. R. 949; 5 D. L. R. 754.—*CAN.*

r. — Sale of land with view to purchase other land for purposes of corporation.]—A trading corp. selling land to enable it to purchase other lands to carry on its business is bound by its contract of sale although not under the corporate seal, when the circumstances show that the contract was in furtherance of the objects of the corp.—*VANSICKLER v. MCKNIGHT CONSTRUCTION CO.* (1914), 31 O. L. R. 531; 24 D. L. R. 298; 6 O. W. N. 526.—*CAN.*

Sect. 3.—When seal dispensed with: Sub-sect. 3. Sects. 4 & 5: Sub-sect. 1, A. (a).]

1158. — Changing system of locomotion—By railway company.]—DIGGLE *v.* LONDON & BLACKWALL RY. CO., No. 1105, *ante*.

1159. — Sale of iron by copper mining company.]—In an action of *assumpsit*, the declaration stated, that in consideration that plffs. would sell to defts. iron rails, defts. agreed to furnish to plffs. sections of the railways, averring mutual promises, & alleging as a breach the non-delivery of the sections by defts. It appeared that plffs. were incorporated by a charter, for the purpose of carrying on the business of copper miners, & that the contract in question, which was not under seal, had been made by an agent on behalf of plffs. with defts. :—*Held*: the action could not be maintained by the corpn. as the contract was not under seal, & did not fall within any of the exceptions to the general rule, that a corporation can only bind itself by deed; the contract was not incidental or ancillary to carrying on the business of copper miners, & was therefore not binding on the corpn.—COPPER MINERS' CO. *v.* FOX (1851), 16 Q. B. 229; 20 L. J. Q. B. 174; 16 L. T. O. S. 460; 15 Jur. 703; 117 E. R. 866.

*Annotations:—*Consd. Clarke *v.* Cuckfield Union Grdns. (1852), 21 L. J. Q. B. 349. Foll. Reuter *v.* Electric Telegraph Co. (1856), 6 E. & B. 341. Consd. South of Ireland Colliery Co. *v.* Waddle (1868), L. R. 3 C. P. 463. Refd. Henderson *v.* Australian Royal Mail Steam Navigation Co. (1855), 5 E. & B. 409; Smart *v.* West Ham Grdns. (1855), 10 Exch. 867; Bateman *v.* Ashton-under-Lyne Corpn. (1858), 22 J. P. 498; Kidderminster Corpn. *v.* Hardwick (1873), L. R. 9 Exch. 13.

1160. — Cleansing docks & basins—Dock company.]—The London Dock Co., a corpn. constituted for the purpose of carrying on a particular trade, entered into a contract for cleansing & removing the filth & dirt accumulating in their docks & basins :—*Held*: such a contract ought to have been under the corpn. seal, as it was not a contract of a mercantile nature; nor was it with a customer of the co., nor was it of a character which created an impossibility that it should be under seal.—LONDON DOCK CO. *v.* SINNOTT (1857), 8 E. & B. 347; 27 L. J. Q. B. 129; 30 L. T. O. S. 164; 4 Jur. N. S. 70; 6 W. R. 165; 120 E. R. 129.

*Annotations:—*Consd. Bateman *v.* Ashton-under-Lyne Corpn. (1858), 3 H. & N. 323; Haigh *v.* North Bierley Union (1858), E. B. & E. 873; Nicholson *v.* Bradfield Union (1866), L. R. 1 Q. B. 620. Distd. South of Ireland Colliery Co. *v.* Waddle (1868), L. R. 3 C. P. 463. Refd. Dyto *v.* St. Pancras Board of Grdns. (1872), 27 L. T. 342.

See Nos. 175, 888, 1098, *ante*, Nos. 1170–1178, 1180, *post*.

SECT. 4.—RATIFICATION BY SEAL.

1161. General rule.]—A contract must be ratified within a reasonable time after acceptance by an unauthorised person, & such a contract cannot be ratified after the date fixed for performance to commence.—METROPOLITAN ASYLUMS BOARD (MANAGERS) *v.* KINGHAM & SONS (1890), 6 T. L. R. 217.

1162. By persons having power to act—For joint stock company—Under Joint Stock Companies Act, 1844 (c. 110)—Binding on company.]—RIDLEY *v.* PLYMOUTH GRINDING & BAKING CO., No. 1196, *post*.

1163. After breach of contract.]—A municipal

corpn., acting as a board of health, authorised, by resolution under seal, an auctioneer to offer a market & tolls for lease. Deft. at the auction was the highest bidder, under conditions of sale to pay one month's rent as deposit & find two sureties on the fall of the hammer. The conditions were signed by deft. & the town clerk on the part of the corpn. Deft. paid the deposit but did not find sureties nor complete the agreement. The sale was afterwards acknowledged by a further resolution under seal but the contract itself was not sealed.

Held: (1) an action by the corpn. was not maintainable there being no mutuality; (2) plffs. were not bound by the first resolution because the auctioneer did not enter into the contract; (3) the second resolution was not a ratification because it came after breach, & the payment of the rent as deposit was merely provisional, & not a part performance such as would bind plffs. in equity; (4) the dictum of TINDALL, C.J., in *Fishmongers' Co. v. Robertson*, No. 1138, *ante*, that a corpn., by putting a contract in suit, made it sufficiently binding on itself to satisfy the requirements of mutuality, was overruled; (5) the contract was one that required to be under plffs.' seal.—KIDDERMINSTER CORPN. *v.* HARDWICK (1873), L. R. 9 Exch. 13; 43 L. J. Ex. 9; 29 L. T. 611; 22 W. R. 160.

*Annotations:—*As to (1) Consd. Melbourne Banking Corpn. *v.* Brougham (1878), 4 App. Cas. 156. As to (2 & 5) Foll. Oxford Corpn. *v.* Crow, [1893] 3 Ch. 535.

1164. After part performance of contract—Retainer of engineer—Public Health Act, 1875 (c. 55).]—Plffs. contracted with defts. by an agreement in writing, but not under seal, to act as joint engineers in the execution of certain works. Plffs. did various work in performance of their part of the agreement for twelve months. At the end of that time, & before the works contemplated by the original agreement were actually commenced, a memorandum under seal was duly executed by defts., reciting the previous agreement & purporting to confirm the same :—*Held*: there was a valid contract under seal between the parties within the meaning of sect. 174 of above Act, & plffs. could recover for work done both before & after the date of the sealed agreement.—MELLISS *v.* SHIRLEY LOCAL BOARD (1885), 14 Q. B. D. 911; 54 L. J. Q. B. 408; 52 L. T. 544; 1 T. L. R. 427; *reversd.* on other 16 Q. B. D. 446, C. A.

1165. — Retainer of solicitor.]—Corpn. of T. having presented a memorial to the Local Government Board asking for the inclusion within their borough of the urban district of C., the district council of C. resolved to oppose it, & by resolutions passed from time to time retained plffs., a firm of solicitors & Parliamentary agents, for that purpose. The resolutions were not under seal, but subsequently, & after plffs. had done a considerable amount of work under them, the seal of the district council was affixed to the resolutions. An enquiry having been held, a provisional order was made by the Local Government Board, which was afterwards confirmed, the effect of which was to dissolve the C. district, & to add part of it to the borough of T. & the other part to the rural district of N. Plffs.' bill of costs in respect of the Parliamentary opposition to the confirmation of the provisional order was delivered to the district council of C. & afterwards to defts. In an action brought by plffs. to recover the amount of such bill from

PART X. SECT. 4.

persons having power to act
—*Binding on corporation.]—*A corpn. put up lands to lease by auction, with conditions. P. was the highest bidder, & signed an agreement to accept a

lease subject to the conditions, & the auctioneer, not appointed under seal, signed on behalf of the corpn. Subsequently corpn. affixed its seal to a memorandum ratifying the contract. Nothing had previously been done

under the contract, & P. had not paid any rent :—*Held*: but for subsequent ratification the corpn. would not have been bound.—PROUDFOOT *v.* OTAGO HARBOUR BOARD (1879), O. B. & F. 119.—N.Z.

defts. :—*Held*: the confirmation under seal of the original retainers created an obligation binding upon the district council of C. without any new consideration, & it was not *ultra vires* for them to create such an obligation.—**BROOKS, JENKINS & Co. v. TORQUAY CORPN.**, [1902] 1 K. B. 601; 71 L. J. K. B. 109; 85 L. T. 785; 66 J. P. 293; 18 T. L. R. 139.

Ratification by adoption or acquiescence.—See Sect. 5, sub-sect. 3, *post*.

Consent to ultra vires acts.—See Part IX., Sect. 5, sub-sect. 4, *ante*.

SECT. 5.—WHEN CONTRACTS NOT UNDER SEAL ENFORCEABLE.

SUB-SECT. 1.—EXECUTED CONTRACTS.

A. Benefit received by Corporation.

(a) In General.

1166. General rule—Goods sold & delivered.—A corporation aggregate may be sued in *indebitatus assumpsit* for goods sold & delivered, though the contract be not under seal. The contract may be implied or express, as in cases of *assumpsit* against an individual; & the implication may arise from the object of the incorporation, as compared with the subject-matter of the contract; as in *assumpsit* against an incorporated gas co. for the price of gas-meters sold & delivered, to the amount of £15. In the case of corpns. aggregate, as in that of individuals, if goods are taken on the terms of their being returned if not approved of, & they are retained an unreasonable time, the party so taking & retaining may be sued for goods sold & delivered.—**BEVERLEY v. LINCOLN GAS LIGHT & COKE CO.** (1837), 6 Ad. & El. 829; 2 Nev. & P. K. B. 283; Will. Woll. & Dav. 519; 7 L. J. Q. B. 113; 112 E. R. 318.

Annotations:—**Consd.** Church v. Imperial Gas Light & Coke Co. (1837), 6 Ad. & El. 846. **Appld.** Ludlow Corpn. v. Charlton (1840), 6 M. & W. 815. **Distd.** Diggle v. London & Blackwall Ry. (1850), 5 Exch. 442. **Consd.** Clarke v. Cuckfield Union Grdns. (1852), 21 L. J. Q. B. 349; Finlay v. Bristol & Exeter Ry. (1852), 7 Exch. 409; Eccel. Comrs. v. Merril (1869), L. R. 4 Exch. 162. **Refd.** Gibson v. East India Co. (1839), 5 Bing. N. C. 262; Hall v. Swansea Corpn. (1844), 5 Q. B. 526; Paine v. Strand Union (1846), 8 Q. B. 326; Doe d. Pennington v. Tanriere (1848), 13 L. T. O. S. 204; Henderson v. Australian Royal Mail Steam Navigation Co. (1855), 5 E. & B. 409; Smart v. West Ham Grdns. (1855), 24 L. J. Ex. 201; Lawford v. Billericay R. C. (1903), 72 L. J. K. B. 554. **Mentd.** Gibson v. Kirk (1841), 1 Q. B. 850; Iley v. Frankenstein (1844), 8 Scott, N. R. 839; Moss v. Sweet (1851), 20 L. J. Q. B. 167; Smith v. Hull Glass Co. (1852), 16 Jur. 595.

1167. — Contracts incident to purposes of cor-

PART X. SECT. 5, SUB-SECT. 1.— A. (a).

1166 i. General rule—Goods sold & delivered.—Where a tradesman has supplied to an incorporated club, goods for use in the club, & the same have been received into stock by an employee of the club having authority, the contract, which is one incidental to the purposes for which the corpn. exists, & has been executed by the tradesman, does not require to be under seal.—**GOWANS-KENT WESTERN, LTD. v. ASSINIBOIA CLUB** (1915), 33 W. L. R. 266; 9 W. W. R. 936.—**CAN.**

1167 i. — Contracts incidental to purposes of corporation.—Where work done for a corpn. is such as was evidently contemplated by their charter, & they have accepted & availed themselves of it, they cannot refuse to pay on the ground that there was no contract under seal.—**CLARK v. HAMILTON & GORE MECHANICS' INSTITUTE** (1854), 12 U. C. R. 178.—**CAN.**

1167 ii. — — — — —.—A corpn. is liable on an executed contract for the performance of work within the purposes for which it was created, which work it has adopted & of which it has received the benefit, though the contract was not executed under its corporate seal.—**BERNARDIN v. NORTH DUFFERIN MUNICIPALITY** (1891), 19 S. C. R. 581.—**CAN.**

1169 i. — — — — —.—Though a contract by a corpn. must ordinarily be made under seal, still, where there is that which is known as an executed consideration, an action will lie, though this formality has not been observed.—**ABAJI SITARAM v. TRIMBAK MUNICIPALITY** (1904), 1 L. R. 28 Bom. 66.—**IND.**

t. — Work & labour.—Pltf. was engaged by the president of deft. ry. co. to act as chief engineer of the ry. at a salary of \$250 per month besides his "usual expenses," & served in that capacity for about nineteen months;—*Held*: he was

entitled to recover at the rate agreed on for his services, although there was no contract under seal.—**FORREST v. GREAT NORTHWEST CENTRAL RY. CO.** (1899), 12 Man. L. R. 472.—**CAN.**

a. — Agreement for compensation for valuable information.—M. being aware of a valuable mining location, made it known to defts., under an agreement that he should be compensated. The mode of compensation was not determined, but the usual mode was found to be by receiving a share or partnership interest in the mine. The agreement was not under the corporate seal. The co. received \$5,500 for their claim to the property by way of compromise, from a director who had availed himself of pltf.'s communication to the directors to obtain secretly a grant of the property to himself personally;—*Held*: pltf. was entitled to share this sum & the want of a seal was no defence.—**MCDONALD v. UPPER CANADA MINING CO.** (1865), 15 Gr. 179.—**CAN.**

Annotations:—**Consd.** Clarke v. Cuckfield Union Grdns. (1852), 21 L. J. Q. B. 349; Smart v. West Ham Grdns. (1855), 10 Exch. 867. **Foll.** Haigh v. North Bierley Union (1858), E. B. & E. 873. **Consd.** Lawford v. Billericay R. C., [1903] 1 K. B. 772. **Refd.** Diggle v. Blackwall Ry. (1850), 14 Jur. 937; Hyett v. Cheltenham Union Grdns. (1850), 15 L. T. O. S. 507; Finlay v. Bristol & Exeter Ry. (1852), 7 Exch. 409; Lowe v. L. & N. W. Ry. (1852), 18 Q. B. 632; Henderson v. Australian Royal Mail Steam Navigation Co. (1855), 5 E. & B. 409. **Mentd.** Attenborough v. Kemp (1861), 5 L. T. 67; Edwards & Mann v. Hatton (1865), 12 L. T. 398.

1168. — — — — —.—**PAINE v. STRAND UNION**, No. 1186, *post*.

1169. — — — — —.—A lease, voidable by a corpn., may be set up merely by their acceptance of rent, without evidence of any deed executed under their seal in that behalf. Payment & receipt of rent is evidence against a corpn. of a demise by them, from year to year. The presumption arising from such payment & acceptance, is not inconsistent with the rule, that, in general a corpn. can only contract by deed; it is merely a presumption raised against the corpn. from their acts, that they have contracted in such a manner as to be binding on them, whether by deed or otherwise.

To enforce an executory contract against a corpn., it may be necessary to show, that it was by deed; but where, the corpn. have acted as upon an executed contract, it is to be presumed against them, that everything has been done that was necessary to make it a binding contract upon both parties, they having had all the advantage they would have had if the contract had been regularly made.

Qu.: whether a lease for 99 years by a dean & chapter purporting to be made in pursuance of a power given by a private Act of Parliament but not in accordance with that power is voidable or absolutely void.—**DOE d. PENNINGTON v. TANIÈRE** (1848), 12 Q. B. 998; 18 L. J. Q. B. 49; 13 L. T. O. S. 204; 13 Jur. 119; 116 E. R. 1144.

Annotations:—**Consd.** Pennington v. Cardale (1858), 3 H. & N. 656; Lawford v. Billericay R. C., [1903] 1 K. B. 772; Bourne & Hollingsworth v. Marylebone B. C.

Sect. 5.—When contracts not under seal enforceable:
Sub-sect. 1, A. (a), (b) & (c).]

(1908), 72 J. P. 129. *Reid*. Kidderminster Corpn. v. Hardwick (1873), L. R. 9 Exch. 13.

Agreement for renewal of lease by corporation.]—
See No. 1076, *ante*.

(b) Trading Corporation.

1170. Opposition to railway company's bill withdrawn—For consideration agreed by promoter—Benefit received by company afterwards incorporated—Agreement binding on company.]—An agreement not to oppose a ry. bill in Parliament is not illegal. The projectors of a ry., pending a bill in Parliament for incorporating them, made an agreement on behalf of the proposed corpn., in consequence of which a threatened opposition to the bill was withdrawn:—*Held*: the corpn., having received the benefit of the agreement, were bound by it.—*EDWARDS v. GRAND JUNCTION RY. CO.* (1836), 1 My. & Cr. 650; 1 Ry. & Can. Cas. 173; 6 L. J. Ch. 47; 40 E. R. 525, L. C.

Annotations:—*Distd.* Aldred, Swann & Boomer v. North Midland Ry. (1839), 1 Ry. & Can. Cas. 404; Howden v. Simpson (1839), 10 Ad. & El. 793; Gooday v. Colchester, etc. Ry. (1852), 17 Beav. 132. *Consd.* Lindsey v. G. N. Ry. (1853), 10 Hare, 664. *Distd.* Eastern Counties Ry. v. Hawkes (1855), 5 H. L. Cas. 331. *Consd.* Caledonian & Dumbartonshire Junction Co. v. Helensburgh Harbour Trustees (1856), 27 L. T. O. S. 241. *Distd.* Williams v. St. George's Harbour Co. (1857), 24 Beav. 339. *Consd.* Shrewsbury v. North Staffordshire Ry. (1865), L. R. 1 Eq. 593; Cutbill v. Shropshire Ry. (1891), 1 T. L. R. 381. *Reid.* Greenhalgh v. Manchester & Birmingham Ry. (1838), 3 My. & Cr. 784; Hargreaves v. Lancaster & Preston Junction Ry. (1838), 1 Ry. & Can. Cas. 416; G. W. Ry. v. Birmingham & Oxford Junction Ry. (1848), 2 Ph. 597; Stuart v. L. & N. W. Ry. (1852), 1 De G. M. & G. 721; Norwich Corpn. v. Norfolk Ry. (1855), 4 E. & B. 397; Leominster Canal Navigation Co. v. Shrewsbury & Hereford Ry. (1857), 3 K. & J. 654; Bedford & Cambridge Ry. v. Stanley (1862), 2 John. & H. 746.

1171. ————.]—In 1846, two competing lines of railway, the D. N. & the L. & Y., being before Parliament, L. agreed with eleven persons, promoters of the D. N. Ry., to give them certain portions of land, at different prices; to withdraw all parliamentary opposition from them, & offer every description of opposition to the L. & Y. Ry.; & that if an amalgamation took place on any grounds, he would not oppose the amalgamated co. In case of the amalgamated co. obtaining their bill, they were to adopt this agreement & all the covenants, etc., one of which was, that the D. N. Ry. Co. were to build a station near T., at a point to be approved by L., at which station all trains should stop. The two cos. did amalgamate by the name of the G. N. Ry. Co. Litigation took place, both in equity & at law, upon the construction of the agreement, the validity of which was never impeached in such litigation. The G. N. Co. now refused to stop their express trains at the T. station:—*Held*: the corpn. was bound at all events, as they had entered upon & taken possession of the land mentioned in the agreement, & otherwise asserted its validity.

Qu.: whether a corporation can be bound by the acts of an agent not appointed under seal.—*LINDSEY (EARL) v. GREAT NORTHERN RY. CO.* (1853), 10 Hare, 664; 22 L. J. Ch. 995; 17 Jur. 522; 1 W. R. 257; 68 E. R. 1094.

1172. ———— Undertaking afterwards abandoned—No benefit received by company—Company not liable.]—An incorporated ry. co. promoted a bill in Parliament to obtain powers to make an extension line. A landowner opposed but withdrew his opposition in consequence of an agreement to purchase his land, entered into & executed by a person, the solr. of the co., who professed to act as their agent. The agreement was not under the

seal of the co., & the person executing it had not been legally authorised by the co. to do so. The bill passed into an Act, but the construction of the ry. was not proceeded with before the expiration of the compulsory powers of the co. The time for the completion of the ry. had not expired when the pltf. filed his bill against the co. for specific performance of the agreement:—*Held*: in the absence of any proof of the adoption of the agreement by the co., or of their having received any benefit under it, pltf. was not entitled to a decree for specific performance, & the co. were not compellable to admit the contract in an action at law for damages.—*GOODAY v. COLCHESTER, ETC. RY. CO.* (1852), 17 Beav. 132; 7 Ry. & Can. Cas. 375; 19 L. T. O. S. 334; 51 E. R. 983.

Annotations:—*Consd.* Eastern Counties Ry. v. Hawkes (1855), 5 H. L. Cas. 331. *Folld.* Williams v. St. George's Harbour Co. (1857), 24 Beav. 339. *Reid.* Preston v. Liverpool, etc. Junction Ry. (1853), 17 Beav. 114; Haynes v. Haynes (1861), 7 Jur. N. S. 595.

1173. ————.]—In order to induce pltf. to withdraw his opposition to a bill in Parliament, H. & Y., on behalf of a projected ry. co. entered into an agreement with him that he should assent to the ry. being made through his property in the manner laid down in the deposited plans, & that the co. should, in case they obtained an Act of incorporation in the then present or any subsequent session, pay to pltf. £1,000 for all lands required by the co. for the making of the ry., & a further sum of £4,000 for residential injury. That the co. should construct a tunnel in manner therein mentioned & that the co. should cause a station to be made at the village F., with all proper approaches, the land required for such station & approaches to be furnished by pltf. The agreement was signed by H. & Y. & pltf. withdrew his opposition. The co. were duly incorporated, but, having abandoned the undertaking, pltf. filed his bill for specific performance of the contract:—*Held*: the incorporated co. had not adopted or taken the benefit of the agreement, so as to bind themselves equitably to perform it. Although a co. cannot legally bind itself except by deed under the corporate seal, yet it may equitably bind itself by adoption, or by reception of a benefit under a contract.—*PRESTON v. LIVERPOOL, ETC. JUNCTION RY. CO.* (1853), 17 Beav. 114; 7 Ry. & Can. Cas. 704; 21 L. T. O. S. 222; 51 E. R. 975; *affd.* (1856), 5 H. L. Cas. 605, H. L.; *earlier proceedings* (1851), 1 Sim. N. S. 586.

Annotations:—*Distd.* Gooday v. Colchester & Stour Valley Ry. (1852), 7 Ry. & Can. Cas. 375. *Consd.* Stuart v. L. & N. W. Ry. (1852), 15 Beav. 513; Caledonian & Dumbartonshire Junction Co. v. Helensburgh Harbour Trustees (1856), 27 L. T. O. S. 241; Taylor v. Chichester & Midhurst Ry. (1867), L. R. 2 Exch. 356; Mann v. Edinburgh Northern Tram. Co., [1893] A. C. 69. *Reid.* Stuart v. L. & N. W. Ry. (1851), 7 Ry. & Can. Cas. 25; Gage v. Newmarket Ry. (1852), 7 Ry. & Can. Cas. 168; Webb v. Direct London & Portsmouth Ry. (1852), 1 De G. M. & G. 519; Lindsey v. G. N. Ry. (1853), 10 Hare, 664; Eastern Counties Ry. v. Hawkes (1855), 5 H. L. Cas. 331; Scottish North-Eastern Ry. v. Stewart (1859), 33 L. T. O. S. 307; Shrewsbury v. North Staffordshire Ry. (1865), L. R. 1 Eq. 593.

1174. Goods sold & delivered—To gas company.]—*BEVERLEY v. LINCOLN GAS LIGHT & COKE CO.*, No. 1166, *ante*.

1175. ———— To railway company.]—*DENTON v. EAST ANGLIAN RYS. CO.* (1850), 3 Car. & Kir. 16, N. P.

1176. Use & occupation of land—By railway company—Contract for purchase—Enforceable against company.]—An objection to a bill by an incorporated ry. co. for specific performance of a contract for the purchase of land entered into by their agent, that it did not appear that the agent was authorised under the corporate seal,

& therefore that there was no mutuality, over-ruled on the ground that the co. had, before the bill was filed, not only acted on the contract by entering into possession of the land, but actually made a railroad over it.—**LONDON & BIRMINGHAM RY. CO. v. WINTER** (1840), Cr. & Ph. 57; 41 E. R. 410, L. C.

Annotations:—**Consd.** *Lindsey v. G. N. Ry.* (1853), 10 Hare, 664. **Apld.** *Wilson v. West Hartlepool Harbour & Ry. Co.* (1864), 34 Beav. 187. **Refd.** *Hoare v. Lewisham Corp.* (1901), 85 L. T. 281. **Mentd.** *Smith v. Wheatcroft* (1878), 9 Ch. D. 223.

1177. ——— No tenancy inferred—From payment of rent during occupation.—An incorporated ry. co. agreed by parol to take certain premises for a year. They occupied, & at the end of the year continued to occupy for another year, at the expiration of which period they removed their goods, without any previous notice to quit, but paid rent up to the end of the following quarter:—**Held**: they were not liable in an action for use & occupation for the remaining three quarters of a year, since they did not occupy during that period; & no tenancy could be inferred from the payment of rent, inasmuch as they could not contract except under seal.—**FINLAY v. BRISTOL & EXETER RY. CO.** (1852), 7 Exch. 409; 7 Ry. & Can. Cas. 149; 21 L. J. Ex. 117; 155 E. R. 1008.

Annotations:—**Distd.** *Lowe v. L. & N. W. Ry.* (1852), 18 Q. B. 632. **Refd.** *Smart v. West Ham Grdns.* (1855), 24 L. J. Ex. 201.

1178. ——— Company liable.—An action of *assumpsit* for use & occupation lies against a corp., where there has been an actual occupation by the corp., though they have not contracted under seal; & where a ry. co. have occupied in the absence of any negative evidence the ct. will presume that they occupied under such a parol contract as the directors are by Companies Clauses Consolidation Act, 1845 (c. 16), s. 97 empowered to enter into.—**LOWE v. LONDON & NORTH WESTERN RY. CO.** (1852), 18 Q. B. 632; 7 Ry. & Can. Cas. 524; 21 L. J. Q. B. 361; 19 L. T. O. S. 200; 17 Jur. 375; 118 E. R. 239.

Annotations:—**Apld.** *Pauling v. L. & N. W. Ry.* (1853), 8 Exch. 867. **Mentd.** *Taff Vale Ry. v. Giles* (1853), 23 L. J. Q. B. 43; *Markham v. Stanford* (1863), 14 C. B. N. S. 577.

1179. Employment of agent—By railway company—Resolution not under seal—Or signed by three directors—Company not liable for services rendered.—**COPE v. THAMES HAVEN DOCK & RY. CO.**, No. 1098, *ante*.

1180. Reference to arbitration—By secretary of company—Award made & acted on—Binding on company.—The secretary of a ry. co. agreed, in writing, not under seal, to refer the compensation to be paid for land to arbn. The reference proceeded, the award made, & the compensation under it paid, but the co. would not pay the costs of the award; & in an action to recover the same:—**Held**: the agreement of the secretary, so entered into & acted upon, was binding upon the co., & the award made in pursuance of it good, notwithstanding the regular & ordinary notices required by Companies Clauses Consolidation Act, 1845 (c. 16) did not appear to have been given.—**COLLINS v. SOUTH STAFFORDSHIRE RY. CO.** (1851), 7 Exch. 5; 21 L. J. Ex. 247; 18 L. T. O. S. 96; 16 Jur. 843; 155 E. R. 831.

Annotations:—**Mentd.** *R. v. Manchester, etc. Ry.* (1854), 4 E. & B. 88; *Martin v. Leicester Waterworks Co.* (1858), 3 H. & N. 463.

1181. Money advanced on mortgage—Failure to comply with prescribed formalities—Mortgagee's

claim disallowed.—A charge upon the assets of a co. will not bind the co. unless created in the mode & executed with the formalities prescribed by their articles of assocn.

B. advanced money to a co. upon the deposit of certain title deeds, accompanied by a memorandum of charge signed by the general manager, but not under the seal of the co., nor executed with other requisite formalities. There was evidence that the manager had been authorised by the directors to effect the loan & sign the memorandum, but no entry of any resolution for that purpose was made in the books of the co. In the winding-up:—**Held**: B.'s claim would be disallowed.—**Re GENERAL PROVIDENT ASSURANCE CO., LTD.** (1869), 38 L. J. Ch. 320; 17 W. R. 514.

Annotations:—**Refd.** *Re Wynn Hall Coal Co., Ex p. North & South Wales Bank* (1870), L. R. 10 Eq. 515; *Re General Provident Assce., Ex p. National Bank* (1872), L. R. 14 Eq. 507.

1182. Agreement not to prove debt in bankruptcy—Consideration executed by assignee in bankruptcy—Enforceable against company.—A release of an insolvent's equity of redemption to the mtgee. is not *prima facie* beyond the scope of an official assignee's authority; & "Insolvency Statute, 1865," of Victoria, clearly contemplates the exercise of such authority. Where the consideration for such a release is an agreement not under seal by a corp., the mtgee., to abstain from proving any portion of its debt, & such agreement had been acted on by accepting the release:—**Held**: the corp. was bound thereby, & that the consideration had not failed.—**MELBOURNE BANKING CORPN. v. BROUGHAM** (1879), 4 App. Cas. 156; 48 L. J. P. C. 12; 40 L. T. 1, P. C.; *subsequent proceedings* (1882), 7 App. Cas. 307, P. C.

Annotation:—**Mentd.** *Teabay v. M. S. & L. Ry.* (1883), 24 Ch. D. 572.

See, also, Nos. 1105, 1153, 1154, 1156, *ante*.

(c) Board of Guardians.

1183. Goods sold & delivered—Gates for workhouse—Supplied on order of union officer.—**SANDERS v. ST. NEOT'S UNION GUARDIANS**, No. 1167, *ante*.

1184. ——— Water-closets for workhouse.—If the guardians of a poor law union, at a board properly constituted & authorised to enter into contracts, give orders to a tradesman to supply & put up water-closets in the union workhouse, & he puts them up, & the guardians approve & accept them they cannot afterwards defend themselves, in an action against them for the price, by showing that there was no contract under seal, as the purposes for which the guardians were made a corp. require that they should provide such articles.—**CLARKE v. CUCKFIELD UNION GUARDIANS** (1852), Bail Ct. Cas. 81; 21 L. J. Q. B. 349; 19 L. T. O. S. 207; 16 J. P. 457; 16 Jur. 686.

Annotations:—**Consd.** *Henderson v. Australian Royal Mail Steam Navigation Co.* (1855), 5 E. & B. 409; *Smart v. West Ham Grdns.* (1855), 10 Exch. 867. **Apld.** *Haigh v. North Bierley Union* (1858), E. B. & E. 873. **Foll.** *Nicholson v. Bradfield Union* (1866), L. R. 1 Q. B. 620. **Consd. & Distd.** *Hunt v. Wimbledon L. B.* (1878), 4 C. P. D. 48. **Consd.** *Young v. Royal Leamington Spa Corp.* (1883), 8 App. Cas. 517. **Apprvd.** *Lawford v. Billericay R. C.* [1903] 1 K. B. 772. **Consd.** *Bourne & Hollingsworth v. Marylebone B. C.* (1908), 72 J. P. 129. **Distd.** *Mackay v. Toronto City Corp.* [1920] A. C. 208. **Refd.** *South of Ireland Colliery Co. v. Waddle* (1868), L. R. 3 C. P. 463; *Scott v. Clifton School Board* (1884), 14 Q. B. D. 500.

1185. ——— Coal for workhouse.—Pltf. supplied coals from time to time to defts., the guardians of

PART X. SECT. 5, SUB-SECT. 1.— A. (c).

b. Necessary & incidental to pur-

pose of union.—The guardians of poor law unions are liable upon contracts not under seal, when the works, etc., contracted for are necessary &

incidental to the purposes of the union.—**BRADFORD v. CARRICK-ON-SUIR UNION** (1857), 9 Ir. Jur. 333.—**IR.**

Sect 5.—When contracts not under seal enforceable :
Sub-sect. 1, A. (c), (d) & (e), B.; sub-sect. 2.]

a poor law union, for the use of their workhouse under articles of agreement between pltf. & defts. executed by pltf., but not under the seal of defts. Defts. received & used some of the coals. In an action for goods sold & delivered:—*Held*: as the goods had been supplied & accepted by defts., & were such as must necessarily be from time to time supplied for the very purposes for which defts. were incorporated, defts. were liable to pay for the coals although the contract was not under seal.—*NICHOLSON v. BRADFELD UNION* (1866), L. R. 1 Q. B. 620; 7 B. & S. 774; 35 L. J. Q. B. 176; 14 L. T. 830; 30 J. P. 549; 12 Jur. N. S. 686; 14 W. R. 731.

Annotations:—*Distd.* *Hunt v. Wimbledon L. B.* (1878), 4 C. P. D. 48. *Consd.* *Young v. Royal Leamington Spa Corp.* (1883), 8 App. Cas. 517; *Lawford v. Billericay R. C.*, [1903] 1 K. B. 772. *Mentd.* *Pegge v. Lampeter Union Grdns.* (1872), 41 L. J. C. P. 204.

1186. Employment of surveyor—Survey of parish—Not incidental to office of guardians.]—The guardians of a union under Poor Law Amendment Act, 1844 (c. 101), by contract under seal, employed pltf. to make a survey of one of the united parishes, & afterwards, by parol, employed him to prepare a survey, reduced to one-fifth of the size of the original plan:—*Held*: as the making of a survey of any of the united parishes was not incidental to the office of guardians, they could not make a contract for that purpose, not under seal, which would bind them.—*PAINE v. STRAND UNION* (1846), 8 Q. B. 326; 15 L. J. M. C. 89; 6 L. T. O. S. 432; 10 J. P. 391; 10 Jur. 308; 115 E. R. 899.

Annotations:—*Consd.* *Lamprell v. Billericay Union* (1849), 3 Exch. 283. *Refd.* *Hyett v. Cheltenham Union Grdns.* (1850), 15 L. T. O. S. 507; *Clarke v. Cuckfield Union Grdns.* (1852), 21 L. J. Q. B. 349; *Finlay v. Bristol & Exeter Ry.* (1852), 7 Exch. 409; *Haigh v. North Bierley Union* (1858), E. B. & E. 873. *Mentd.* *R. v. Greene* (1852), 16 Jur. 663.

1187. — Rescission of agreement—Remuneration on quantum meruit.]—*FARADAY v. TAMBORTH UNION*, No. 1103, *ante*.

1188. Employment of accountant.]—The guardians of a poor law union having reason to believe that their clerk had been guilty of fraud, & that sums of money had been misappropriated, employed pltf., an accountant, to audit their accounts, investigate them generally, & make up the books. Resolutions to this effect were from time to time entered in the rough minute-book, but there was no contract under the seal of the guardians:—*Held*: pltf., having done the work agreed upon, was entitled to recover, although the contract was not under seal.—*HAIGH v. NORTH BIERLEY UNION* (1858), E. B. & E. 873; 28 L. J. Q. B. 62; 31 L. T. O. S. 213; 23 J. P. 195; 5 Jur. N. S. 511; 6 W. R. 679; 120 E. R. 735.

Annotations:—*Distd.* *Sutton v. Spectacle Makers' Co.* (1864), 4 New Rep. 98. *Consd.* *Hunt v. Wimbledon L. B.* (1878), 4 C. P. D. 48; *Lawford v. Billericay R. C.*, [1903] 1 K. B. 772.

PART X. SECT. 5, SUB-SECT. 1.
A. (d).

servant.]—A municipal corp. may contract to hire a clerk or servant to render service in the ordinary business of the corp., without their corporate
CREDIT HARBOUR
 (1844), 1 U. C. R. 174.—**CAN.**

d. — Where accepted.]—An action may be sustained against a corp. for work & labour done for & accepted by them, without being supported by a contract under the seal of the corp.—*PIM v. ONTARIO MUNICIPAL COUNCIL* (1860), 9 C. P. 304.—**CAN.**

Making road—
Liab.—A resolution of a municipality was passed, that the road surveyor should be associated with S., one of the councillors for R., to receive tenders & approve of contracts for opening a road. Pltf.'s tender was accepted in pursuance of the resolution, & the work was performed, examined, & approved of by the surveyor & S.:—*Held*: a contract under seal was unnecessary.—*FETTERLY v. RUSSELL TOWNSHIP* (1867), 14 U. C. R. 433.—**CAN.**

1193 l. Employment of architect or engineer—Payment on quantum meruit.]—The chairman of a committee of a corp. was appointed with power to treat with & recommend to the council

Executed contracts by medical officers & other officers, see Nos. 1113, 1115, 1125, *ante*.

(d) Municipal Corporation.

1189. General rule.]—*YOUNG & CO. v. ROYAL LEAMINGTON SPA CORPN.*, No. 1126, *ante*.

1190. —.]—*HOARE v. KINGSBURY URBAN COUNCIL*, No. 1127, *ante*.

1191. Work & labour—Removing street obstruction—Not liable.]—*LUDLOW CORPN. v. CHARLTON*, No. 170, *ante*.

1192. Goods sold & delivered—In parcels below £50 in value—Council liable for parcels supplied.]—An urban authority invited tenders for a supply of coal for a year, the amount of which would exceed £100. Pltfs. tendered, & their tender was accepted subject to the execution of the contract & bond required by Public Health Act, 1875 (c. 55), s. 174. No such contract or bond was ever executed; but pltfs. supplied coal from time to time at the request of the urban authority. The value of the coal supplied in response to each separate request was below £50. In an action by pltfs. to recover the price of the coal so supplied:—*Held*: the tender & acceptance did not constitute a contract at all, inasmuch as the acceptance was subject to a condition which was never performed; & there was, therefore, nothing to prevent there being an implied contract on the part of the urban authority to pay for each parcel of coals delivered at their request. Accordingly, pltfs. were entitled to recover the price of the coals supplied.—*SPENCER, WHATLEY & UNDERHILL v. SOUTHALL-NORWOOD URBAN DISTRICT COUNCIL* (1905), 69 J. P. 308; 3 L. G. R. 641.

1193. Employment of architect or engineer—Payment on quantum meruit.]—A rural district council under the powers of Local Government Act, 1894 (c. 73), s. 56 (1), referred an application for the execution of sewerage works within a portion of their district to a committee. The committee requested an engineer to report what works were necessary & to give an estimate of the cost. On his report & estimate the committee recommended the council to carry out certain works. The council adopted the recommendation & confirmed the minutes of the committee:—*Held*: although there was no contract under seal between the council & the engineer, yet, the work performed by him being necessary for the purposes for which the council was created, an implied contract arose, upon the performance of the work by him & the acceptance of its benefit by the council, for the council to pay for the work.—*LAWFORD v. BILLERICAY RURAL DISTRICT COUNCIL*, [1903] 1 K. B. 772; 72 L. J. K. B. 554; 88 L. T. 317; 67 J. P. 245; 51 W. R. 630; 19 T. L. R. 322; 47 Sol. Jo. 366; 1 L. G. R. 535, C. A.

Annotations:—*Consd.* *Bourne & Hollingsworth v. Marylebone B. C.* (1908), 72 J. P. 129. *Distd.* *Jackson v. Romford R. D. C.* (1909), 73 J. P. 248. *Follid.* *Hodge v. Matlock Bath & Scarthin Nick U. D. C. & Nuttall* (1910), 75 J. P.

an engineer to make requisite surveys for supplying the city with water, & making application to govt. for a site for a reservoir. He employed pltf. to make plans which the comr. of public works required to see, & one of the aldermen wrote to pltf. to come down & assist in pressing their appln. for a site, which he did, the chairman having also told him to go. The report of their proceedings was adopted by the council:—*Held*: pltf. was entitled to recover for his work, & journey, though there was no contract under seal, & no bye-law relating to the matters out of which his claim arose.—*PERRY v. OTTAWA CITY* (1864), 23 U. C. R. 391.—**CAN.**

65; *Douglass v. Rhyl U. C.*, [1913] 2 Ch. 407. *Distd.* *Baker v. Holme Cultram U. C.* (1915), 85 L. J. K. B. 799. *Appl.* *Faraday v. Tamworth Union* (1916), 86 L. J. Ch. 436.

1194. ———.]—An urban district council who were building a *kursaal* under powers conferred upon them by a private Act, by a resolution employed pltf. as architect in connection with the proposed building. There was no contract under seal. After pltf. had done some of the work, but before it was finished, he was dismissed. In an action for damages for breach of contract, &, alternatively, on a *quantum meruit*, the jury awarded damages on the *quantum meruit* in excess of the amount claimed by pltf. in his particulars:—*Held*: (1) deft. council having received the benefit of the work, were liable to pltf. on a *quantum meruit*.—*HODGE v. MATLOCK BATH & SCARTHIN NICK URBAN DISTRICT COUNCIL & NUTTALL* (1910), 75 J. P. 65; 27 T. L. R. 129; 8 L. G. R. 1127, C. A.

Annotations:—*Distd.* *Baker v. Holme Cultram U. C.* (1915), 85 L. J. K. B. 799. *Reid.* *Hoare v. Kingsbury U. D. C.* (1912), 107 L. T. 492.

1195. ———.]—*DOUGLASS v. RHYL URBAN DISTRICT COUNCIL*, No. 1135, *ante*.

Contracts under Public Health Act, 1875 (c. 55).]—*See* Nos. 1125–1129, 1131, *ante*.

Enforcement in equity.]—*See* Part X., Sect. 5, sub-sect. 4, *post*.

(e) *Joint Stock Company.*

1196. General rule.]—Joint stock cos. completely registered under Joint Stock Cos. Act, 1844, (c. 110), are bound by contracts made by a competent board of directors, though not under seal, or made in compliance with the requisites of s. 44, though, *semble*: they cannot enforce such contracts.

Persons seeking to render those cos. liable on contracts made with the directors, must show their authority to bind the co., either by the production of the registered deed of settlement, or by proof that the body of shareholders authorised particular individuals to make contracts binding on the co. A ratification or admission by a competent board of directors will bind the co.—*RIDLEY v. PLYMOUTH GRINDING & BAKING CO., KINGSBRIDGE FLOUR MILL CO. v. PLYMOUTH BAKING CO.* (1848), 2 Exch. 711; 17 L. J. Ex. 252; 12 Jur. 542; 154 E. R. 676.

PART X. SECT. 5, SUB-SECT. 1.—B.

1. Offer to take lease from corporation accepted by it.—*Entry into possession*—*Refusal to take lease*—*Corporation may enforce contract*.]—D. proposed to a corpn. to take a lease of their lands. An acceptance of the proposal was entered in the corpn. books, & communicated to D., who took possession, & paid the first year's rent. He refused to complete the contract by taking out the lease. In a suit for specific performance:—*Held*: there had been acts of part performance sufficient to take the case out of the general rule by which corpns. can contract only under their common seal.—*STEEVENS'S HOSPITAL, DUBLIN v. DYAS* (1863), 15 I. Ch. R. 405; 15 Ir. Jur. 411.—*IR.*

G. ———.]—*SIMPSON v. DUNEDIN DRILL-SHED COMRS.* (1885), 3 N. Z. L. R. 402.—*N.Z.*

PART X. SECT. 5, SUB-SECT. 2.

1199 i. *Whether action maintainable—Against corporation*.]—An action on a contract based on the acceptance, not under seal, of a tender for erecting a dam to form a reservoir was brought against a corpn.:—*Held*: the contract was not binding because not under corporate seal.—*BARKER v. CLUNES MUNICIPAL COUNCIL* (1863), 2 W. A'B. & W 315.—*AUS.*

1199 ii. ———.]—The managing director of a ry. co. entered into a contract "on behalf of the co." for the construction of the road, & for keeping it in repair. The contractor completed the greater portion, when the co. stopped the works, alleging that they were not aware of the terms of the contract:—*Held*: (1) the common seal not necessary; (2) the co. were bound to pay for the work at the prices agreed upon.—*WHITEHEAD v. BUFFALO & LAKE HURON RY. CO.* (1859), 8 Gr. 157.—*CAN.*

1199 iii. ———.]—A trading co. entered into a contract, but not under seal, for the purchase of a quantity of barrels:—*Held*: the contract being executory, defts. were not liable for refusing to accept barrels not then manufactured.—*WINGATE v. ENNIS-KILLEN OIL REFINING CO.* (1864), 14 C. P. 379.—*CAN.*

1199 iv. ———.]—Where a municipal corpn. contracted for the purchase of land for a market site, & afterwards a bye-law was passed with the sanction of the rate-payers, which recited the purchase but did not name the seller, & there was no evidence under the corporate seal, & possession had not been taken:—*Held*: the contract could not be enforced by the vendor.—*HOUCK v. WHITBY TOWN* (1868), 14 Gr. 671.—*CAN.*

Annotations:—*Distd.* *Smith v. Hull Glass Co.* (1849), 8 C. B. 688. *Consd.* *Re Sea Fire & Life Assoc., Greenwood's Case* (1854), 3 De G. M. & G. 459; *Ernest v. Nichols* (1857), 6 H. L. Cas. 401. *Reid.* *East Anglian Rys. v. Eastern Counties Ry.* (1851), 11 C. B. 775; *Hallett v. Dowdall* (1852), 18 Q. B. 2; *Royal British Bank v. Turquand* (1856), 6 E. & B. 327; *Charles v. National Guardian Assoc. Soc.* (1857), 29 L. T. O. S. 246; *Metropolitan Saloon Omnibus Co. v. Hawkins* (1859), 4 H. & N. 87. *Mentd.* *Prince of Wales Assoc. Soc. v. Athenæum Assoc. Soc.* (1858), 3 C. B. N. S. 756, n.; *Balfour v. Ernest* (1859), 5 C. B. N. S. 601.

See COMPANIES.

B. *Benefit received by other Party.*

Demise of tolls by corporation—Use & occupation by grantee.]—*See* No. 1073, *ante*.

1197. *Withdrawal of corporation's opposition to Parliamentary bill—Consideration for withdrawal not performed—Corporation may sue*.]—*FISH-MONGERS' CO. v. ROBERTSON*, No. 1138, *ante*.

SUB-SECT. 2.—EXECUTORY CONTRACTS.

1198. *Whether action maintainable—By corporation*.]—*Assumpsit* upon an executory contract not under seal cannot be maintained by a corpn., although the act creating it empowers the directors to make contracts, agreements, & bargains with the workmen, agents, undertakers, & other persons employed or concerned in making completing or continuing the works belonging to the undertaking.—*EAST LONDON WATERWORKS CO. v. BAILEY* (1827), 4 Bing. 283; 12 Moore, C. P. 532; 5 L. J. O. S. C. P. 175; 130 E. R. 776.

Annotations:—*Consd.* *Edwards v. Grand Junction Ry.* (1836), 1 My. & Cr. 650; *Church v. Imperial Gas Light & Coke Co.* (1838), 6 Ad. & El. 846. So far as the decision in *East London Waterworks Co. v. Bailey* proceeded on the distinction between contracts executed & executory we are compelled, after consideration, to express our opinion that it was wrongly decided; the case may be sustained, however, on another ground (LORD DENMAN, C.J.); *Clarke v. Cuckfield Union Grdns.* (1852), Bail Ct. Cas. 81. *Distd.* *South of Ireland Colliery Co. v. Waddle* (1868), L. R. 3 C. P. 463. *East London Waterworks Co. v. Bailey* can no longer be considered to be law (MONTAGUE SMITH, J.). *Reid.* *Copper Miners' Co. v. Fox* (1851), 20 L. J. Q. B. 174; *Wells v. Kingston-upon-Hull* (1875), L. R. 10 C. P. 402.

1199. ——— *Against corporation*.]—*DOE d. PENNINGTON v. TANIÈRE*, No. 1169, *ante*.

1199 v. ———.]—Defts. wished to dredge their harbour, & pltf. had a dredge he offered to lend to the corpn. on condition that he did the dredging & that the corpn. should pay the costs of the transport of the dredge to the harbour. This offer was adopted; pltf. transported his dredge, but the corpn. would not permit him to carry out the contract for dredging:—*Held*: the corpn. were liable for the cost of bringing the dredge, although there was no contract under seal.—*BROWN v. BELLEVILLE TOWN* (1870), 30 U. C. R. 373.—*CAN.*

1199 vi. ———.]—*BROWN v. LINDSAY TOWN* (1874), 35 U. C. R. 509.—*CAN.*

1199 vii. ———.]—*HUGHES v. CANADA PERMANENT LOAN & SAVINGS SOCIETY* (1876), 39 U. C. R. 221.—*CAN.*

1199 viii. ———.]—*HILL v. INGERSOL & PORT BURWELL GRAVEL ROAD CO.* (1900), 20 C. L. T. 403; 32 O. R. 194.—*CAN.*

1199 ix. ———.]—*NATIONAL MALLEABLE CASTINGS CO. v. SMITH'S FALLS MALLEABLE CASTINGS CO.* (1907), 9 O. W. R. 165; 14 O. L. R. 22.—*CAN.*

1199 x. ———.]—*WHALEY v. O'GRADY, ANDERSON & CO.* (1912), 21 W. L. R. 617; 2 W. W. R. 663; 4 D. L. R. 485.—*CAN.*

Sect. 5.—When contracts not under seal enforceable:
Sub-sects. 2, 3 & 4.]

1200. ———.]—A co. having power to enter into a contract for the purchase of goods is bound by such contract, although the goods may not be intended to be used for the purposes of the co., & although this fact may be known to the person with whom the contract is entered into.

The C. Co., formed for the purpose, amongst others, of constructing railways, by a letter from the secretary gave an order to the E. Co. for 500 tons of rails at a certain price, to be paid for by three months' acceptances from the date of delivery. The managing director of the E. Co. was also a director of the C. Co. The rails were intended to be used in the construction of a line of railway which the managing director of the C. Co., & not the Co. itself, had undertaken to make. The rails were made, but were not delivered, in consequence of the C. Co. being ordered to be wound up:—*Held*: the order was binding on the C. Co., although not under seal, & although the managing director of the E. Co. might have known the purpose for which the rails were to be used.—*Re CONTRACT CORPN., EBBW VALE CO.'S CLAIM* (1869), L. R. 8 Eq. 14; 20 L. T. 964.

Annotation:—*Mentd. Re Phoenix Bessemer Steel Co., Ex p. Carnforth Haematite Iron Co.* (1876), 4 Ch. D. 108.

1201. ——— Employment of architect.]—Pltf., an architect, had been requested by deft. school board to prepare plans for the enlargement of the school & to act as clerk of the works & superintend the construction of the building. Pltf. prepared plans; but the lowest tender was for a larger sum than was estimated. Another architect was engaged, who carried out the work. Pltf. sued the school board for services rendered, & the jury found in his favour, awarding him a sum of £150:—*Held*: as the agreement was not under seal pltf. was not entitled to recover.—*START v. WEST MERSEA SCHOOL BOARD* (1899), 63 J. P. 440; 15 T. L. R. 442.

Compare No. 1115, *ante*.

Executory contract put in suit by corporation.]—
See No. 1138, *ante*.

SUB-SECT. 3.—ADOPTION OR ACQUIESCENCE BY CORPORATION.

1202. Binding in equity.]—*PRESTON v. LIVERPOOL, ETC. JUNCTION RY. CO.*, No. 1173, *ante*.

1203. What is—Examination of goods—Supplied on order of mayor.]—If the mayor of a town orders weights & measures, & when supplied they are examined at a full meeting of the corpn., this is such a recognition of the contract as will make the corpn. liable to pay for them, although the order for them was not under the common seal of the corpn., & the fact that the mayor was afterwards ousted from his office by a judgment of the Ct. of K. B. makes no difference.—*DE GRAVE v. MONMOUTH CORPN.* (1830), 4 C. & P. 111, N. P.

Annotations:—*Consd. Beverley v. Lincoln Gas Light & Coke Co.* (1837), 6 Ad. & El. 829. *Reid. Lawford v. Billericay R. C.*, [1903] 1 K. B. 772. *Mentd. Hall v. Swansea Corpn.* (1844), 13 L. J. Q. B. 107; *Paine v. Strand Union* (1846), 8 Q. B. 326.

PART X. SECT. 5, SUB-SECT. 3.

h. What is—Resolution of council.]—An acceptance, by resolution of the council, of an offer to purchase land from a municipal corpn. is sufficient to constitute a contract, & an agree-

ment under seal is not essential.—*TRACY v. NORTH VANCOUVER DISTRICT* (1903), 10 B. C. R. 235; 34 S. C. R. 132.—*CAN.*

k. ——— Acceptance of work done.]—*SEILING v. KRONAU VILLAGE* (1908), 8 W. L. R. 552.—*CAN.*

1204. ——— Entry of agreement in minutes of company—Payments by company—Parol contract by chairman.]—By the deed of settlement of a co. incorporated by Royal charter for trading purposes the directors were to manage the business of the co., but all contracts above a certain value were to be signed by at least three individual directors, or sealed with the seal of the co. under the authority of a special meeting. Pltf. sued the co. on an agreement above the prescribed value. It was within the scope of the co.'s business, & was made by parol with the chairman, who, with his own hand, entered a memorandum of it in the minute-book of the co. It was recognised in correspondence with the secretary, & pltf. did work under it, & received payments by cheques for it. These payments passed into the accounts of the co., & were audited & allowed, but there never was any contract signed by three directors or under the seal of the co. On a case stating these facts, with power to draw inferences of fact:—*Held*: the contract was ratified, if not authorised, by the co., & was binding.—*REUTER v. ELECTRIC TELEGRAPH CO.* (1856), 6 E. & B. 341; 26 L. J. Q. B. 46; 27 L. T. O. S. 167; 2 Jur. N. S. 1245; 4 W. R. 564; 119 E. R. 892.

Annotations:—*Consd. Friend v. Dennett* (1861), 5 L. T. 73; *Nicholson v. Bradfield Union Grdns.* (1866), 7 B. & S. 774. *Distd. Hunt v. Wimbledon L. B.* (1878), 3 C. P. D. 208. *Reid. Re Athenæum Life Assce. Soc., Ex p. Eagle Insce.* (1858), 4 K. & J. 549; *South of Ireland Colliery Co. v. Waddo* (1868), L. R. 3 C. P. 463. *Mentd. Lockhart v. Moldacot Pocket Sewing Machine Co.* (1889), 5 T. L. R. 307.

1205. ——— Entry on land & construction of works—Informal assent to proposals by directors.]—Where an incorporated co. stands by & permits expensive works to be executed at the spot where its premises are situated, & its operations carried on, the effect for all purposes of knowledge & acquiescence will be the same as in the case of an individual.

Pltf. in 1855 submitted to the directors of a railway co. a project for a private branch line, to be constructed at pltf.'s cost, & for his accommodation, to which the directors expressed their assent & agreement generally, but the terms & details were left for future arrangement. In 1856 pltf., at considerable cost, constructed the branch, & the co. prohibited the user until a definite understanding should be come to. After some discussion terms as to tolls & other matters were proposed by pltf., & the traffic was continued on the basis of pltf.'s memorandum of terms, & payments made by pltf. for the carriage of goods during two & a half years, but no agreement was ever signed by two directors. The directors ultimately insisted on terms originally suggested by them before the user commenced, & then objected to by pltf.; & on pltf. declining to make an agreement in variance with the terms on which the user had been enjoyed, the co. proceeded to obstruct the traffic. On demurrer to a bill for specific performance & injunction:—*Held*: there was an indefinite agreement in 1855 for a user on reasonable terms, that the actual user had removed all difficulty about what terms were reasonable, & pltf. was entitled to specific performance on the basis of the unsigned memorandum, on the terms of which the user had been permitted.—*LAIRD v. BIRKENHEAD RY. CO.* (1859),

l. Proof of acquiescence.]—The only way by which the collective assent of the members of a corporate body can be proved is by a resolution embodied in a minute.—*MACARTHY v. WELLINGTON CORPN.* (1889), 8 N. Z. L. R. 168.—*N.Z.*

John. 500; 29 L. J. Ch. 218; 1 L. T. 159; 6 Jur. N. S. 140; 8 W. R. 58; 70 E. R. 519.

Annotations.—*Reid*. Bourke v. Alexandra Hotel (1877), 25 W. R. 393; Marriott v. Reid (1900), 82 L. T. 369; Hoare v. Lewisham Corpn. (1901), 85 L. T. 281. *Mentd.* Civil Service Musical Instrument Assocn. v. Whiteman (1899), 68 L. J. Ch. 484.

1206. ——— **Contract in writing by manager of company.**—Pltf. entered into a contract in writing with the general manager of a railway co. for the purchase of some land belonging to the co. In pursuance of the terms of the contract, a branch line of rails was laid down by the co.'s servants, machinery & plant were removed by the co.'s waggons to the land, pltf. was let into possession, & the land was measured by an officer of the co.:—*Held*: pltf. was entitled to a decree for specific performance.—*WILSON v. WEST HARTLEPOOL RY. CO.* (1865), 2 De G. J. & Sm. 475; 5 New Rep. 289; 34 L. J. Ch. 241; 11 T. 692; 11 Jur. N. S. 124; 13 W. R. 361; 40 E. R. 459, L. J.J.; *subsequent proceedings*, 34 Beav. 414.

Annotations.—*Consd.* Hunt v. Wimbledon L. B. (1878), 4 C. P. D. 48; Hart v. Hart (1881), 18 Ch. D. 670; Teebay v. Manchester & Sheffield Ry. (1883), 52 L. J. Ch. 613; *Re* Patent Ivory Manufacturing Co., Howard v. Patent Ivory Manufacturing Co. (1888), 38 Ch. D. 156. *Distd.* Hoare v. Kingsbury U. C., [1912] 2 Ch. 452. *Reid*. Prince v. Prince (1866), 14 L. T. 43; Melbourne Banking Corpn. v. Brougham (1879), 48 L. J. P. C. 12; *Re* Northumberland Avenue Hotel Co., Sully's Case (1885), 54 L. T. 76; Davis v. Leicester Corpn. (1894), 42 W. R. 362. *Mentd.* Bateman v. Mid Wales Ry. (1866), L. R. 1 C. P. 499; *Re* National Savings Bank Assocn., Brady's Case (1867), 15 W. R. 753; A.-G. v. Biphosphated Guano Co. (1879), 11 Ch. D. 327.

1207. ——— **Agreement for lease.**—A municipal corpn. passed a resolution in Jan. 1860, agreeing to let to pltf. the flat part of the beach opposite to pltf.'s field, for 300 years, at a nominal rent. Pltf. claimed all the beach comprised between lines drawn in prolongation of the sides of his field, & he built a wall & terrace along the part so claimed. In 1864 the corpn. gave pltf. notice to quit, & after much negotiation, in 1869 brought an action of ejectment against pltf., who thereupon filed the bill in this suit for specific performance:—*Held*: though the agreement was not under seal, the corpn. was bound by acquiescence, & must perform the agreement to grant a lease.—*CROOK v. SEAFORD CORPN.* (1871), 6 Ch. App. 551; 25 L. T. 1; 35 J. P. 804; 19 W. R. 938, L. C.

Annotations.—*Expld.* Hoare v. Kingsbury U. C., [1912] 2 Ch. 452. *Reid*. Hunt v. Wimbledon L. B. (1878), 3 C. P. D. 208; Melbourne Banking Corpn. v. Brougham (1879), 48 L. J. P. C. 12; Hoare v. Lewisham Corpn. (1901), 85 L. T. 281.

1208. ——— **By corporation—Rights reserved enforceable.**—The proprietor of a public house with a draw-up in front of it which also belonged to him offered by letter to the corpn. of the borough to permit the draw-up to be thrown into the public road on condition that his signpost was allowed to continue at a convenient spot on the widened highway, & that certain front gardens belonging to other frontagers were also thrown into the road. The corpn. did not reply to this letter, but subsequently it did throw the gardens & the draw-up into the public road. The proprietor of the public house thereupon erected his

signpost in the highway, & the corpn. threatened to have it removed:—*Held*: the proprietor was entitled to restrain such removal, as the facts constituted an agreement between him & the corpn. in the terms of his letter, & the agreement was part performed by the action of the corpn.—*HOARE & CO., LTD. v. LEWISHAM CORPN.* (1902), 87 L. T. 464; 67 J. P. 20; 18 T. L. R. 816; 46 Sol. Jo. 715, C. A.

Enforcement of rights in equity.—See Sect. 5, sub-sect. 4, *post*.

Ratification under seal.—See Sect. 4, *ante*.

Consent of corporators to ultra vires acts.—See Part IX., Sect. 5, sub-sect. 4, *ante*.

SUB-SECT. 4.—WHEN ENFORCEABLE IN EQUITY.

1209. Corporation compelled to make legal assurance of property—General rule.—A ct. of equity will not compel a corpn. to execute a legal assurance of corporate property in pursuance of a contract not under seal unless valuable consideration for the contract be expressly proved, or evidence be given of acts done or omitted by the contracting party on the faith of the expressed legal assurance.—*WILMOT v. COVENTRY CORPN.* (1835), 1 Y. & C. Ex. 518; 160 E. R. 211.

Annotations.—*Reid*. Diggle v. London & Blackwall Ry. (1850), 14 Jur. 937; Drogheda Corpn. v. Holmes (1855), 5 H. L. Cas. 460; Jack v. Holmes (1855), 26 L. T. O. S. 159; Eccl. Comrs. v. Merral (1869), L. R. 4 Exch. 162.

1210. ——— **Expenditure incurred on faith of corporate resolution—To grant interest in property.**—*Semble*: if a regular corporate resolution has been passed for granting an interest in the corporate property, & upon the faith of it expenditure has been incurred, the ct. will compel the corpn. to make a legal grant in pursuance of the resolution, although it is not under the corporate seal.—*MARSHALL v. QUEENBOROUGH CORPN.* (1823), 1 Sim. & St. 520; 57 E. R. 206.

Annotations.—*Consd.* Wilmot v. Coventry Corpn. (1835), 1 Y. & C. Ex. 518; Jack v. Holmes (1855), 26 L. T. O. S. 159. *Reid*. Diggle v. London & Blackwall Ry. (1850), 15 L. T. O. S. 208; Drogheda Corpn. v. Holmes (1855), 5 H. L. Cas. 460; Hoare v. Kingsbury U. C., [1912] 2 Ch. 452.

1211. Not when unenforceable at law—Owing to informality of contract.—A co. incorporated by Act of Parliament advertised for tenders for the formation of their line of railway. Pltf. sent in a tender for a portion of the work, which was accepted by the engineer of the co. authorised to act on their behalf, & such consent was recognised by the directors at a board meeting. Nothing further was done & no specific contract in a legal form was reduced into writing to which the seal of the co. had been affixed. Pltf., in consequence, as he alleged, of the acceptance of his tender, went to a great outlay in order to be prepared for proceeding with the works, but the whole scheme being afterwards abandoned, the directors refused to allow him compensation for the expenses incurred. Pltf. filed his bill for relief, whereupon the co. demurred generally for want of equity:—*Held*: the demurrer would be allowed for where by legal enactment certain formalities were required to render contracts legally binding on the parties

PART X. SECT. 5, SUB-SECT. 4.

m. Where seal omitted—Through mutual mistake.—*WRIGHT v. SUN MUTUAL INSURANCE CO.* (1878), 29 C. P. 221; 5 A. R. 218.—*CAN.*

n. ——— Through fraud.—*LONDON LIFE INSURANCE CO. v. WRIGHT* (1881), 5 S. C. R. 466.—*CAN.*

o. ———.—A lease, void under the Act, was attempted to be

supported by a prior contract, which was not under the corporate seal, but was a resolution of the common council, who were in the habit of managing the corporate property. The proof that the property had been held for public trusts was defective; but the profits had been applied to public purposes for many years. A resolution granting a lease was made in favour of the chamberlain of the

appointed by the common council, was under value:—*Held*: although equity might enforce a contract or resolution, not under seal, or binding at law against a corpn., yet this resolution could not be enforced, & would not support the lease.—*A.-G. v. BALL* (1847), 10 L. Eq. R. 146.—*IR.*

Sect. 5.—When contracts not under seal enforceable: Sub-sect. 4. Sects. 6 & 7. Part XI. Sects. 1 & 2.]

the want of such formalities would not be a ground for giving jurisdiction in equity in matters to which such jurisdiction would not otherwise be extended, & the mere allegation of trusteeship, which was a conclusion of law, was not of itself sufficient, but the case made must support the allegation.—*JACKSON v. NORTH WALES RY. CO.* (1848), 1 H. & Tw. 75; 6 Ry. & Can. Cas. 112; 18 L. J. Ch. 91; 12 L. T. O. S. 489; 13 Jur. 69; 47 E. R. 1332, L. C.

1212. ——— *Plaintiff acting with knowledge of rights of company.*—The agent of a railway co. made a verbal agreement with the contractor for the line that if he would build on land of the co. certain cottages more substantially than would be required for his own purposes, & would leave them for the use of the co. then the co. would pay him £5,000. The cottages were accordingly built, & when the railway was completed, the contractor left them on the land, & the agent of the co. made an agreement with the contractor that he should be paid £500 a year for the cottages by way of rent, with an option to the co. to purchase them for £5,000. This agreement was confirmed by a resolution of the board of directors. The co. paid the £500 a year for some years, & then refused to pay:—

Held: (1) the claim of the contractor being simply for payment of money could not be enforced in the Ct. of Ch. & though the contractor was unable to sue at law because the agreement was not under seal, he did not thereby obtain an equity to enforce a claim for money; (2) inasmuch

as the contractor did not act in ignorance of the rights of the co., he could not claim compensation for having been induced to build on the land of the co.—*CRAMPTON v. VARNA RY. CO.* (1872), 7 Ch. App. 562; 41 L. J. Ch. 817; 20 W. R. 713, L. C. *Annotation:—Refd. Hunt v. Wimbledon L. B.* (1878), 3 C. P. D. 208.

1213. Provisional payment—Insufficient for part performance.—*KIDDERMINSTER CORPN. v. HARDWICK*, No. 1163, *ante*.

Contract for renewal of lease & rebuilding—When enforceable against corporation.—*See* No. 1143, *ante*.

Specific performance—Benefit of contract received by corporation.—*See* Nos. 1171, 1176, *ante*.

—— **Adoption or acquiescence by corporation.**—*See* Nos. 1205–1207, *ante*.

SECT. 6.—NEGOTIABLE INSTRUMENTS.

See, generally, AGENCY, Vol. I., pp. 645–647; *BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS*, Vol. VI., p. 58, No. 464; *COMPANIES*.

SECT. 7.—OTHER CASES.

1214. Devolution of personal contract—With corporation sole.—*HOWLEY v. KNIGHT*, No. 71, *ante*.

Succession generally, *see* Part I., Sect. 3, *ante*.

1215. Contract under seal—Whether capable of rectification.—*FARADAY v. TAMWORTH UNION*, No. 1103, *ante*.

Part XI.—Liability and Remedies in Tort.

See NOTE on p. 270, *ante*.

SECT. 1.—IN GENERAL.

1216. General rule—Act within scope of corporation.—*GREEN v. LONDON GENERAL OMNIBUS CO.*, No. 1253, *post*.

1217. ——— *There can be no question since the decision of the case of Goff v. Great Northern Ry. Co., No. 1261, post, that where a ry. co. or any other body, for it does not matter whether it is a ry. co. or not, have upon the spot a person acting as their agent, that is evidence to go to the jury that that person has authority from them to do all those things on their behalf which are right & proper in the exigencies of their business, all such things as somebody must make up his mind, on behalf of the co., whether they should be done or not, & the fact that the co. are absent, & the person is there to manage their affairs, is prima facie evidence that he was clothed with authority to do all that was right & proper; & if he happens to make a mistake, or commits an excess, while acting within the scope of his authority, his employers are responsible for it (BLACKBURN, J.).—POULTON v. LONDON & SOUTH*

WESTERN RY. CO. (1867), L. R. 2 Q. B. 534; 8 B. & S. 616; 36 L. J. Q. B. 294; 17 L. T. 11; 31 J. P. 677; 16 W. R. 309.

Annotations:—Consd. Allen v. L. & S. W. Ry. (1870), L. R. 6 Q. B. 65; *Edwards v. L. & N. W. Ry.* (1870), L. R. 5 C. P. 445. *Distd. Moore v. Met. Ry.* (1872), L. R. 8 Q. B. 36. *Folld. Charleston v. London Tram. Co.* (1888), 4 T. L. R. 629. *Distd. Smith v. North Metropolitan Tram. Co.* (1891), 55 J. P. 630. *Consd. Radley v. L. C. C.* (1913), 109 L. T. 162. *Folld. Ormiston v. G. W. Ry.*, [1917] 1 K. B. 598. *Refd. Bolingbroke v. Swindon L. B.* (1874), L. R. 9 C. P. 575; *Mill v. Hawker* (1874), L. R. 9 Exch. 309; *Bank of New South Wales v. Owston* (1879), 4 App. Cas. 270; *Giblan v. National Amalgamated Labourers' Union of Gt. Britain & Ireland*, [1903] 2 K. B. 600; *Smithies v. National Assoc. of Operative Plasterers* (1908), 78 L. J. K. B. 259; *Campbell v. Paddington Corpn.*, [1911] 1 K. B. 869; *Whittaker v. L. C. C.*, [1915] 2 K. B. 676. *Mentd. Abrahams v. Deakin*, [1891] 1 Q. B. 516.

1218. ——— *—An action for a malicious prosecution will lie against a co.*

The employment of policemen by a co. to protect their property is an act within the scope of the incorporation of the co.—*EDWARDS v. MIDLAND RY. CO.* (1880), 6 Q. B. D. 287; 50 L. J. Q. B. 281; 43 L. T. 694; 45 J. P. 374; 29 W. R. 609.

Annotations:—Folld. Kent v. Courage, Croft v. Same (1890), 55 J. P. 264; *Cornford v. Carlton Bank*, [1899] 1 Q. B. 392. *Consd. Lambert v. G. E. Ry.*, [1909] 2 K. B. 776. *Refd. Pratt v. British Medical Assoc.*, [1919] 1 K. B. 244. *Mentd. Flood v. Jackson*, [1895] 2 Q. B. 21.

PART X. SECT. 6.

p. General rule.—A corpn. has no power to accept bills of exchange without power expressly given by statute or implied inferentially by reason of the nature of the business.—*STEPHENS v. NORTH BATTLEFORD SCHOOL DISTRICT* (1908), 9 W. L. R. 501.—CAN.

q. Power to accept negotiable instruments—In absence of statutory prohibition—Promissory notes.—*ST. STEPHEN BRANCH RY. CO. v. BLACK* (1870), 2 Han. 139.—CAN.

PART XI. SECT. 1.

r. Deceit—Action will lie.—*MOORE*

v. ONTARIO INVESTMENT ASSOCN. (1888), 16 O. R. 269.—CAN.

s. Slander—Action will not lie.—An action for slander will not lie against a corpn.—*MARSHALL v. CENTRAL ONTARIO RY. CO.* (1896), 28 O. R. 241.—CAN.

Assault.]—See No. 1259, post.

1219. Breach of trust.]—A municipal corpn. were trustees of a charity. They permitted their town clerk to receive & retain the trust moneys, instead of seeing it applied to the purposes of the trust:—*Held*: the corpn. & the town clerk were liable for the breach of trust.

Assuming it to have been right to permit the mayor to receive this money, was it enough for the corpn. to see that the mayor produced a receipt, neglecting altogether to superintend the employment of the money according to the trust, & thus leave the mayor at liberty, for anything they knew, to allow the misemployment of the money, in the way in which it has been done in this case. There was great neglect. The corpn. of L., whose servant it is said the mayor was for this purpose, ought vigilantly to have watched & superintended the employment of that money, which they placed in his hands; if they had so done, they would have known that this breach of trust had been going on. There has been a plain neglect on their part, & they are answerable for the consequences of that neglect (LORD LANGDALE, M.R.).—*A.-G. v. LEICESTER CORPN.* (1844), 7 Beav. 176; 49 E. R. 1031.

False imprisonment.]—See No. 1217, ante, No. 1261, post.

Fraud by agent.]—See No. 1268, post, & AGENCY, Vol. I., p. 587, No. 2245.

Fraudulent representation.]—See No. 897, ante.

Libel.]—See Nos. 1244, 1263, post.

Maintenance.]—See No. 1280, post.

Malevolent prosecution.]—See No. 1218, ante, Nos. 1246–1248, 1250, 1265, post.

Negligence.]—See Nos. 1224, 1227, post.

Nuisance.]—See No. 1229, post.

1220. Passing off—Using name of bank—Whether action will lie.]—In an action against a banking corpn., the declaration stated that pltf. had established a bank called The Bank of L. at great expenses & caused the name to be published & affixed to the offices of the bank, & prospectuses to be issued; & that defts. afterwards fraudulently established another bank, under the style of The Bank of L., by reason of which, pltf. was prevented from carrying on his business at his bank so fully as he otherwise would, & was deprived of gains & profits:—*Held*: the declaration was bad for not showing that pltf. carried on the business of a bank. *Qu.*: whether the corpn. could have been liable in such an action.—*LAWSON v. BANK OF LONDON* (1856), 18 C. B. 84; 25 L. J. C. P. 188; 27 L. T. O. S. 134; 2 Jur. N. S. 716; 4 W. R. 481; 139 E. R. 1296.

Annotations.—*Reid*. Licensed Victuallers Newspaper Co. v. Bligham (1888), 36 W. R. 433. *Mentd*. McAndrew v. Bassett (1864), 4 New Rep. 12; *Maxwell v. Hogg*, *Hogg v. Maxwell* (1867), 2 Ch. App. 307; *Raggett v. Findlater* (1873), L. R. 17 Eq. 29.

1221. Quare impedit—Action will lie.]—PETRE (LORD) v. CAMBRIDGE UNIVERSITY & WOODROFFE (1692), 3 Lev. 332; 2 Lut. 1100; 83 E. R. 715.

Annotations.—*Reid*. Yarborough v. Bank of England (1812), 16 East, 6; *Edwards v. Exeter* (1839), 5 Bing. N. C. 652.

Trespass.]—See Nos. 1258, 1259, 1393, post.

1222. Trover—Action will lie.]—YARBOROUGH v. BANK OF ENGLAND, No. 199, ante.

Wrongful distress.]—See No. 1252, post.

See, generally, TORT; TRESPASS, TROVER & DETINUE.

SECT. 2.—ACTS IN EXERCISE OF STATUTORY POWERS.

1223. General rule.]—Where persons are incorporated by Act of Parliament for a particular purpose, & have full powers given them to effect that purpose, if the effecting of it may occasion, not only in the course of originally executing the necessary works for the required purpose, but at recurring intervals afterwards, inconvenience or injury to others, they may be treated as under an obligation to take, from time to time, measures to prevent the occurrence of such inconvenience & injury. Where the Legislature has authorised certain persons to effect a certain purpose, & has given them the powers necessary to effect it, they may exercise these powers to their full extent without incurring responsibility, but in so doing they must not occasion any needless injury to any one.

A local Act of Parliament incorporated certain persons for the purpose of securing a regular & proper supply of water to millowners whose works were situated on the banks of the river B. These persons had powers given them to collect the waters of several small streams into a reservoir, & as often as necessary, to send down these waters to the river B. through the channel of a stream called M. The second clause of the Act directed them to make, erect, construct, maintain, repair & keep by means of a reservoir, a due & adequate supply of water for the river B, at all seasons of the year & to enter on the lands at the different streams named; to do what was necessary for the conveyance & due regulation of the supply of such waters, & “to make, erect, alter, maintain, repair, widen, deepen, scour, cleanse, & keep proper & sufficient conduits, aqueducts, channels & watercourses, drains, feeders, weirs, dams,” etc. The eighty-second clause gave similar directions, & ordered that the surplus water should be returned into the different streams from which it had been taken, & also made provisions for supplying with water the cattle depasturing in fields adjoining. The persons incorporated under the Act erected the reservoir, collected the waters of the different streams, & sent them through the channel of the M, to supply the B, but, after a time, neglected to cleanse the channel of the M, so that at times it overflowed its banks, & did damage to the lands of the adjoining proprietors:—*Held*: under the words of the Act there was an obligation on the persons so incorporated to take care that the due execution of the works & operations intended by the Act should not be injurious to the lands lying along the banks of the M, & the bed or channel of the M must be cleansed & kept in a proper state for the flow & reflow of the water that had to pass through it.—*GEDDIS v. BANN RESERVOIR (PROPRIETORS)* (1878), 3 App. Cas. 430, H. L.

Annotations.—*Consd*. Hill v. Metropolitan Asylum (1879), 4 Q. B. D. 433; *Fleming v. Manchester Corpn.* (1881), 44 L. T. 517; *Gas Light & Coke Co. v. St. Mary Abbots, Kensington, Vestry* (1884), Cab. & El. 368. *Distd*. Truman v. L. B. & S. C. Ry. (1885), 29 Ch. D. 89; *Evans v. M. S. & L. Ry.* (1887), 36 Ch. D. 626. *Consd*. Colac President, etc. v. Summerfield, [1893] A. C. 187; *Thompson v. Brighton Corpn.*, *Oliver v. Horsham L. B.*, [1894] 1 Q. B. 332; *Dixon v. G. W. Ry.* (1896), 75 L. T. 245. *Expld*. *Consd*. Southwark & Vauxhall Water Co. v. Wandsworth Board of Works, [1898] 2 Ch. 603. *Folld*. Canadian Pacific Ry. v. Roy, [1902] A. C. 220. *Consd*. Ash v. G. N. Picc. & Brompton Ry. Co. (1903), 67 J. P. 417; *McClelland v. Manchester Corpn.*, [1912] 1 K. B. 118; *Newberry v. Bristol Tram. & Carriage Co.* (1913), 107 L. T. 801; *Papworth v. Battersea Corpn.*, [1916] 1 K. B.

by its negligence.—*NEW GORDON DIAMOND MINING CO. v. DU TORT'S PAN MINING BOARD* (1892), 9 S. C. 150.—S. AF.

PART XI. SECT. 2.

t. General rule—Common law liability.]—Where a public body is with duties which involve the

exercise of judgment & discretion, the only remedy available against it for negligence in the performance of those duties is by way of action for damages at the suit of any person injured

Sect. 2.—Acts in exercise of statutory powers.

583. *Distd. G. C. Ry. v. Hewlett*, [1916] 2 A. C. 511. *Appl. Carpenter v. Finsbury B. C.*, [1920] 2 K. B. 195. *Consd. Boynton v. Ancholme Drainage & Navigation Comrs.*, [1921] 2 K. B. 213; *Sheppard v. Glossop Corp.*, [1921] 3 K. B. 132. *Reid. Harrison v. Southwark & Vauxhall Water Co.*, [1891] 2 Ch. 409; *A.-G. v. Conduit Colliery Co.*, [1895] 1 Q. B. 301; *Goldberg v. Liverpool Corp.* (1900), 82 L. T. 362; *Lambert v. Lowestoft Corp.*, [1901] 1 K. B. 590; *East Fremantle Corp. v. Annois*, [1902] A. C. 213.

1224. — Governed by statute.—In an action brought against the Local Board of Health of S., it was averred in the declaration that defts. were the Local Board of Health of S., i.e., The Local Board of Health duly established & constituted according to law, in & for the entire area, places & parts of places within the boundaries of S., as the same were fixed by The Municipal Corp. Act; & that defts., acting as such Local Board, conducted themselves so wrongfully, improperly & negligently, & with such want of due & proper care in the construction, management & direction of a certain sewer & certain sewage within their district, that, by & through means of the wrongful, improper & negligent conduct of defts., & their want of due & proper care as such Local Board in & about the premises, great quantities of filth & sewage matter were poured in & upon certain canals, approaches & works of a certain bridge, of which plths. were the proprietors:—*Held*: such an action for negligence was properly brought against The Local Board of Health, *eo nomine*; for that such a wrong was not the subject of compensation under Public Health Act, 1848 (c. 63), s. 144, & it was contemplated in s. 139 that an action might be maintained for such a wrong against the Local Board *eo nomine*.

These Local Boards of Health are very peculiar bodies, the creatures of statute, to whom very extraordinary powers are given, & who may therefore reasonably be made liable to unusual liabilities. What that liability is, if any, must be determined by a true interpretation of the statute by which they are created (CAMPBELL, C.J.).—*SOUTHAMPTON & ITCHIN BRIDGE CO. v. SOUTHAMPTON LOCAL BOARD* (1858), 8 E. & B. 801; 28 L. J. Q. B. 41; 4 Jur. N. S. 1298; 120 E. R. 298; *sub nom. ITCHIN BRIDGE CO. v. LOCAL BOARD OF HEALTH OF SOUTHAMPTON*, 30 L. T. O. S. 256; 6 W. R. 223.

Annotations.—*Consd. Ruck v. Williams* (1858), 3 H. & N. 308; *Mersey Docks Trustees v. Gibbs* (1866), 11 H. L. Cas. 687; *R. v. Selby Dam Drainage Comrs.*, [1892] 1 Q. B. 348. *Reid. Metcalfe v. Hetherington* (1860), 5 H. & N. 719; *Holliday v. St. Leonard, Shoreditch* (1861), 11 C. B. N. S. 192; *Coe v. Wise* (1864), 5 B. & S. 440; *Bostock v. Ramsay U. C.*, [1900] 2 Q. B. 616; *Tozeland v. West Ham Union*, [1907] 1 K. B. 920.

1225. — — ——The mere fact that the breach of a public statutory duty has caused damage does not vest a right in the person suffering the damage against the person guilty of the breach; whether the breach does or does not give such right of action must depend upon the object & language of the particular statute.—*ATKINSON v. NEWCASTLE WATERWORKS CO.* (1877), 2 Ex. D. 441; 46 L. J. Ex. 775; 36 L. T. 761; 25 W. R. 794, C. A.

Annotations.—*Folld. M'Colla v. Clacton-on-Sea Gas & Water Co.* (1889), 5 T. L. R. 690. *Consd. Saunders v. Holborn District Board of Works*, [1895] 1 Q. B. 64; *Goodson v. Sunbury Gas Consumers' Co.* (1896), 75 L. T. 251; *Gale v. Rhymney & Aber Valleys Gas & Water Co.* (1903), 89

L. T. 399; *Simpson v. South Oxfordshire Water & Gas Co.*, [1908] 1 K. B. 917; *Dawson v. Bingley U. C.*, [1911] 2 K. B. 149. *Reid. Cornell v. Hay* (1873), L. R. 8 C. P. 328; *Ross v. Rugge-Price* (1876), 1 Ex. D. 269; *Bathurst v. Macpherson* (1879), 4 App. Cas. 256; *Great Northern Fishing Co. v. Edgehill* (1883), 11 Q. B. D. 225; *Melliss v. Shirley & Freemantle L. B. of Health* (1885), 54 L. J. Q. B. 408; *Cowley v. Newmarket L. B.*, [1892] A. C. 345; *Barry Ry. v. Taff Vale Ry.* (1894), 64 L. J. Ch. 230; *Chartered Institute of Patent Agents v. Lockwood* (1894), 63 L. J. P. C. 74; *Patent Agents Institute v. Lockwood*, [1894] A. C. 347; *Clegg, Parkinson v. Earby Gas Co.*, [1896] 1 Q. B. 592; *Johnston & Toronto Type Foundry Co. v. Toronto Consumers' Gas Co.*, [1898] A. C. 447; *Hartley v. Rochdale Corp.*, [1908] 2 K. B. 594; *Butler v. Fife Coal Co.*, [1912] A. C. 149; *Neville v. London Express Newspaper*, [1919] A. C. 368; *R. v. Marshland Smeeth & Fen District Comrs.*, [1920] 1 K. B. 155. *Mentd. Handley v. Moffat* (1872), 21 W. R. 231; *Pickering v. James* (1873), L. R. 8 C. P. 489; *Norris v. Scott* (1874), L. R. 9 Exch. 125; *Thorley v. Glossop* (1876), 34 L. T. 169; *Vallance v. Fallo* (1884), 13 Q. B. D. 109; *R. v. Hall*, [1891] 1 Q. B. 747; *Groves v. Wimborne*, [1898] 2 Q. B. 402; *Price v. Webb*, [1913] 2 K. B. 367.

1226. S. P. M'COLLA v. CLACTON-ON-SEA GAS & WATER CO. (1889), 5 T. L. R. 690, C. A.

1227. — — ——The liability of a body created by statute is governed by the statutes which create it. The powers conferred when exercised at all must be executed with due care. In the absence of a contrary intention, its duties & liabilities are the same as those imposed by the general law on a private person doing the same thing. But for mere nonfeasance no action lies except in regard to a duty towards plth. imposed by the statute & negligently omitted.

In an action to recover damages for injury to resps.' property arising from the fall of an overhanging road, consequent upon the giving way of its retaining wall, which applt. corp. was under a statutory duty to maintain for the purposes merely of road conservancy, it appeared that the result was due to original defects in the structure of the wall, & that applt. was not negligently ignorant thereof, & not guilty of misfeasance:—*Held*: according to the true construction of the Orders in Council constituting the applt. corp., it was vested with administrative powers, subject to the control of the Government, & there was no intention to render it responsible to resps. in respect of such injury.—*GIBRALTAR SANITARY COMRS. v. ORFILA* (1890), 15 App. Cas. 400; 59 L. J. P. C. 95; 63 L. T. 58, P. C.

Annotations.—*Folld. Pictou Municipality v. Geldert*, [1893] A. C. 524. *Consd. Foster v. Warblington U. D. C.* (1906), 70 J. P. 233. *Reid. Sydney Municipal Council v. Bourke* (1895), 72 L. T. 605; *Robinson v. Workington Corp.*, [1897] 1 Q. B. 619. *Mentd. Brabant v. King*, [1895] A. C. 632.

1228. — — ——Public corps. to which an obligation to keep public roads & bridges in repair has been transferred are not liable to an action in respect of mere non-feasance, unless the Legislature has shown an intention to impose such liability upon them.—*PICTOU MUNICIPALITY v. GELDELT*, [1893] A. C. 524; 63 L. J. P. C. 37; 69 L. T. 510; 42 W. R. 114; 1 R. 447, P. C.

Annotations.—*Reid. Thompson v. Brighton Corp.*, *Oliver v. Horsham L. B.*, [1894] 1 Q. B. 332; *Brabant v. King*, [1895] A. C. 632; *Saunders v. Holborn District Board of Works*, [1895] 1 Q. B. 64; *Sydney Municipal Council v. Bourke*, [1895] A. C. 433; *Maguire v. Liverpool Corp.*, [1905] 1 K. B. 767; *Short v. Hammersmith Corp.* (1910), 104 L. T. 70; *Dawson v. Bingley U. C.*, [1911] 2 K. B. 149; *Papworth v. Battersea B. C.* (1914), 79 J. P. 105.

1229. — — ——Certain general principles have been laid down for our guidance in cases of this nature. In the first place there is a presumption that a public body whether a trading

1224 i. — Governed by statute.—*KERBY v. GRAND RIVER NAVIGATION CO.* (1854), 11 U. C. R. 334.—CAN.

u. — No remedy given by statute.—If a public body, acting in

the execution of a public trust & for the public benefit, do an act which they are authorised by law to do, & the act, though done in a proper manner, causes special injury to a particular person, that person has no

remedy, unless one is given by statute.—*JOHANNESBURG MARKET CONCESSION & BUILDING CO., LTD. v. RAND PLAGUE COMMITTEE* (1905), T. S. 406.—S. AF.

body or not is not authorised to create a nuisance or otherwise to affect private rights unless compensation is provided. In the second place this presumption must yield where the language of the statute is sufficiently clear to authorise the nuisance without compensation. In the third place if the statute expressly confers a power but adds a proviso that no nuisance must be created, it is no defence to say that the work, in truth, cannot be done without creating a nuisance (*COZENS-HARDY, M.R.*).—*PRICE'S PATENT CANDLE CO., LTD. v. LONDON COUNTY COUNCIL*, [1908] 2 Ch. 526; 78 L. J. Ch. 1; 99 L. T. 571; 72 J. P. 429; 24 T. L. R. 823; 7 L. G. R. 84, C. A.; *affd.* on other grounds, *sub nom.* *LONDON COUNTY COUNCIL v. PRICE'S CANDLE CO., LTD.* (1911), 75 J. P. 329, H. L.

1230. — Permissive powers.]—The Legislature has very often interfered with the rights of private persons, & in modern times it has generally given compensation to those injured; & if no compensation is given it affords a reason, though not a conclusive one, for thinking that the intention of the Legislature was, not that the thing should be done at all events, but only that the thing should be done, if it could be done, without injury to others (*LORD BLACKBURN*).

Where the terms of a statute are not imperative, but permissive, the fair inference is that the Legislature intended that the discretion, as to the use of the general powers thereby conferred, should be exercised in strict conformity with private rights (*LORD WATSON*).—*METROPOLITAN ASYLUM DISTRICT v. HILL* (1881), 6 App. Cas. 193; 50 L. J. Q. B. 353; 44 L. T. 653; 45 J. P. 664; 29 W. R. 617, H. L.

Annotations:—*Consd.* *L. B. & S. C. Ry. v. Truman* (1885), 11 App. Cas. 45; *Canadian Pacific Ry. v. Parke*, [1899] A. C. 535; *East London Ry. v. Thames Conservators* (1904), 68 J. P. 302; *A.-G. v. Dorchester Corpn.* (1906), 94 L. T. 682. *Refd.* *Vernon v. St. James' Westminster Vestry* (1880), 16 Ch. D. 449; *Dixon v. Metropolitan Board of Works* (1881), 7 Q. B. D. 418; *Lea Conservancy Board v. Hertford Corpn.* (1884), Cab. & El. 299; *Ennew v. G. E. Ry.* (1885), 1 T. L. R. 519; *Gas Light & Coke Co. v. St. Mary Abbots, Kensington Vestry* (1885), 15 Q. B. D. 1; *Goolden v. Thames Conservators* (1887), 4 T. L. R. 187; *National Telephone Co. v. Baker*, [1893] 2 Ch. 186; *Rapier v. London Tram. Co.*, [1893] 2 Ch. 588; *Jordeson v. Sutton Southcoates & Drypool Gas Co.*, [1898] 2 Ch. 614; *Goldberg v. Liverpool Corpn.* (1900), 82 L. T. 362; *East Fremantle Corpn. v. Annals*, [1902] A. C. 213; *Re New River Co. & Metropolitan Water Board* (1904), 68 J. P. 329; *Demerara Electric Co. v. White*, [1907] A. C. 330; *Metropolitan Water Board v. Solomon*, [1908] 2 Ch. 214; *Price's Patent Candle Co. v. L. C. C.*, [1908] 2 Ch. 526; *Hanley v. Edinburgh Corpn.* (1913), 77 J. P. 233. *Mentd.* *M'Murray v. Cadwell* (1889), 6 T. L. R. 76.

1231. — — —.]—Wherever, according to the sound construction of a statute, the Legislature has authorised a proprietor to make a particular use of his land, & the authority given is in the strict sense of law permissive merely, & not imperative, the Legislature must be held to have intended that the use sanctioned is not to be in prejudice of the common law right of others.—*CANADIAN PACIFIC RY. v. PARKE*, [1899] A. C. 535; 68 L. J. P. C. 89; 81 L. T. 127; 48 W. R. 118; 15 T. L. R. 427, P. C.

Annotations:—*Consd.* *Metropolitan Water Board v. Solomon*, [1908] 2 Ch. 214; *Hanley v. Edinburgh Corpn.* (1913), 77 J. P. 233. *Refd.* *A.-G. v. Dorchester Corpn.* (1905), 93 L. T. 290; *West v. Bristol Tramways & Carriage Co.* (1908), 72 J. P. 145.

1232. — Duties & liabilities as imposed on private persons.]—*MERSEY DOCKS TRUSTEES v. GIBBS*, No. 880, *ante*.

1233. — — —.]—Defts. were a corporate body, in whom were vested, by Thames Navigation Act, 1866 (c. 89), certain powers & authorities for the preservation & improvement of the stream, etc

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including all powers & authorities before that Act vested in the comrs. appointed under earlier statutes. Defts. obtained power, *inter alia*, to make & establish a continued horse-towing path throughout the navigation & to purchase land for that purpose. By the above Act, defts. were authorised to take tolls & apply their funds to the expenses of the repair of the works vested in, acquired by, or constructed by them under the Act, & to the carrying into execution of the purposes of that Act & of the former Acts. In consequence of a part of the towing-path on the upper navigation of the Thames being out of repair & giving way, some horses of pltf.'s which were engaged in towing a barge fell into the river & were drowned. Defts. had in pursuance of the powers vested in them in 1866, made a parol arrangement with the owner of the soil of the towing-path at the place in question for the use of such towing-path, at an annual rent. Some parts of the towing path along the river had been artificially constructed by & belonged to the defts., & the use of the whole of the remainder had been acquired by them. They were in the habit of taking an aggregate toll for the use of the whole of the navigation & towing path at T. Lock, which they had done in the present instance. Pltf. having brought an action against defts. for negligence in not keeping the towing path in repair:—*Held*: defts. had power to maintain & repair towing path for using which they were entitled to charge toll. The intention of Legislature was that the corpn. should have the same duties & funds subject to the same liabilities as the law would impose on a private person having & exercising same rights, & therefore defts. having provided the towing path under their Acts, having power under such Acts to maintain & repair it, & having invited the public to use it, were bound to take reasonable care that it was in fit condition to be used as a towing path & action maintainable.

Towing path includes so much of the bank as is necessary & proper for the purpose of towing barges & is reasonably & properly used as such.—*WINCH v. THAMES CONSERVATORS* (1874), L. R. 9 C. P. 378; 43 L. J. C. P. 167; 31 L. T. 128; 22 W. R. 879, Ex. Ch.

Annotations:—*Distd.* *Gridley v. Thames Conservators* (1886), 2 T. L. R. 469. *Consd.* *Thames Conservators v. Kent*, [1918] 2 K. B. 272. *Refd.* *Forbes v. Lee Conservancy Board* (1879), 4 Ex. D. 116; *Lee Conservancy Board v. Button* (1879), 12 Ch. D. 383; *Nesbitt v. Mablethorpe U. D. C.*, [1918] 2 K. B. 1. *Mentd.* *Thomas v. Quartermaine* (1887), 18 Q. B. D. 685; *Yarmouth v. France* (1887), 19 Q. B. D. 647.

1234. — — — In absence of contrary intention.]—*GIBRALTAR SANITARY COMRS. v. ORFILA*, No. 1227, *ante*.

1235. — — —.]—In the absence of negligence or misconduct, a corpn. authorised by statute to carry on a particular business, is not responsible for any damage caused by its doing so in a normal & reasonable manner; for when the Legislature has legalised the acts contemplated & carried out, they cannot constitute an actionable wrong.—*CANADIAN PACIFIC RY. CO. v. ROY*, [1902] A. C. 220; 71 L. J. P. C. 51; 86 L. T. 127; 50 W. R. 415; 18 T. L. R. 200, P. C.

Annotations:—*Distd.* *Quebec Ry., Light, Heat & Power Co. v. Vandry*, [1920] A. C. 662. *Refd.* *McClelland v. Manchester Corpn.* (1911), 76 J. P. 21.

1236. — No remedy given by statute.]—Applt. municipality, in the exercise of authority conferred by the Western Australia Municipal Institutions Act (59 Vict. No. 10), s. 109, & at the request of the ratepayers, in order to improve a street reduced the gradient opposite the resps. house so that it was left on the edge of a cutting

Sect. 2.—Acts in exercise of statutory powers. Sects. 3 & 4: Sub-sect. 1, A.]

with a drop of about six or eight feet to the road :—*Held*: resp. was without remedy, since none had been given by statute, & applts. had not exceeded the powers conferred.—**EAST FREMANTLE CORPN. v. ANNOIS**, [1902] A. C. 213; 71 L. J. P. C. 39; 85 L. T. 732; 67 J. P. 103; 18 T. L. R. 199, P. C.

Annotations:—*Consd.* **Roberts v. Charing Cross, Euston & Hampstead Ry.** (1903), 87 L. T. 732. *Refd.* **Ash v. G. N. Plcc. & Brompton Ry.** (1903), 67 J. P. 417; A.-G. v. **Dorchester Corpn.** (1905), 93 L. T. 290.

1237. Acts not expressly sanctioned—Common law liability. A co. were empowered by Act of Parliament, in 1852, to make & maintain, & to do all matters fit or necessary for making & using a ry. or tramroad for the passage of waggons, engines, & other carriages, for the purpose of conveying minerals, etc. The co. having obtained the certificate of the Board of Trade, ran passenger trains drawn by locomotive steam engines, having taken all reasonable precautions to prevent the emission of sparks. Pltf.'s hay stack having been fired by sparks from one of the engines :—*Held*: as the co. had not express powers given them by statute to use locomotive steam engines, they were liable at common law for the damage, though negligence was negatived.—**JONES v. FESTINIOG Ry. Co.** (1868), L. R. 3 Q. B. 733; 9 B. & S. 835; 37 L. J. Q. B. 214; 18 L. T. 902; 32 J. P. 693; 17 W. R. 28.

Annotations:—*Refd.* **Hammersmith, etc. Ry. v. Brand** (1869), L. R. 4 H. L. 171; **Madras Ry. v. Zemindar of Carvetinagarum** (1874), 30 L. T. 770; **Cattle v. Stockton Waterworks Co.** (1875), 44 L. J. Q. B. 139; **Gas Light & Coke Co. v. St. Mary Abbots, Kensington Vestry** (1884), Cab. & El. 368; **Evans v. M. S. & L. Ry.** (1887), 57 L. T. 194; **Cowper Essex v. Acton L. B.** (1889), 14 App. Cas. 153; **Jordeson v. Sutton Southcoates & Drypool Gas Co.**, [1899] 2 Ch. 217; **Walton v. Vanguard Motor Bus Co.**, **Gibbons v. Vanguard Motor Bus Co.** (1908), 72 J. P. 505; **West v. Bristol Tram. Co.** (1908), 77 L. J. K. B. 684. *Mentd.* **Powell v. Fall** (1880), 5 Q. B. D. 597; **Mansel v. Webb** (1918), 88 L. J. K. B. 323.

1238. ———.—A tramway co. after a heavy fall of snow cleared their track by means of a snow-plough & heaped up the snow upon the sides of the streets; they then scattered salt upon the rails & in the vicinity; the town council did not take any immediate steps to remove the briny slush so produced, & it was left upon the streets :—*Held*: a legal nuisance had been committed which was not sanctioned by either the special or the general Tramways Acts, & that the default, if any, of the town council did not effect the primary liability of the tramway co.—**OGSTON v. ABERDEEN DISTRICT TRAMWAYS CO.**, [1897] A. C. 111; 66 L. J. P. C. 1; 75 L. T. 633; 61 J. P. 436; 13 T. L. R. 123, H. L.

Annotations:—*Distd.* **Montreal City v. Montreal Street Ry.**, [1903] A. C. 482; **Acton U. D. C. v. London United Tram.** (1901), Ltd. (1908), 100 L. T. 80.

1239. Duty to exercise care—Liability for needless injury.—**GEDDIS v. BANN RESERVOIR (PROPRIETORS)**, No. 1223, *ante*.

1240. ——— Liability for negligence.—**SOUTHAMPTON & ITCHIN BRIDGE CO. v. SOUTHAMPTON LOCAL BOARD**, No. 1224, *ante*.

1241. ——— Injury directly caused by act of third party.—A corpn. exercising statutory powers is liable in damages for injury resulting from the exercise of such powers, if the injury is caused by the neglect on their part of care which they were bound by law to exercise towards the injured party. But where the compensation for injury is provided for by the statute, it must be recovered as thereby provided, & damages will not be assessed by the ct. The liability of the corpn. is not

affected by the fact that the injury has been directly caused by the acts of a third party.

The owner of minerals under a canal worked them so as to cause a subsidence & consequent percolation of water into a mill :—*Held*: the canal co. was liable for damages.—**EVANS v. MANCHESTER, SHEFFIELD & LINCOLNSHIRE Ry. Co.** (1887), 36 Ch. D. 626; 57 L. J. Ch. 153; 57 L. T. 194; 36 W. R. 328; 3 T. L. R. 691.

By servant or agent, see Nos. 41, 880, *ante*, Nos. 1274, 1277, *post*.

1242. ——— No liability for non-feasance—Except when statutory duty negligently omitted.—**GIBRALTAR SANITARY COMRS. v. ORFILA**, No. 1227, *ante*.

See No. 1293, *post*.

1243. Damage arising after compulsory purchase.—Lands Clauses Consolidation Act, 1845 (c. 18) & Railways Clauses Consolidation Act, 1845 (c. 20) do, not contain any provisions under which a person, whose land has not been taken for the purposes of a ry., can recover statutory compensation from the ry. co. in respect of damage or annoyance arising from vibration occasioned, without negligence, by the passing of trains, after the ry. is brought into use, even though the value of the property has been actually depreciated thereby. The right of action for such damage is taken away.—**HAMMERSMITH & CITY Ry. Co. v. BRAND** (1869), L. R. 4 H. L. 171; 38 L. J. Q. B. 265; 21 L. T. 238; 34 J. P. 36; 18 W. R. 12, H. L.; *revsq.* S. C. *sub nom.* **BRAND v. HAMMERSMITH & CITY Ry. Co.** (1867), L. R. 2 Q. B. 223, Ex. Ch.

Annotations:—*Consd.* **City of Glasgow Union Ry. v. Hunter** (1870), L. R. 2 Sc. & Div. 78. *Distd.* **R. v. Cambrian Ry.** (1871), L. R. 6 Q. B. 422; **Buccleuch v. Metropolitan Board of Works** (1871–2), L. R. 5 H. L. 418. *Consd.* **Hopkins v. G. N. Ry.** (1877), 2 Q. B. D. 224; **Truman v. L. B. & S. C. Ry.** (1885), 29 Ch. D. 89. *Appld.* A.-G. v. **Met. Ry.**, [1894] 1 Q. B. 384. *Distd.* **Long Eaton Recreation Grounds Co. v. Mid. Ry.** (1901), 71 L. J. K. B. 74. *Consd.* **Canadian Pacific Ry. v. Ray**, [1902] A. C. 220. *Distd.* **Fletcher v. Birkenhead Corpn.**, [1907] 1 K. B. 205. *Consd.* **Price's Patent Candle Co. v. L. C. C.**, [1908] 2 Ch. 526; **Rockingham Sisters of Charity v. R.** (1922), 38 T. L. R. 782. *Refd.* **Smith v. L. & S. W. Ry.** (1870), L. R. 6 C. P. 14; **Clowes v. Staffordshire Potteries Waterworks Co.** (1872), 8 Ch. App. 125; **Jones v. Stanstead, Shefford & Chamblay Railroad Co.** (1872), L. R. 4 P. C. 98; **G. W. Ry. v. Smith** (1870), 2 Ch. D. 235; **Smith v. Mid. Ry. & L. & Y. Ry.** (1877), 37 L. T. 224; **Dixon v. Metropolitan Board of Works** (1881), 7 Q. B. D. 418; **Metropolitan Asylum District v. Hill** (1881), 6 App. Cas. 193; **Calc. Ry. v. Walker's Trustees** (1882), 7 App. Cas. 259; **R. v. L. G. Board & Taylor** (1882), 52 L. J. M. C. 4; **R. v. Sheward** (1882), 9 Q. B. D. 741; **Lea Conservancy Board v. Hertford Corpn.** (1884), Cab. & El. 299; **L. B. & S. C. Ry. v. Truman** (1885), 11 App. Cas. 45; **R. v. Essex** (1886), 17 Q. B. D. 447; **Parkdale Corpn. v. West** (1887), 12 App. Cas. 602; **Cowper Essex v. Acton L. B.** (1889), 14 App. Cas. 153; **North Shore Ry. v. Pion** (1889), 14 App. Cas. 612; **Holliday v. Wakefield Corpn.**, [1891] A. C. 81; **Meux Brewery Co. v. City of London Electric Lighting Co.**, **Shelfer v. Same** (1894), 72 L. T. 34; **Emsley v. N. E.** (1907) 1 Ch. 437; **Coldman v. Hill**, [1919] 1 K. B. 443.

Annotations:—*Consd.* **Southwark & Vauxhall Water Co. v. Wandsworth Board of Works**, [1898] 2 Ch. 603; **Canadian Pacific Ry. v. Parke**, [1899] A. C. 535; **Dawson v. G. N. & City Ry.**, [1905] 1 K. B. 260; **Edinburgh Water Trustees v. Sommerville** (1906), 95 L. T. 217; **Toronto Corpn. v. Toronto Ry.**, **Toronto Ry. v. Toronto Corpn.**, [1907] A. C. 315; **Horton v. Colwyn Bay & Colwyn U. C.**, [1908] 1 K. B. 327; **West v. Bristol Tram. Co.** (1908), 77 L. J. Q. B. 684; **R. v. Fulham Grdns.** (1909), 7 L. G. R. 881; **Grand Trunk Pacific Ry. v. Fort William Land Investment Co.**, [1912] A. C. 224; **Board of Agriculture for Scotland v. Plummer**, [1916] 1 A. C. 675; **Quebec Ry. Light, Heat & Power Co. v. Vandry**, [1920] A. C. 662. *Mentd.* **Dibden v. Skirrow**, [1907] 1 Ch. 437; **Coldman v. Hill**, [1919] 1 K. B. 443.

—.]—See, further, **COMPULSORY PURCHASE OF LAND & COMPENSATION**, Vol. XI., pp. 146, 147.

See, generally, **TORT; NUISANCE; NEGLIGENCE.**

SECT. 3.—TORTS INVOLVING MALICE.

1244. Malicious libel—Whether express malice may be inferred.]—A count against a railway co., being a corpn. aggregate, for a malicious libel is good, for a corpn. aggregate may well, in its corporate capacity, cause the publication of a defamatory statement under such circumstances as would imply malice in law sufficient to support the action.

Considering that an action of tort or trespass will lie against a corpn. aggregate & that an indictment may be preferred against a corpn. aggregate both for commission & omission, to be followed by a fine, although not by imprisonment, there may be great difficulty in saying that, under certain circumstances, express malice may not be imputed to & proved against a corpn. (LORD CAMPBELL, C.J.).—**WHITFIELD v. SOUTH EASTERN RY. CO.** (1858), 11 B. & E. 115; 27 L. J. Q. B. 229; 31 L. T. O. S. 113; 4 Jur. N. S. 688; 6 W. R. 545; 120 E. R. 451.

Annotations:—**Appld.** *Green v. London General Omnibus Co.* (1859), 7 C. B. N. S. 290. **Consd.** *Nevill v. Fine Arts & General Insee.*, [1895] 2 Q. B. 156. **Refd.** *Walker v. S. E. Ry.*, *Smith v. Same* (1869), 21 L. T. 301; *Edwards v. Mid. Ry.* (1880), 6 Q. B. D. 287; *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244.

1245. — Publication by corporation.]—**WHITFIELD v. SOUTH EASTERN RY. CO.**, No. 1244, *ante*.
— **By servant or agent.]**—See Nos. 1256, 1263, *post*.

1246. Malicious prosecution—Whether corporation capable of malice.]—*Qu.*: whether an action for a malicious prosecution will lie against a corpn. aggregate.—**STEVENS v. MIDLAND COUNTIES RY. CO.** (1854), 10 Exch. 352; 23 L. J. Ex. 328; 18 J. P. 713; 18 Jur. 932; 2 C. L. R. 1300; 156 E. R. 480.

Annotations:—**Consd.** *Edwards v. Mid. Ry.* (1880), 6 Q. B. D. 287; *Kent v. Courage, Croft v. Same* (1890), 55 J. P. 264; *Cornford v. Carlton Bank*, [1899] 1 Q. B. 392. **Refd.** *Whitfield v. S. E. Ry.* (1858), 27 L. J. Q. B. 229; *Bank of New South Wales v. Owston* (1879), 4 App. Cas. 270; *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244.

1247. — —.]—Pltf. was arrested on a warrant issued on the sworn information of an officer employed by defts. on a charge of theft, he was taken before a magistrate & remanded for a week at the request of an attorney employed by defts.; he was ultimately discharged. At the trial of the present action, which was for malicious prosecution, pltf. denied that he was guilty of the theft; the judge nonsuited him. Defts. were a corpn. aggregate:—**Held**: (KELLY, C. B. & CLEASBY, B.) the nonsuit was wrong. (BRAMWELL, B.) the nonsuit was right; & further that no action for malicious prosecution would lie against defts., for a corpn. aggregate is in law incapable of acting maliciously.—**HENDERSON v. MIDLAND RY. CO.** (1871), 24 L. T. 881; 20 W. R. 23.

Annotation:—**Refd.** *Cornford v. Carlton Bank*, [1899] 1 Q. B. 392.

1248. — —.]—In an action against a ry. co. for malicious prosecution the judge directed the jury that it was for pltf. to establish a want of reasonable & probable cause & malice & laid on him to show defts. had not taken reasonable care to inform themselves of true facts of the case & asked the jury if satisfied that defts. did take

reasonable care to inform themselves & if they honestly believed in case laid before magistrate. Jury answered in affirmative in both cases & judge gave judgment for defts.:—**Held**: direction right & the judgment rightly entered.

Action for malicious prosecution does not lie against corpn. aggregate, a corpn. aggregate being incapable of malice or motive (LORD BRAMWELL).—**ABRATH v. NORTH EASTERN RY. CO.** (1886), 11 App. Cas. 247; 55 L. J. Q. B. 457; 55 L. T. 63; 50 J. P. 659; 2 T. L. R. 416, H. L.; *affg.* (1883), 11 Q. B. D. 440.

Annotations:—**Consd.** *Cornford v. Carlton Bank*, [1899] 1 Q. B. 392. **N. F. Citizen's Life Assce. v. Brown**, [1904] A. C. 423. **Refd.** *Nevill v. Fine Arts & General Insee.*, [1895] 2 Q. B. 156. **Mentd.** *Quartz Hill Consolidated Gold Mining Co. v. Eyre* (1884), 50 L. T. 274; *Harrison v. National Provincial Bank of England* (1885), 2 T. L. R. 70; *Penfold v. Grosvenor Bank* (1886), 2 T. L. R. 759; *Edwards v. Annett* (1887), 3 T. L. R. 671; *Lea v. Charrington* (1889), 61 L. T. 222; *Brown v. Hawkes*, [1891] 2 Q. B. 718; *Bradshaw v. Goodwin* (1894), 10 T. L. R. 491; *Flood v. Jackson*, [1895] 2 Q. B. 21; *Wakelin v. L. & S. W. Ry.*, [1896] 1 Q. B. 189, n.; *Cox v. English, Scottish & Australian Bank*, [1905] A. C. 168; *Jones v. Hulton*, [1909] 2 K. B. 444; *R. v. Stoddart* (1909), 2 Cr. App. Rep. 217; *R. v. Bradshaw, etc.* (1910), 4 Cr. App. Rep. 280; *R. v. Horn* (1912), 76 J. P. 270; *Wiffer v. Bailey & Romford U. D. C.* (1914), 78 J. P. 187; *Bradshaw v. Waterlow*, [1915] 3 K. B. 527; *R. v. Immer, R. v. Davis* (1917), 26 Cox, C. C. 186; *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244.

1249. — Corporation liable—Acts within scope of incorporation.]—**EDWARDS v. MIDLAND RY. CO.**, No. 1218, *ante*.

1250. — —.]—An action for a malicious prosecution will lie against a corpn. or limited co.—**KENT v. COURAGE & CO., LTD., CROFT v. SAME** (1890), 55 J. P. 264; *sub nom.* **KEMP v. COURAGE & CO., LTD., CROFT v. SAME**, 7 T. L. R. 50.

Annotation:—**Refd.** *Cornford v. Carlton Bank*, [1899] 1 Q. B. 392.

1251. — —.]—**CORNFORD v. CARLTON BANK**, No. 1265, *post*.

— **By servant or agent.]**—See No. 1265, *post*.

See, generally, LIBEL & SLANDER; MALICIOUS PROSECUTION & PROCEDURE.

SECT. 4.—ACTS OF AGENTS AND SERVANTS.

SUB-SECT. 1.—ACTS WITHIN SCOPE OF AUTHORITY.

A. In General.

1252. General rule.]—A corpn. is liable in tort for the tortious act of its agent, though not appointed by seal, if such act be an ordinary service, such as a distress professedly made under a statute, for a debt due to the corpn.; & a jury may infer the agency from an adoption of the act by the corpn., as from their having received the proceeds of the seizure.—**SMITH v. BIRMINGHAM & STAFFORDSHIRE GAS LIGHT CO.** (1834), 1 Ad. & El. 526; 3 Nev. & M. K. B. 771; 3 L. J. K. B. 165; 110 E. R. 1309.

Annotations:—**Consd.** *Hall v. Swansea Corpn.* (1844), Dav. & Mer. 475; *Mill v. Hawker* (1874), L. R. 9 Exch. 309.

1253. — —.]—A corpn. aggregate may be liable to an action for intentional acts of misfeasance by its servants, provided they are sufficiently connected with the scope & object of its incorporation.

In an action against a co. established for conveying passengers by omnibuses in the streets of

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w. Malicious prosecution—Corporation liable—Information laid by mayor.]—A municipal as well as a trading corpn. might be liable for malicious prosecution, where its mayor, assuming to act as an officer of the city laid the information.—**WILSON v. WINNIPEG CITY** (1887), 4 Man. L. R. 193.—CAN.

a. Where proof of malice essential—Malice must be proved.]—Where proof of malice is essential to an action such proof must be given though deft. be a corpn.—**WHITAKER v. HAMILTON CORPN.** (1908), 27 N. Z. L. R. 321.—N.Z.

PART XI. SECT. 4, SUB-SECT. 1.—A. 1252 i. General rule.]—If a servant of

a corpn. commits a tort in the course of his employment, & for the benefit of his employer, whether by his direct orders or not, the employer is liable, even if the act was unknown to or actually forbidden by him.—**HARRIS v. BRUNETTE SAW MILL** (1893), 3 B. C. R. 172.—CAN.

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L., charging that the co. by its servants wrongfully, vexatiously, & maliciously did certain acts with a view to, & which in the result did, obstruct & annoy pltf. in the conduct of a similar trade:—**Held**: as the acts complained of were connected with the object & purpose for which the co. was incorporated the co. was responsible.

An action for a wrong will lie against a corp'n. where the thing that is complained of is a thing done within the scope of their incorporation & is one which would constitute an actionable wrong if committed by an individual (ERLE, C.J.).—**GREEN v. LONDON GENERAL OMNIBUS CO.** (1859), 7 C. B. N. S. 290; 29 L. J. C. P. 13; 1 L. T. 95; 6 Jur. N. S. 228; 8 W. R. 88; 141 E. R. 828.

Annotations:—**Consd.** *Edwards v. Mid. Ry.* (1880), 6 Q. B. D. 287; *Allen v. Flood*, [1898] A. C. 1. **Refd.** *Cowley v. Sunderland Corp'n.* (1861), 30 L. J. Ex. 127.

1254. —.]—**POULTON v. LONDON & SOUTH WESTERN RY. CO.**, No. 1217, *ante*.

1255. —.]—**SMITH v. NORTH METROPOLITAN TRAMWAYS CO.** (1891), 55 J. P. 630; 7 T. L. R. 459, C. A.

1256. —.]—A corp'n. cannot be held to be incapable of malice so as to be relieved of liability for malicious libel when published by its servant acting in the course of his employment. Although the servant may have had no actual authority express or implied to write the libel complained of, containing statements against pltf. which he knew to be untrue, if he did so in the course of an employment which is authorised the corp'n. is liable.

The ordinary doctrines of agency & of master & servant are as applicable to corp'ns. as to private persons, whether they arise in questions of contract or of tort & frauds.—**CITIZENS' LIFE ASSURANCE CO. v. BROWN**, [1904] A. C. 423; 73 L. J. P. C. 102; 90 L. T. 739; 53 W. R. 176; 20 T. L. R. 497, P. C.

Annotations:—**Refd.** *Pratt v. British Medical Assn.*, [1919] 1 K. B. 244. **Mentd.** *Mousell v. L. & N. W. Ry.*, [1917] 2 K. B. 836.

1257. Wrongful distress.—**SMITH v. BIRMINGHAM & STAFFORDSHIRE GAS LIGHT CO.**, No. 1252, *ante*.

1258. Trespass.—Trespass will lie against a corp'n. for an act done by their agent, within the scope of his authority, & it is not necessary to show any appointment or authority of such agent under the common seal of the corp'n.—**MAUND v. MONMOUTHSHIRE CANAL CO.** (1842), 4 Man. & G. 452; Car. & M. 606; 2 Dowl. N. S. 113; 3 Ry. & Can. Cas. 159; 5 Scott, N. R. 457; 11 L. J. C. P. 317; 6 Jur. 932; 134 E. R. 186.

Annotations:—**Consd.** *Mill v. Hawker* (1874), L. R. 9 Exch. 309. **Refd.** *R. v. G. N. of England Ry.* (1846), 9 Q. B. 315. **Mentd.** *Hall v. Swansea Corp'n.* (1844), 8 Jur. 213; *Nash v. Lucas* (1867), 16 L. T. 610.

1259. —.]—Trespass lies against a corp'n. aggregate for an assault committed by their servant authorised by them to do the act. Such authority, although not given by an instrument under seal, is binding upon the corp'n.

An assault committed on behalf of & for the

benefit of the corp'n. is capable of being ratified by them, & if ratified, renders them liable in trespass for the act.

The servant of a ry. co. took pltf., a passenger upon the co.'s line into custody, for an alleged breach of one of the co.'s byelaws, & carried him before a magistrate. The attorney of the co. attended before the magistrate to conduct the charge:—**Held**: this was no evidence that the company ratified the act of their servant.

Trespass will lie against a corp'n. aggregate for breaking & entering a close & for seizing goods (**PATTISON, J.**).—**EASTERN COUNTIES RY. CO. v. BROOM** (1851), 6 Exch. 314; 6 Ry. & Can. Cas. 743; 20 L. J. Ex. 196; 16 L. T. O. S. 465, 509; 15 Jur. 297; 155 E. R. 562, Ex. Ch.

Annotations:—**Consd.** *Whitfield v. S. E. Ry.* (1858), E. B. & E. 115; *Goff v. G. N. Ry.* (1861), 3 E. & E. 672; *Bank of New South Wales v. Owston* (1879), 4 App. Cas. 270. **Refd.** *Woollen v. Wright* (1862), 1 H. & C. 554; *Williams v. Smith* (1863), 14 C. B. N. S. 596. **Mentd.** *Walker v. S. E. Ry.*, *Smith v. S. E. Ry.* (1870), L. R. 5 C. P. 640.

1260. Assault—Action will lie.—**EASTERN COUNTIES RY. CO. v. BROOM**, No. 1259, *ante*.

— **Removal of passengers.**—*See* **CARRIERS**, Vol. VIII., pp. 113–115, Nos. 764–770.

Trover.—*See* No. 199, *ante*; *see, also*, **AGENCY**, Vol. I., pp. 598, 599, 600, Nos. 2306, 2310, 2315.

1261. False imprisonment—By authority of corporation—Corporation liable.—A ry. co., though a corp'n., is liable in an action for false imprisonment, if the act be committed by the authority of the co.; the authority need not be under seal; but it lies on pltf. to give evidence justifying the jury in finding that the co.'s servants who imprisoned him, or some of them, had authority from the co. to do so.—**GOFF v. GREAT NORTHERN RY. CO.** (1861), 3 E. & E. 672; 30 L. J. Q. B. 148; 3 L. T. 850; 25 J. P. 326; 7 Jur. N. S. 286; 121 E. R. 594.

Annotations:—**Consd.** *Poulton v. L. & S. W. Ry.* (1867), L. R. 2 Q. B. 534. **Expld.** *Edwards v. L. & N. W. Ry.* (1870), L. R. 5 C. P. 445. **Expld. & Apld.** *Moore v. Met. Ry.* (1872), L. R. 8 Q. B. 36. **Distd.** *Walker v. Nottingham Board of Grdns.* (1873), 28 L. T. 308. **Consd.** *Bank of New South Wales v. Owston* (1879), 4 App. Cas. 270. **Distd.** *Knight v. North Metropolitan Tram. Co.* (1898), 78 L. T. 227. **Refd.** *Kirkstall Brewery Co. v. Furness Ry.* (1874), L. R. 9 Q. B. 468; *Edwards v. Mid. Ry.* (1880), 6 Q. B. D. 287; *Lambert v. G. E. Ry.*, [1909] 2 K. B. 776. **Mentd.** *Seymour v. Greenwood* (1861), 7 H. & N. 355; *Allen v. L. & S. W. Ry.* (1870), 19 W. R. 127.

1262. — **By servant of corporation—Corporation liable.**—In an action of damages brought against the corp'n. of G. pursuer averred that he tendered in payment of his fare as a passenger on a corp'n. tramway car a penny which was slightly indented but was a proper tender; that the conductor rejected the coin & summoned an inspector, who demanded another penny, which pursuer declined to pay; that the conductor & inspector then gave pursuer into custody on a charge of refusing to pay his fare, notwithstanding that he had offered them his name & address. Pursuer further averred that it was part of the duty of the conductor & inspector to prevent any passenger evading payment of his fare & that they were empowered under the bye-laws made under Corp'n. Tramways Acts to seize & detain

1258 i. Trespass.—A corp'n. is liable for a trespass committed by its servant while conducting its business, although committed in the doing of an act *ultra vires* of the corp'n.; & where the servant of a corp'n. forms an erroneous judgment, & in the supposed scope & discharge of the duty delegated to him, commits a trespass, the corp'n. is liable for it.—**ADAMS v. NATIONAL ELECTRIC TRAMWAY & LIGHTING CO.** (1893), 3 B. C. R. 199.—**CAN.**

1260 i. Assault—Action will lie. Pltf. during his initiation as a member of deft. corp'n., in the presence of the principal officers & a number of members, constituting a full & perfect meeting, was injured through the rough usage of some of the members:—**Held**: the acts complained of must be taken to have been done with the consent of the corporate body, & defts. were liable in damages for the injuries sustained.—**KINVER v. PHOENIX LODGE**

(1885), 7 O. R. 377.—**CAN.**

b. False imprisonment.—A corp'n. may be liable for false imprisonment under an order of its agent acting within the scope of his authority.—**LYDEN v. MCGEE** (1888), 16 O. R. 105.—**CAN.**

c. Illegal arrest.—**FANJOY v. PORTLAND CITY** (1889), 29 N. B. R. 24.—**CAN.**

any such passenger whose name or residence was unknown to them until discharged in due course of law; that it was within the general scope of the authority of the conductor & inspector as employees of the corpn. & in the course of their employment to give into custody any person in their opinion detected in an attempt to defraud the corpn. by evading payment or tendering improper coins. He then charged the conductor & inspector with having acted recklessly, maliciously, & in an excess of zeal, in giving pursuer into custody, in that they did not properly examine the coin tendered & in that they knew pursuer's name & address, which he had given them, & alleged that the corpn. as the employers of the conductor & inspector were responsible for their actions. Defenders pleaded that pursuer's averments were irrelevant:—*Held*: the averments meant that the conductor & inspector, acting in the course of & within the general scope of their employment, improperly exceeded the power conferred by the bye-laws upon their employers, the corpn., in which case the corpn. would be liable, & the action should be allowed to proceed to trial.—*PERCY v. GLASGOW CORPN.*, [1922] 2 A. C. 299; 91 L. J. P. C. 187; 127 L. T. 501; 38 T. L. R. 722; 66 Sol. Jo. 555, H. L.

— **Arrest & detention of passengers.**—See *CARRIERS*, Vol. VIII., pp. 115–117, Nos. 771–783.

— **By managers.**—See *AGENCY*, Vol. I., pp. 602–603, Nos. 2326–2330.

1263. Malice of servant—Libel—Whether corporation liable.—Where in an action for libel the judge rules that the occasion was privileged, pltf. cannot succeed in the action, unless the jury find that deft. was actuated by express malice. A finding by the jury that the defamatory statement complained of was in excess of the privilege is not enough.

Qu.: whether in an action for libel against a corpn., the corpn. would be liable in respect of the express malice of their servant.—*NEVILL v. FINE ARTS & GENERAL INSURANCE CO.*, [1895] 2 Q. B. 156; 64 L. J. Q. B. 681; 72 L. T. 525; 59 J. P. 371; 11 T. L. R. 332; 39 Sol. Jo. 316; 14 R. 587; *affd.*, [1897] A. C. 68, H. L.

Annotations:—*Consd.* *Adam v. Ward*, [1917] A. C. 309. *Refd.* *British Empire Typesetting Machine Co. v. Linotype* (1898), 14 T. L. R. 511; *Cornford v. Carlton Bank*, [1899] 1 Q. B. 392. *Mentd.* *Stollery v. Maskelyne* (1898), 15 T. L. R. 79; *Dauncey v. Holloway* (1901), 84 L. T. 649; *Floyd v. Gibson* (1909), 100 L. T. 761; *Mapey v. Baker* (1909), 73 J. P. 289; *Banbury v. Bank of Montreal*, [1918] A. C. 626; *Ware & De Freville v. Motor Trade Assocn.*, [1921] 3 K. B. 40; *Yorkshire Insee. v. Craine* (1922), 38 T. L. R. 845.

1264. — Acting in course of employment—Corporation liable.—*CITIZENS' LIFE ASSURANCE CO. v. BROWN*, No. 1256, *ante*.

1265. — Malicious prosecution—Corporation liable.—An action for malicious prosecution lies against a corpn. where a servant or agent of the corpn., acting within the scope of his authority, has instituted a prosecution in the name of the corpn. against the pltf. maliciously & without reasonable or probable cause.—*CORNFORD v. CARLTON BANK*, [1899] 1 Q. B. 392; 68 L. J. Q. B.

d. Malice of servant—Slander—Whether corporation liable—Pleading. In an action for damages for verbal slander against a corpn. pursuer averred that A. who was in service of defender as collector of assessments called at her husband's house to collect an assessment, which was payable in instalments, that she tendered balance due, which A. declined to accept as correct, that he was shown receipts for previous payments & then left the house, returned after some hours & charged her with altering one of the

receipts with the purpose of defrauding the corpn., & he thereafter repeated the slander in house of a neighbour & later in the office of the collector:—*Held*: averments were relevant, seeing that they disclosed that the alleged slander was connected with & related to A.'s employment as collector.—*RIDDELL v. GLASGOW CORPN.*, [1910] S. C. 693.—*SCOT*.

DELSTON v. NORTH BRITISH RY. CO., [1917] S. C. 442.—*SCOT*.

196; 80 L. T. 121; 15 T. L. R. 156; *affd.*, [1900] 1 Q. B. 22, C. A.

Annotations:—*Refd.* *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244. *Mentd.* *Corea v. Peiris*, [1909] A. C. 549.

By bank manager.—See *AGENCY*, Vol. I., p. 602, No. 2326.

1266. — Molestation in exercise of calling—Corporation liable.—In an action for molesting a person in the exercise of his calling a corpn. may, by its servants acting within the scope of their authority, be guilty of malice.—*PRATT v. BRITISH MEDICAL ASSOCN.*, [1919] 1 K. B. 244; 88 L. J. K. B. 628; 120 L. T. 41; 35 T. L. R. 14; 63 Sol. Jo. 84.

Annotations:—*Consd.* *Ware & De Freville v. Motor Trade Assocn.*, [1921] 3 K. B. 40. *Refd.* *Valentine v. Hyde*, [1919] 2 Ch. 129. *Mentd.* *Davies v. Thomas*, [1920] 1 Ch. 217; *Hodges v. Webb*, [1920] 2 Ch. 70; *Said v. Butt*, [1920] 3 K. B. 497; *British Railway Traffic & Electric Co. v. C. R. C. Co. & L. C. Co.*, [1922] 2 K. B. 260.

1267. Act expressly forbidden.—*SMITH v. NORTH METROPOLITAN TRAMWAYS CO.* (1891), 55 J. P. 630; 7 T. L. R. 459, C. A.

—*See AGENCY*, Vol. I., p. 595, No. 2286.

1268. Fraud by agent.—A person purchasing a chattel or goods, concerning which the vendor makes a fraudulent misrepresentation, may on finding out the fraud elect to retain the chattel or goods, & still have his action to recover any damage he has sustained. But the same principle does not apply to shares or stock in a joint stock co., for a person induced by the fraud of the agents of a joint stock co. to become a partner in that co. can bring no action for damages against the co. whilst he remains in it: his only remedy is *restitutio in integrum*, & rescission of the contract; & if that becomes impossible—by the winding-up of the co. or by any other means—his action for damages is irrelevant, & cannot be maintained.

H. bought from the City of G. Bank, a co-partnership registered under the Cos. Act, 1862, £4,000 of its stock in Feb. 1877. He was registered as a partner, received dividends & otherwise acted as a partner ever since. The bank went into liquidation in Oct. 1878, with immense liabilities; & H. was entered on the lists of contributories, & paid calls. In Dec. 1878, H. raised an action against the liquidators, to recover damages in respect of the sum he had paid for the stock; the money he had already paid in calls; & the estimated amount of future calls. He founded his right to relief upon the ground of fraudulent misrepresentations made by the directors & other bank officials to him. He admitted that after the winding-up had commenced it was too late for him to have rescission of his contract, & *restitutio in integrum*:—*Held*: even although the fraudulent misrepresentations might, if the bank had been a going concern, have entitled him to rescind his contract, rescission being now impossible, they afforded no ground for an action against the liquidators; therefore the action was irrelevant.—*HOULDSWORTH v. CITY OF GLASGOW BANK* (1880), 5 App. Cas. 317; 42 L. T. 194; 28 W. R. 677, H. L.

Annotations:—*Expld.* *Chapleo v. Brunswick Permanent Bldg. Soc.* (1881), 6 Q. B. D. 696. To the general principles involved in the observations of LORD HATHERLEY in

f. Misrepresentation—By clerk. A corpn. may be liable for an untrue statement innocently made by its clerk & within the scope of his employment.—*STEPHENS v. REID (R.) & Co.* (1902), 28 V. L. R. 82.—*AUS*.

g. Slander—By authority of corporation—Corporation liable.—A corpn. may be liable if slander is spoken by its servants or agents in direct obedience to its orders.—*RODGER v. NOXON CO.* (1900), 19 P. R. 327.—*CAN*.

Sect. 4.—Acts of agents and servants: Sub-sect. 1, A. & B.; sub-sect. 2. Sect. 5.]

Houldsworth v. City of Glasgow Bank, I give a ready assent, but it is clear, when the case is examined, that LORD HATHERLEY is referring to an agent acting within the scope of his authority (BAGGALLAY, L.J.). *Consd.* Great Australian Gold Mining Co., *Ex p.* Appleyard (1881), 18 Ch. D. 587; *Ludgater v. Love* (1881), 44 L. T. 694; *Re Addlestone Linoleum Co.* (1887), 37 Ch. D. 191; *Hambro v. Burnand*, [1903] 2 K. B. 399; *Lloyd v. Grace Smith*, [1912] A. C. 716. *Reid.* *Re Hull & County Bank*, *Burgess's Case* (1880), 15 Ch. D. 507; *Simson & Mason v. New Brunswick Trading Co.* (1888), 5 T. L. R. 148; *Thorne v. Heard*, [1894] 1 Ch. 599; *Re Railway Time Tables Publishing Co.*, *Welton's Claim* (1898), 79 L. T. 679; *Citizens' Life Assce. Co. v. Brown*, [1904] A. C. 423; *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244. *Mentd.* *British Mutual Banking Co. v. Charnwood Forest Ry.* (1887), 18 Q. B. D. 714; *McKeown v. Boudard Peveril Gear Co.* (1896), 65 L. J. Ch. 446; *Whitechurch v. Cavanagh*, [1902] A. C. 117; *Hambro v. Burnand* (1904), 9 Com. Cas. 251.

—.]—*See* AGENCY, Vol. I., pp. 277, 587, 591-593, 594, Nos. 88, 89, 2245, 2267-2272, 2282.

See BANKERS & BANKING, Vol. III., pp. 163-164, Nos. 250-252.

See, generally, AGENCY, Vol. I.; MASTER & SERVANT; NEGLIGENCE; NUISANCE; TORT.

B. Proof of Authority.

1269. Authority under seal unnecessary.]—YARBOROUGH v. BANK OF ENGLAND, No. 199, *ante*.

1270. — Act adopted by corporation.]—SMITH v. BIRMINGHAM & STAFFORDSHIRE GAS LIGHT CO., No. 1252, *ante*.

1271. —.]—MAUND v. MONMOUTHSHIRE CANAL CO., No. 1258, *ante*.

1272. — Authority conferred by ratification.]—EASTERN COUNTIES RY. CO. v. BROOM, No. 1259, *ante*.

1273. —.]—Authority under seal unnecessary for acts within ordinary course of employment.]—GILES v. TAFF VALE RY. CO. (1853), 2 E. & B. 822; 22 L. T. O. S. 157; 18 Jur. 510; 118 E. R. 975; *sub nom.* TAFF VALE RY. CO. v. GILES, 23 L. J. Q. B. 43; 2 W. R. 57, Ex. Ch.

Annotations:—Consd. *Goff v. G. N. Ry.* (1861), 3 E. & E. 672. *Reid.* *Moore v. Met. Ry.* (1872), L. R. 8 Q. B. 36. *Mentd.* *Slim v. G. N. Ry.* (1854), 23 L. J. C. P. 166; *Little v. Port Talbot Co.*, *The Apollo*, [1891] A. C. 499.

See Part XIII., *post*.

Authority of agents, *see, generally*, AGENCY, Vol. I., p. 295 *et seq.*

Authority of servants, *see, generally*, MASTER & SERVANT.

SUB-SECT. 2.—NEGLIGENCE.

1274. Corporation deriving no profit from property.]—By an Act of Parliament, drainage comrs. were to make & maintain a cut & sluice; the sluice burst, owing to the negligence of the servants of the comrs., & damage having ensued to pltf.'s land, he brought an action against the comrs., in the name of their clerk:—Held: the comrs. were

not exempt from liability by reason of their being comrs. for a public purpose; & the duty being imposed upon them of maintaining the sluice, they were liable for the damage caused by the negligent performance of that duty by their servants.—*COE v. WISE* (1866), L. R. 1 Q. B. 711; 7 B. & S. 831; 37 L. J. Q. B. 262; 14 L. T. 891; 30 J. P. 484; 14 W. R. 865, Ex. Ch.; *reversg.* (1864), 5 B. & S. 440.

Annotations:—Reid. *Mersey Dock Trustees v. Gibbs* (1866), L. R. 1 H. L. 93; *Worral Waterworks Co. v. Lloyd* (1866), L. R. 1 C. P. 719; *Holborn Union Grdns. v. St. Leonard*, *Shoreditch Vestry* (1876), 2 Q. B. D. 145; *Gibraltar Sanitary Comrs. v. Orfila* (1890), 15 App. Cas. 400; *Jersey v. Uxbridge R. S. A.*, [1891] 3 Ch. 183; *Tozeland v. West Ham Union*, [1907] 1 K. B. 920; *Liebigs Extract of Meat Co. v. Mersey Docks & Harbour Board & Nelson*, [1918] 2 K. B. 381; *Boynton v. Ancholme Drainage & Navigation Comrs.*, [1921] 2 K. B. 213. *Mentd.* *Harrison v. G. N. Ry.* (1864), 3 H. & C. 231; *Wilson v. Halifax Corpn.* (1868), L. R. 3 Exch. 114; *Birch v. St. Marylebone Vestry* (1869), 20 L. T. 697; *River Wear Comrs. v. Adamson* (1877), 37 L. T. 543; *Colley v. L. & N. W. Ry. & G. W. Ry.* (1880), 42 L. T. 807.

1275. —.]—MERSEY DOCKS TRUSTEES v. GIBBS, No. 880, *ante*.

1276. Liability of Trinity House.]—GILBERT v. TRINITY HOUSE CORPN., No. 41, *ante*.

1277. Liability of hospital governors—For negligent operation.]—The only duty undertaken by the governors of a public hospital towards a patient who is treated in the hospital is to use due care & skill in selecting their medical staff. The relationship of master & servant does not exist between the governors & the physicians & surgeons who give their services at the hospital, & the nurses & other attendants assisting at an operation cease for the time being to be the servants of the governors, inasmuch as they take their orders during that period from the operating surgeon alone & not from the hospital authorities.

Pltf. brought an action against the governors of a hospital for damages for injuries alleged to have been caused to him during an operation by the negligence of some member of the hospital staff:—*Held: the action was not maintainable.*

It is now settled that a public body is liable for the negligence of its servants in the same way as private individuals would be liable under similar circumstances, notwithstanding that it is acting in the performance of public duties, like a local board of health, or of eleemosynary & charitable functions, like a public hospital (FARWELL, L.J.).—*HILLYER v. ST. BARTHOLOMEW'S HOSPITAL (GOVERNORS)*, [1909] 2 K. B. 820; 78 L. J. K. B. 958; 25 T. L. R. 762; 53 Sol. Jo. 714; *sub nom.* *HILLYER v. LONDON CORPN.*, 101 L. T. 368; 73 J. P. 501, C. A.

Annotations:—Consd. *Shrimpton v. Hertfordshire County Council* (1910), 74 J. P. 305. *Distd.* *Smith v. Martin & Kingston-upon-Hull Corpn.*, [1911] 2 K. B. 775.

See, generally, AGENCY, Vol. I., pp. 600, 601; MASTER & SERVANT; NEGLIGENCE.

PART XI. SECT. 4, SUB-SECT. 2.

h. General rule.]—A municipal corpn. is liable to an action for negligence in the discharge of any duty imposed on them by their charter.—GREEN v. ST. JOHN'S CORPN. (1869), 1 Han. 523.—CAN.

k. Duty to exercise care—Liability for negligence.]—A corpn. acting as a public body, in the execution of a public duty, which they are bound to perform, are not answerable for the negligence or unskillfulness of the agents or contractors whom they employ, they having exercised their judgment fairly in the selection of such agents or contractors.—GLOVER v. LIMERICK CORPN. (1840), 3 I. L. R. 246.—IR.

l. Liability of hospital governors—For negligent treatment.]—A patient

who has been injured by the negligence of the servants employed by the comrs. of the General Public Hospital in St. J., incorporated by 23 Vict. c. 61, may maintain an action against the corpn. therefor.—*DONALDSON v. ST. JOHN'S GENERAL PUBLIC HOSPITAL COMRS.* (1890), 30 N. B. R. 279.—CAN.

m. Liability for accident—Defective bridge.]—Pltf. while crossing, on horseback, a bridge within the municipality received injuries found to have resulted from negligence of the corporation & its officers:—Held: def. corporation was liable.—MCQUARRIE v. ST. MARY'S MUNICIPALITY (1884), 5 R. & G. 493.—CAN.

n. —.]—WATSON v. COLCHESTER MUNICIPALITY (1884), 6 R. & G. 549.—CAN.

o. —.]—VICTORIA CITY

v. PATTERSON, VICTORIA CITY v. LANG, [1899] A. C. 615.—CAN.

p. — Defective sidewalk.]—GRANT v. NEW GLASGOW TOWN (1885), 6 R. & G. 87; 6 C. L. T. 142.—CAN.

q. — Unfenced embankment.]—KING v. KINGS' MUNICIPALITY (1886), 7 R. & G. 68; 7 C. L. T. 119.—CAN.

r. — Undermining of gravel pit.]—STEVES v. SOUTH VANCOUVER DISTRICT CORPN. (1897), 6 B. C. R. 17.—CAN.

s. — Defective condition of drain.—JENNISON v. EAST HANTS MUNICIPALITY (1885), 6 R. & G. 71; 6 C. L. T. 141.—CAN.

t. — Sparks from defective railway engine.]—CANADA ATLANTIC RY. CO. v. MOXLEY (1887), 15 S. C. R. 145.—CAN.

SECT. 5.—OTHER CASES.

1278. *Scienter*—Sufficiency of notice.]—With respect to questions of *scienter* there is no difference between a corpn. & an individual, & whatever is notice to a person competent to receive it is notice to the corpn.—*STYLES v. CARDIFF STEAMBOAT CO.* (1864), 4 New Rep. 483; 10 L. T. 844; 28 J. P. 646; *sub nom.* *STILES v. CARDIFF STEAM NAVIGATION CO.*, 33 L. J. Q. B. 310; 10 Jur. N. S. 1199; 12 W. R. 1080.

Annotations:—*Mentd.* *Baldwin v. Casella* (1872), L. R. 7 Exch. 325; *Applebee v. Peroy* (1874), L. R. 9 C. P. 647.

See, generally, ANIMALS.

1279. Where indictment maintainable against corporation for general damage—Action will be for special damage to individual.]—Where an indictment can be maintained against a corpn. for something done to the general damage of the public, an action can be maintained for special damage thereby done to an individual, & there is no distinction in this respect between nonfeasance & misfeasance.

Appls. under their Act of incorporation, had the care, construction, & management of the roads & streets within their municipality. The brickwork of a drain constructed by applts. under one of their streets having broken away, & not having been repaired, the rain washed away the soil, & caused a hole which was left unfenced. Resp.'s horse fell into this hole as he was riding along the street at night, & caused an injury to the resp.:

Held: it was the duty of applts. to keep the work constructed by them in such repair as to prevent its causing a danger to passengers on the highway, & that an action would lie against them at the suit of resp.—*BATHURST BOROUGH v. MACPHERSON* (1879), 4 App. Cas. 256; 48 L. J. P. C. 61; 41 L. T. 778; 43 J. P. 827, P. C.

Annotations:—*Distd.* *Pictou Municipality v. Geldert*, [1893] A. C. 524. *Consd. & Expld.* *Sydney Municipal Council v. Bourke*, [1895] A. C. 433. *Consd.* *Lambert v. Lowestoft Corpn.*, [1901] 1 K. B. 590. *Refd.* *Kent v. Worthing L. B.* (1882), 10 Q. B. D. 118; *Thompson v. Brighton Corpn.*, *Oliver v. Horsham L. B.*, [1894] 1 Q. B. 332. *Mentd.* *Moore v. Lambeth Waterworks Co.* (1886), 17 Q. B. D. 462; *Goodson v. Sunbury Gas Consumers' Co.* (1896), 75 L. T. 251; *Short v. Hammersmith Corpn.* (1910), 104 L. T. 70; *Papworth v. Battersea B. C.* (1914), 79 J. P. 105.

1280. Maintenance—Corporation in liquidation—Action will not lie.]—A bkpt. cannot maintain an action for maintenance on the ground that deft. incited & supported bkpcy. proceedings in which he had no common interest, since the cause of action, if any, passed to the trustees in bankruptcy, & such an action may be summarily dismissed upon summons as frivolous & vexatious.

In my opinion the corpn. was incapable of maintenance. Maintenance in that sense could not take place by a corpn. in liquidation. A corpn. in liquidation might be answerable in certain circumstances for the improper acts of its liquidator, its agent. If it had profited by those acts it would not be permitted to retain the profit; it would be chargeable no doubt in that respect, I suppose, even if in liquidation. But this particular act of maintenance, which is criminal, & also in some circumstances the ground for a civil action, is an act which, in my opinion, in liquidation the corpn. as distinct from the individual liquidator was incapable of committing (*LORD SELBORNE, C.*).—*METROPOLITAN BANK, LTD. v. POOLEY* (1885), 10 App. Cas. 210; 54 L. J. Q. B. 449; 53 L. T. 163; 49 J. P. 756; 33 W. R. 709, H. L.

Annotations:—*Consd.* *Neville v. London Express Newspaper*, [1917] 1 K. B. 402. If it [the statement of *LORD SELBORNE*] means that a civil action cannot be brought against a limited co. which by its servants has been guilty

of maintenance, I do not think this is the present state of the law. But I do not think that *LORD SELBORNE*'s statement need affect my decision in this case, because he was considering the case of a co. which was in liquidation, & he relied on the limited authority possessed by the liquidator of a co. in liquidation as justifying the view which he expressed (*LORD READING, C.J.*). *Refd.* *Oram v. Hutt*, [1914] 1 Ch. 98; *Neville v. London Express Newspaper*, [1919] A. C. 368. *Mentd.* *Tucker v. Collinson* (1886), 54 L. T. 263; *Magrath v. Reichel* (1887), 57 L. T. 850; *Lawrance v. Norreys* (1888), 39 Ch. D. 213; *Barrett v. Day*, *Day v. Foster* (1890), 43 Ch. D. 435; *Bruce v. Allesbury* (1892), 36 Sol. Jo. 865; *Haggard v. Pellicier Freres*, [1892] A. C. 61; *Fletcher v. Bethom* (1893), 68 L. T. 438; *Logan v. Bank of Scotland* (1905), 94 L. T. 153; *British Cash & Parcel Conveyors v. Lamson Store Service Co.*, [1908] 1 K. B. 1006; *Boaler v. Power*, [1910] 2 K. B. 229; *Norman v. Mathews* (1916), 85 L. J. K. B. 857.

—*See, also*, ACTION, Vol. I., p. 67, No. 556.

1281. Merchant Shipping Act, 1894 (c. 60), s. 502—Fault of managing authority—"Fault or privity" of corporation—Not of servant or agent.]—A passenger on a steamer placed his watch, with gold cigar cutter & sovereign purse containing £5 attached, on retiring for the night, in a canvas pocket suspended from a hook over the top bunk which he occupied in a cabin on the main deck. The pocket was placed where it was under the superintendence of the shipowner's marine superintendant. Above the pocket was a fanlight, which the passenger left open, leading into the ventilating shaft which opened on the spar deck. A small man by putting his head & shoulders into the opening of the ventilating shaft could, by stretching his arm downwards, reach the pocket. The contents of the pocket had disappeared by the following morning. Finger marks were found round the pocket & in the ventilating shaft. The passenger's ticket contained a condition that the owners would not be responsible for & should be exempt from all liability in respect of any loss of any baggage, property, goods, effects, articles, matters, or things belonging to or carried by or with any passenger, whether the same should arise from or be occasioned by thefts by persons in the employment of the owners, or by others or any other acts, defaults, or negligence of the owners agents or servants of any kind whatsoever. The passenger had not declared the value of the articles. On an action for damages for negligence or alternatively for breach of warranty of seaworthiness:—

Held: the liability of the carrier as regards articles carried on the person or in the passenger's personal custody was the same as that towards the passenger, to take reasonable care. If the articles by being placed in the pocket changed their character, then sect. 502 of the above Act applied. There was no "fault or privity" of the shipowners. The condition on the ticket protected the shipowners, & the shipowners were not liable for the loss.

I am of opinion that in the case of a corpn. the fault of the managing authority of the directors would be the actual fault of the co. within the meaning of the sect., but not so the fault of a servant who has not general managing duties (*CHANNELL, J.*).—*SMITTON v. ORIENT STEAM NAVIGATION CO., LTD.* (1907), 96 L. T. 848; 23 T. L. R. 359; 51 Sol. Jo. 343; 10 Asp. M. L. O. 459; 12 Com. Cas. 270.

Annotation:—*Mentd.* *Asiatic Petroleum Co. v. Lennard's Carrying Co.*, [1914] 1 K. B. 419.

See SHIPPING & NAVIGATION.

Breach of trust.]—*See* CHARITIES, Vol. VIII., p. 378, No. 1910.

See, generally, TORT; NEGLIGENCE; NUISANCE.

SECT. 6.—TORTS AGAINST CORPORATION.

1282. Libel—Libel of one director.]—An information granted against deft. for a libel against the East India Co., although the imputation was in the singular number, *viz.*: Whereas an East India director has raised etc.—*R. v. JENOUR* (1741), 7 Mod. Rep. 400; 87 E. R. 1318.

1283. — Right of corporation to sue—Where business injured—Unless corporation incapable of committing the tort.]—A joint stock co. incorporated under Joint Stock Companies Act, 1856 (c. 47), may maintain an action for a libel calculated to injure the co.: & it is no answer to such an action that deft. is a shareholder in the co.

Semble: a corpn. at common law may maintain an action for a libel on the corpn.; unless the matter imputed by the libel is something of which a corpn. is incapable, as murder & such like.—*METROPOLITAN SALOON OMNIBUS CO. v. HAWKINS* (1859), 4 H. & N. 87; 28 L. J. Ex. 201; 32 L. T. O. S. 283; 5 Jur. N. S. 226; 7 W. R. 265; 157 E. R. 769.

Annotations:—*Consd.* South Hetton Coal Co. v. North-Eastern News Assocn., [1894] 1 Q. B. 133. *Refd.* Manchester Corpn. v. Williams, [1891] 1 Q. B. 94; Homing Pigeon Publishing Co. v. Racing Pigeon Publishing Co. (1913), 29 T. L. R. 389. *Mentd.* Yorkshire Provident Life Assce. Co. v. Gilbert & Rivington, [1895] 2 Q. B. 148; Arnold & Butler v. Bottomley, [1908] 2 K. B. 151; Willmott v. London Road Car Co., [1910] 2 Ch. 525.

1284. — — — — —.]—The right of a corpn. to sue for libel is confined to the protection of their property. In an action by a municipal corpn. for a libel imputing corruption:—*Held*: a corpn., as distinguished from the individuals com-

posing it, cannot be guilty of corrupt practices, the statement of claim disclosed no cause of action.—*MANCHESTER CORPN. v. WILLIAMS*, [1891] 1 Q. B. 94; 60 L. J. Q. B. 23; 63 L. T. 805; 54 J. P. 712; 39 W. R. 302; 7 T. L. R. 9, D. C.

Annotations:—*Consd.* South Hetton Coal Co. v. North-Eastern News Assocn., [1894] 1 Q. B. 133. *Distd.* Pratt v. British Medical Assocn., [1919] 1 K. B. 244. *Refd.* Homing Pigeon Publishing Co. v. Racing Pigeon Publishing Co. (1913), 29 T. L. R. 389.

]—A trading corpn. may maintain an action in respect of a libel calculated to injure their reputation in the way of their business without proof of special damage.

The condition of a mining village where large numbers of miners & their families are living, as regards its fitness for habitation according to rules of health & morality, is a matter of public interest, in reference to which fair & honest criticism is not libellous.

A corpn. or co. could not sue in respect of a charge of murder, or incest, or adultery because it could not commit these crimes. Nor could it sue in respect of a charge of corruption or of an assault, because a corpn. cannot be guilty of corruption or of an assault although the individuals composing it may be (*LOPES, L.J.*).—*SOUTH HETTON COAL CO. v. NORTH-EASTERN NEWS ASSOCN.*, [1894] 1 Q. B. 133; 63 L. J. Q. B. 293; 69 L. T. 844; 58 J. P. 196; 42 W. R. 322; 10 T. L. R. 110; 9 R. 240, C. A.

Annotations:—*Refd.* Homing Pigeon Publishing Co. v. Racing Pigeon Publishing Co. (1913), 29 T. L. R. 389; Pratt v. British Medical Assocn., [1919] 1 K. B. 244. *Mentd.* Empire Typesetting Machine Co. of New York v. Linotype Co. (1898), 79 L. T. 8; Willmott v. London Road Car Co., [1910] 2 Ch. 525; Adam v. Ward (1915), 31 T. L. R. 299.

Part XII.—Criminal and Quasi-Criminal Proceedings.

See, generally, CRIMINAL LAW & PROCEDURE.

How far corporation is a person—In statutes.]—

See Part IX., Sect. 2, sub-sect. 1, *ante*.

1286. General rule.]—A corpn. cannot, in one sense, commit a crime, a corpn. cannot be imprisoned, if imprisonment be the sentence for the crime; a corpn. cannot be hanged or put to death if that be the punishment for the crime; & so, in those senses a corpn. cannot commit a crime. But a corpn. may be fined, & a corpn. may pay damages (*LORD BLACKBURN*).—*PHARMACEUTICAL SOCIETY v. LONDON & PROVINCIAL SUPPLY ASSOCN.* (1880), 5 App. Cas. 857; 49 L. J. Q. B. 736; 43 L. T. 389; 45 J. P. 20; 28 W. R. 957, H. L.

Annotations:—*Refd.* *R. v. Tyler & International Commercial Co.*, [1891] 2 Q. B. 588; *Pearks, Gunston & Tee v. Ward, Hennen v. Southern Counties Dairies Co.*, [1902] 2 K. B. 1. *Mentd.* *Chapleo v. Brunswick Bldg. Soc.* (1881), 6 Q. B. D. 696; *G. W. Ry. v. Swindon & Cheltenham Extension Ry.* (1882), 52 L. J. Ch. 306; *Re Jeffcock's Trusts* (1882), 51 L. J. Ch. 507; *Pharmaceutical Soc. v. Wheeldon* (1890),

24 Q. B. D. 683; *Hirst v. West Riding Union Banking Co.*, [1901] 2 K. B. 560; *Pharmaceutical Soc. v. White*, [1901] 1 K. B. 601; *Wills v. Tozer* (1904), 53 W. R. 74; *Edwards v. Pharmaceutical Soc. of Great Britain*, [1910] 2 K. B. 766; *Pharmaceutical Soc. v. Nash* (1910), 80 L. J. K. B. 416; *Re Royal Naval School, Seymour v. Royal Naval School*, [1910] 1 Ch. 806; *Wilmott v. London Road Car Co.*, [1910] 2 Ch. 525.

1287. — — — — —.]—By the general principles of the criminal law if a matter is made a criminal offence it is essential that there should be something in the nature of *mens rea*, & therefore in the ordinary cases a corpn. cannot be guilty of a criminal offence, nor can a master be liable criminally for an offence committed by his servant, but there are exceptions to this rule in the case of quasi-criminal offences, as they may be termed, that is to say, where certain acts are forbidden by law under a penalty, possibly even under a personal penalty, such as imprisonment, at any rate in default of payment of a fine; & the reason for

can be maintained by one corpn. against another.—*L'INSTITUT CANADIEN v. LE NOUVEAU MONDE* (1873), 17 L. C. J. 296.—*CAN.*

PART XII.

1286 i. General rule.]—A corpn. cannot be charged criminally with a crime involving malice or the intention of the offender.—*GEORGIAN BAY SHIP CANAL CO. v. WORLD NEWSPAPER CO.* (1897), 16 P. R. 320.—*CAN.*

h. Manslaughter.]—On a count for manslaughter:—*Held*: an indictment would not lie against a corpn. for manslaughter.—*R. v. GREAT WEST LAUNDRY CO.* (1900), 20 C. L. T. 217; 13 Man. L. R. 66.—*CAN.*

PART XI. SECT. 6.

a. Libel—Right of corporation to sue—Where business injured.]—*BARNES v. SHARPE* (1910), 11 C. L. R. 462.—*US.*

b. — — — — —.]—No action for damages for defamation lies on behalf of a corpn., unless the words complained of interfere with the corpn. in its pursuit of the purposes for which it has been created, & in the case of a trading corpn., are calculated to injure its business reputation, or to affect its trade.—*WITWATERSRAND NATIVE LABOUR ASSOCN., LTD. v. ROBINSON* (1907), T. S. 264.—*S. AF.*

c. — — — — —.]—*RAND WATER BOARD v. LANE* (1909), T. H. 4.—*S. AF.*

d. — — — — —.]—*Without alleging special damage.]*—An action will lie by a corpn. for a libel reflecting upon the conduct & management of their business, without alleging special

LTD. v. LAWRENCE (1908), 8 S. R. N. S. W. 175; 25 N. S. W. W. N. 67.—*AUS.*

e. — — — — —.]—*NEW ZEALAND BANKING CORPN. v. CUTTEN*, Mac. 212.—*N.Z.*

f. — — — — —.]—*Where not carrying on business.]*—A corporate body which does not carry on business cannot sue as a corpn. for defamation.—*BHIKA v. PREMA* (1910), T. P. D. 101.—*S. AF.*

g. — — — — —.]—*Another corporation.]*—An action for damages for libel

this is, that the Legislature has thought it so important to prevent the particular act from being committed that it absolutely forbids it to be done; & if it is done the offender is liable to a penalty whether he had any *mens rea* or not, & whether or not he intended to commit a breach of the law. Where the act is of this character then the master, who, in fact, has done the forbidden thing through his servant, is responsible & is liable to a penalty. There is no reason why he should not be, because the very object of the Legislature was to forbid the thing absolutely. It seems to me that exactly the same principle applies in the case of a corp'n. If it does the act which is forbidden it is liable (CHANNELL, J.).—PEARKS, GUNSTON & TEE, LTD. v. WARD, HENNEN v. SOUTHERN COUNTIES DAIRIES Co., [1902] 2 K. B. 1; 71 L. J. K. B. 656; 87 L. T. 51; 66 J. P. 774; 18 T. L. R. 538; 20 Cox, C. C. 279.

Annotations:—*Appld.* Mousell v. L. & N. W. Ry., [1917] 2 K. B. 836; *Pearks' Dairies v. Tottenham Food Control Committee* (1918), 88 L. J. K. B. 623. *Refd.* Smithies v. Bridge (1902), 71 L. J. K. B. 555; Korten v. West Sussex County Council (1903), 88 L. T. 466; Hawke v. Hulton, [1909] 2 K. B. 93; Chuter v. Freeth & Pocock, [1911] 2 K. B. 832; R. v. Ascanio Puck & Paice (1912), 76 J. P. 487. *Mentd.* Re Royal Naval School, Seymour v. Royal Naval School, [1910] 1 Ch. 806.

1288. —[Owners of goods may, without a *mens rea*, be guilty of giving a false account under Railways Clauses Consolidation Act, 1845 (c. 20), s. 98, with intent to avoid payment of tolls, & if their manager actually gives the false account with intent to avoid payment the owners, though a limited co., are liable under sect. 99 of the Act.—MOUSELL BROTHERS v. LONDON & NORTH WESTERN RY., [1917] 2 K. B. 836; 87 L. J. K. B. 82; 118 L. T. 25; 81 J. P. 305; 15 L. G. R. 706.

Annotations:—*Appld.* Warrington v. Windhill Industrial Co-op. Soc. (1918), 82 J. P. 149. *Refd.* *Pearks' Dairies v. Tottenham Food Control Committee* (1918), 88 L. J. K. B. 623.

1289. Treason.—SUTTON'S HOSPITAL CASE, No. 3, *ante*.

1290. Seditious libel.—R. v. LONDON CORPN., No. 1568, *post*.

See Nos. 1244, 1256, 1263, *ante*.

1291. Perjury.—The secretary & book-keeper of the East India Co. were made defts. to a bill for a discovery of some entries & orders of the co. Defts. demurred, alleging that they might be examined as witnesses, & also that their answer could not be read against the co.:—*Held*: the demurrer would be overruled lest there should be a failure of justice, since the co. would not be liable to a prosecution for perjury though their answer might be false.—WYCH v. MEAL (1734), 3 P. Wms. 310; 24 E. R. 1078.

Annotations:—*Appld.* Dummer v. Chippenham Corp'n. (1807), 14 Ves. 245. *Distd.* Le Texier v. Anspach (1808), 15 Ves. 159. *Refd.* Portugal (Queen) v. Glyn (1840), 7 Cl. & Fin. 466; Prioleau v. United States & Johnson (1866), L. R. 2 Eq. 659; U. S. A. v. Wagner (1867), 2 Ch. App. 582. *Mentd.* Welsbach Incandescent Gas Light Co. v. New Sunlight Incandescent Co. (1900), 83 L. T. 58.

1292. Felony—Or crimes involving personal violence.—(1) A corp'n. aggregate may be indicted by their corporate name for disobedience to an order of justices requiring the corp'n. to execute works pursuant to a stat.

(2) If such indictment be preferred at assizes or sessions, where parties cannot appear by attorney, the proper course is to remove it into this ct.

k. Whether corporation indictable—Breach of statutory duty—Nonfeasance—Punishment fine not imprisonment.—R. v. UNION COLLIERY Co. (1900), 7 B. C. R. 247; 31 S. C. R. 81.—CAN.

l. — Formal written charge in lieu of indictment.—R. S. 1906, s. 873.]

—R. v. STANDARD SOAP CO. (1907), 7 Torr. L. R. 356; 6 W. L. R. 64.—CAN.

m. Whether corporation subject to preliminary examination before magistrate.—A justice of the peace cannot compel a corp'n. to appear before him nor can he bind them over to appear & answer to an indictment, & he has

by *certiorari*, & compel appearance by distress infinite.

A corp'n. may be indicted for breach of a duty imposed upon it by law, though not for a felony, or for crimes involving personal violence as for riots or assaults (Patteson, J.).—R. v. BIRMINGHAM & GLOUCESTER RY. Co. (1842), 3 Q. B. 223; 3 Ry. & Can. Cas. 148; 2 Gal. & Dav. 236; 11 L. J. M. C. 134; 6 Jur. 804; 114 E. R. 492.

Annotations:—*As to* (1) *Consd.* R. v. Tyler & International Commercial Co., [1891] 2 Q. B. 588. *Refd.* R. v. G. N. of England Ry. (1846), 9 Q. B. 315; Pharmaceutical Soc. v. London Supply Assoon. (1879), 4 Q. B. D. 313. *As to* (2) *Refd.* R. v. Stainhall (1858), 1 F. & F. 363; London Joint Stock Bank v. London Corp'n. (1875), 1 C. P. D. 1; R. v. Puck (1912), 28 T. L. R. 197. *Generally, Mentd.* R. v. Tryddyn (1852), Bail Ct. Cas. 19.

Maintenance.—See No. 1280, *ante*.

1293. Liability for acts of agents—Statutory offence—Motor Car Acts, 1896 & 1903.—*Applts.*, a limited co. who were motor cab proprietors, were convicted before a magistrate of aiding & abetting a driver in their service in using a motor cab in contravention of Art. 11 of the Motor Car (Registration & Licensing) Ord. 1903, made by the Board of Trade under Motor Car Acts, 1896 & 1903. The driver was using a motor cab more than one hour after sunset, having a lamp, which was lighted, hanging too low to illuminate the identification plate. The motor cab was fitted with a proper & permanent bracket on which to hang the lamp. *Applts.* had in their service a foreman, who was charged by them with the duty of seeing that the cabs left their premises in such a condition as to comply in all respects with the Motor Car Acts, 1896 & 1903, & the regs. of the Board of Trade made thereunder. The magistrate found that *applts.* were careless in not seeing to it that a proper lamp was fixed on the cab. *Held*: there was evidence on which *applts.* might be convicted of aiding & abetting their driver in committing a breach of the above reg.

I think it right to say that if a corp'n. have a large number of cars & act, as they must act, by agents, & those agents send out the cars in a way which does not comply with the regs. in my judgment the corp'n. are responsible for the penalties imposed thereby (LORD ALVERSTONE, C.J.).—PROVINCIAL MOTOR CAB CO., LTD. v. DUNNING, [1909] 2 K. B. 599; 78 L. J. K. B. 822; 101 L. T. 231; 73 J. P. 387; 25 T. L. R. 646; 22 Cox, C. C. 159; 7 L. G. R. 765.

Annotation:—*Mentd.* Dickeson v. Mayes, [1910] 1 K. B. 452.

1294. Whether corporation indictable—Liability of particular members.—A corp'n. is not indictable, but the particular members of it are (HOLT, C.J.).—ANON. (1702), 12 Mod. Rep. 559; 88 E. R. 1518. *Annotation*:—*Consd.* R. v. Birmingham & Gloucester Ry. (1842), 3 Q. B. 223.

1295. — Punishable by fine—Not imprisonment.—WHITFIELD v. SOUTH EASTERN RY. Co., No. 1244, *ante*.

1296. — Breach of statutory duty—Nonfeasance.—R. v. BIRMINGHAM & GLOUCESTER RY. Co., No. 1292, *ante*.

1297. — — — — ——A magistrate having refused to issue a summons under Companies Act, 1862 (c. 89), s. 27, against a co. to recover penalties for default in forwarding a list of its members to the Registrar of Joint Stock Cos. as required by

no jurisdiction to bind over the prosecutor or person who intends to present an indictment against them.—*Re* CHAPMAN & CITY OF LONDON (1890), 19 O. R. 33.—CAN.

n. — — — — ——R. v. STANDARD SOAP CO. (1907), 7 Torr. L. R. 356; 6 W. L. R. 64.—CAN.

sect. 26 of the Act, the Q. B. Div. granted a rule *nisi* for a mandamus directing him to hear & determine the application for a summons. The rule was by a subsequent order of the ct. discharged. On appeal against this order:—*Held*: the application to the magistrate for a summons against the co. was a criminal proceeding, & therefore the judgment of the Q. B. Div. was a judgment in a "criminal cause or matter" within Judicature Act, 1873 (c. 66), s. 47, & no appeal would lie.

Where a duty is imposed upon a co. in such a way that a breach of the duty amounts to a disobedience of the law, then, if there is nothing in the stat. either expressly or impliedly to the contrary a breach of the stat. is an offence which can be visited upon the co. by means of an indictment (BOWEN, L.J.).—*R. v. TYLER & INTERNATIONAL COMMERCIAL CO.*, [1891] 2 Q. B. 588; 61 L. J. M. C. 38; 65 L. T. 662; 56 J. P. 118; 7 T. L. R. 720, C. A.

Annotations:—*Reid. Southport Corpn. v. Birkdale U. D. C.* (1897), 76 L. T. 319; *Park v. Royalties Syndicate*, [1912] 1 K. B. 330. *Mentd. R. v. Young, etc.*, London J.J. (1891), 61 L. J. M. C. 42; *Rayson v. South London Tram. Co.* (1893), 42 W. R. 21; *Mousell v. L. & N. W. Ry.*, [1917] 2 K. B. 836; *R. v. Garrett, Ex p. Sharf*, [1917] 2 K. B. 99.

1298. ——— *Misfeasance*.]—A corpn. aggregate may be indicted for a misfeasance, as an incorporated railway co. for cutting through & obstructing a highway by works performed in a course not conformable to the powers conferred on the co. by Act of Parliament.—*R. v. GREAT NORTH OF ENGLAND RY. CO.* (1846), 9 Q. B. 315; 16 L. J. M. C. 16; 7 L. T. O. S. 468; 11 J. P. 21; 10 Jur. 755; 2 Cox, C. C. 70; 115 E. R. 1294.

Annotations:—*Reid. Re Royal British Bank* (1857), 29 L. T. O. S. 148; *Whitfield v. S. E. Ry.* (1858), E. B. & E. 115; *Pharmaceutical Soc. v. London Supply Assocn.* (1879), 4 Q. B. D. 313; *R. v. Tyler & International Commercial Co.*, [1891] 2 Q. B. 588. *Mentd. R. v. Stephens* (1866), 7 B. & S. 710.

1299. ——— *Under Foreign Enlistment Act, 1819 (c. 69)*.]—During the rebellion in S. two foreigners were sent to England by the usurping government to purchase a vessel from defts. The vessel was registered in the name of the co., & a bill of sale was then executed to two persons alleged to be trustees for the foreigners. Pltf., upon being restored to his government, filed a bill to restrain the co. from parting with the vessel upon the ground that the purchase money was taken from his royal treasury. The bill alleged that the co. had entered into a scheme with the two foreigners for the purpose of evading the provisions of 8 & 9 Vict. c. 89. The co. demurred on the ground that by answering the bill they would expose themselves to pains & penalties under 8 & 9 Vict. c. 89, & to an indictment under the above Act:—*Held*: a corpn. could not be indicted under the above Act, & the demurrer would be overruled.—*TWO SICILIES (KING) v. WILLCOX* (1850), 1 Sim. N. S. 301; 14 Jur. 163; 61 E. R. 116; *sub nom. TWO SICILIES (KING) v. PENINSULAR & ORIENTAL STEAM-PACKET CO.*, 19 L. J. Ch. 488; *subsequent proceedings, sub nom. TWO SICILIES (KING) v. WILLCOX*, 7 State Tr. N. S. 1049.

Annotations:—*Mentd. Austria (Emperor) v. Day* (1861), 3 De G. F. & J. 217; *U. S. A. v. Prioleau* (1865), 2 Hem. & M. 559; *U. S. A. v. McRae* (1867), 3 Ch. App. 79; *Hennesy v. Wright* (1888), 4 T. L. R. 597.

—— *Under particular statutes*—As "person" committing offence.]—*See Part IX., Sect. 2, sub-sect. 1, ante.*

1300. *Indictment in corporate name*.]—*R. v. PATRICK & PEPPER*, No. 109, *ante.*

1301. ———.]—*R. v. BIRMINGHAM & GLOUCESTER RY. CO.*, No. 1292, *ante.*

1302. *Indictment preferred at assizes or sessions*
Corporation unable to appear personally or by

solicitor—*Removed by certiorari into High Court.*
—*R. v. BIRMINGHAM & GLOUCESTER RY. CO.*, No. 1292, *ante.*

1303. ——— *Prosecutor not bound to enter into recognisance for costs*.]—An indictment against a corporate body for non-repair of a highway was removed by the prosecutor into the Q. B. by *certiorari*, on the ground that the indictment could not be tried at sessions as defts., a corporate body, could not appear personally or by attorney & plead. The prosecutor did not enter into a recognisance to pay defts.' costs in case of acquittal:—*Held*: Criminal Procedure Act, 1853 (c. 30), s. 5, did not apply to such a case as this, & the prosecutor was not bound to enter into a recognisance for costs in case of defts.' acquittal.—*R. v. MANCHESTER CORPN.* (1857), 7 E. & B. 453; 26 L. J. M. C. 65; 28 L. T. O. S. 369; 21 J. P. 165; 3 Jur. N. S. 839; 5 W. R. 373; 119 E. R. 1315.

Annotations:—*Reid. Marriage v. Eastern Counties Ry. & London & Blackwall Ry.* (1857), 2 H. & N. 625; *Southern Counties Deposit Bank v. Boaler* (1895), 59 J. P. 536; *R. v. Puck* (1912), 28 T. L. R. 197.

1304. *Whether corporation can be committed for trial*.]—A limited co. cannot be committed for trial on an indictment.

A limited co. was charged before a justice with an offence under Representation of the People Act, 1918 (c. 64), s. 34, & a servant of the co. was charged with aiding & abetting the co. therein. Both defts. were ostensibly committed for trial under Grand Juries (Suspension) Act, 1917 (c. 4), s. 1 (2), which was then in force. An indictment was then presented against both defts. in which they were respectively charged as aforesaid, & they were both thereupon tried & convicted. On appeal by both defts. to the Ct. of Criminal Appeal:—*Held*: as against deft. co. the indictment & the conviction must be quashed, inasmuch as a limited co. could not be committed for trial.—*R. v. DAILY MIRROR NEWSPAPERS, R. v. GLOVER*, [1922] 2 K. B. 530; 91 L. J. K. B. 712; 127 L. T. 218; 86 J. P. 151; 38 T. L. R. 531; 66 Sol. Jo. 559, C. C. A.

1305. *Whether corporation liable to attachment—For contempt of court—For not making return to writ*.]—(1) If toll be merely claimed of the individual members of a corpn. exempt from toll an action well lies on the writ *de essendo quietum de thecolonia* in the name of the corpn.

(2) A corpn. to whom the writ is directed cannot be attached for contempt in their corporate capacity for not returning it, but an attachment in the nature of a *pone* is the proper remedy to compel them to appear.

(3) In an action by one corpn. against another each may inspect so much of the books & records of the other as relates to the subject in dispute.—*LONDON CORPN. v. LYNN CORPN.* (1796), 7 Bro. Parl. Cas. 120; 3 E. R. 78; *sub nom. LYNN REGIS CORPN. v. LONDON CORPN.*, 6 Term Rep. 778, H. L.

Annotations:—*As to* (1) *Reid. R. v. Haughley* (1833), 4 B. & Ad. 650. *As to* (2) *Reid. London Joint Stock Bank v. London Corpn.* (1875), 1 C. P. D. 1. *As to* (3) *Consd. A.-G. v. Warwick Corpn.* (1827), 4 Russ. 222. *Generally, Reid. Stafford Corpn. v. Bolton* (1797), 1 Bos. & P. 40; *Croydon Hospital v. Farley* (1816), 6 Taunt. 467; *A.-G. v. Rye Corpn.* (1817), 7 Taunt. 546. *Mentd. Ayray's Case* (1614), 11 Co. Rep. 18 b.

1306. ——— *Fine imposed as appropriate punishment*.]—Although upon a rule calling upon a limited co. to show cause why a writ of attachment should not issue against it for contempt of ct. the ct. cannot make an order of attachment, it can, where it is satisfied that a contempt has been committed, inflict the appropriate punishment, namely, order the co. to pay a fine.—*R. v.*

HAMMOND (J. G.) & Co., LTD., [1914] 2 K. B. 866; 83 L. J. K. B. 1221; 111 L. T. 206; 30 T. L. R. 491; 58 Sol. Jo. 513.

1807. — Disobedience to writ of mandamus.]—A corpn., which is a national body, cannot be attached for disobedience to a writ of mandamus issued against it.

A mandamus addressed to a corporate body whose actions are not controlled by a governing body is a command addressed to every member of that body.

Two precepts were served upon a metropolitan borough council requiring them to pay certain sums or to levy rates for that purpose. The council having failed to do this, the precepting authorities obtained peremptory writs of mandamus against them. No return having been made to the writs, & the council having declined to make the rates, the precepting authorities obtained rules *nisi* for attachment against the council. The rules required the council to show cause why writs of attachment should not be issued "against them or every of them," but did not mention the names of the persons sought to be attached. They were served upon some only of the members, together with affidavits of the precepting authorities in support, which were defective in that they did not specify the contempt with which each member was charged. Some twenty-seven of the members made a joint affidavit in reply, in which they stated their reasons for refusing to make the rates & persisted in their refusal. At the hearing of the applications for rules absolute some eleven or twelve addressed the ct. in support of their refusal. The Div. Ct. directed writs of attachment to issue both

against the council & certain of the individual members. On appeal:—*Held*: the orders against the council could not be supported & must be discharged.—*R. v. POPLAR BOROUGH COUNCIL* (No. 2), [1922] 1 K. B. 95; *sub nom. R. v. POPLAR BOROUGH COUNCIL, Ex p. LONDON COUNTY COUNCIL, Ex p. METROPOLITAN ASYLUMS BOARD* (No. 2), 91 L. J. K. B. 174; 126 L. T. 138; 85 J. P. 259; 38 T. L. R. 5; 66 Sol. Jo. (W. R.) 10; 19 L. G. R. 731, C. A.

1308. Proceedings by officer—Not authorised under seal.]—Appl. on behalf of the mayor & corpn. of L. preferred an information against resps. for damaging a tree at B., the property of the corpn., to the amount of £5. Applt. was chief ranger of B., & stated on oath that he had a general power to prosecute for offences under the B. bye-laws on behalf of the corpn. The present proceedings were initiated, not under the bye-laws but under Malicious Damage Act, 1861 (c. 97), s. 22. The solr. representing resps. asked for the production of a copy of the minute or resolution authorising applt. to prefer the information. No such authority being produced, he raised the objection that as the information was laid on behalf of the corpn. of L. it was laid by a corporate body, & should therefore have been laid by an attorney duly appointed under the common seal or warrant of the corpn. It was contended that the justices could not proceed to hear the information, & the justices acceded to this view & dismissed the information:—*Held*: the information was properly laid.—*DUCHESNE v. FINCH* (1912), 107 L. T. 412; 76 J. P. 377; 28 T. L. R. 440; 23 Cox, C. C. 170; 10 L. G. R. 559.

Part XIII.—Delegation of Authority for Particular Purposes.

1309. General rule.]—A prescriptive right in the eldest son of every burgess born in N., & in the younger sons of every burgess born in N. & having served a seven years apprenticeship to any trade, & in every person having served a seven years apprenticeship in N. to any burgess of N., to be admitted a burgess of the town, on his attaining 21:—*Held*: not to exclude the incidental power arising by implication of law to the corpn. at large to secure their perpetual succession by voluntary elections of burgesses *ad libitum*.

(1) Whether the power of making such voluntary elections be incidental to the corpn. at large, or exist in them by prescription, it is competent for them to delegate it to a select part of themselves, but they cannot delegate such power to any stranger: & the recorder of the town must be taken to be such, if he be not stated to be a burgess. (2) As such select body is the creature of the corpn., its constitution & mode of acting may, it seems, be modelled, with the exception before stated, according to the pleasure of its maker; & where the corpn., consisting primarily of the mayor & burgesses, who were directed by charter to elect aldermen from among themselves, transferred the

right of electing burgesses to a select body, consisting of the mayor & aldermen, of whom the major part must attend; eighteen livery or clothing burgesses, of whom nine were sufficient to attend; together with the recorder, if a burgess, & if choosing to attend, & six of the burgesses at large, if they choose to attend; but the select body might proceed without either the six burgesses or the recorder, if they did not attend:—*Held*: this was a reasonable & valid by-law.—*R. v. BIRD* (1811), 13 East, 367; 104 E. R. 412.

Annotations:—As to (1) Consd. R. v. Westwood (1825), 4 B. & C. 781. *Expld. & Distd. R. v. Dulwich College* (1851), 17 Q. B. 600. *Refd. Osgood v. Nelson* (1869), 10 B. & C. 119. *As to (2) Consd. R. v. Westwood* (1830), 7 Bing. 1. *Refd. R. v. Westwood* (1825), 4 B. & C. 781.

1310. Effect of ratification.]—The city surveyor of M. having certified under 30 & 31 Vict. c. xxxvi., s. 38 that there was imminent danger from a building of which pltf. was the owner & occupier; the town clerk, assuming to act on behalf of the corpn., issued under the same sect. a direction to the surveyor to cause the building mentioned in his certificate to be taken down or repaired in such manner as he should think requisite. The surveyor thereupon employed a builder to take

PART XIII.

1309 i. General rule.]—Corpns. cannot give up to others their special powers on the control of their undertakings unless authorised by their constituting instrument or by statute.—*BROWN v. WICKHAM & BULLOCK ISLAND COAL CO., LTD.* (1894), 15 N. S. W. L. R. 308; 11 N. S. W. N. 30.—*AUS.*

o. Whether seal necessary—Ap-

*pointment of agent—To negotiate for lease.]—*Deft. lodge was incorporated. By resolution passed at a regular meeting of the lodge, the house committee, which had been previously appointed, was given power to rent or lease suitable club rooms. G. was a member of the house committee. He was active in endeavouring to secure suitable premises & acted as chairman of the committee in the

absence of the elected chairman. After negotiations with pltf. for a lease of certain premises, G. handed a letter, signed "Loyal Order of Moose, per G.," to pltf.'s rental agent, to whom it was addressed, offering on behalf of the lodge to take a lease of the premises for two years, to commence when the improvements agreed on should be completed, & asking for a written reply by noon the next day.

down & rebuild certain parts of the building, who was paid by the corpn. for so doing, & the corpn. afterwards recovered the amount from pltf. :—*Held*: (1) the certificate of the surveyor was conclusive, & could not be questioned in an action to recover back the money so paid; (2) the acts of the surveyor, authenticated by the town clerk, were the acts of the corpn., or, at all events, they were ratified & adopted by them so as to justify what was done under the certificate.—*CHEETHAM v. MANCHESTER CORPN.* (1875), L. R. 10 C. P. 249; 44 L. J. C. P. 139; 32 L. T. 28; 39 J. P. 343.

Annotation:—*Generally, Mentd.* *Hopkins v. Smethwick L. B.* (1890), 24 Q. B. D. 712.

1311. Validity—Licence to break up streets.—The corpn. of P., who had no Parliamentary powers for the purposes, supplied water to the adjoining urban district of F., & claimed the right to enter upon & break up the streets of F. whenever occasion should require for the purpose of repairing their water pipes, relying, as regards some of the streets, on alleged irrevocable licences granted by the predecessors of the local board of F., the surveyors of highways, & as regards other streets, on prescription:—*Held*: (1) the claim of the corpn. was to commit a nuisance; (2) it was not in the power of the surveyors of highways to grant the alleged licenses; (3) as a grant could not be presumed, the corpn. could not obtain the right claimed by prescription.—*PRESTON CORPN. v. FULLWOOD LOCAL BOARD* (1885), 53 L. T. 718; 50 J. P. 228; 34 W. R. 196; 2 T. L. R. 134.

1312. ——— Licence to dredge river—& to sell soil for licensee's benefit—The Thames Conservators have no power under Thames Conservancy Act, 1894 (c. clxxxvii.), to grant a licence to dredge the upper Thames upon the terms that the licensee may sell the soil so raised for his own benefit.—*PALMER v. THAMES CONSERVATORS*, [1902] 1 Ch. 163; 71 L. J. Ch. 212; 85 L. T. 537; 66 J. P. 55; 18 T. L. R. 88; 46 Sol. Jo. 84.

1313. ————*CREYKE v. HATFIELD CHASE LEVEL CORPN.* (1896), 12 T. L. R. 383; 40 Sol. Jo. 531.

1314. Whether seal necessary—Entry upon property—To revest estate after disselsin.—Where a mayor & commonalty are disseised the entry to revest this estate ought to be made by one authorised by a deed under their common seal.—*ANON.* (1472), Jenk. 131; 145 E. R. 92.

1315. ————*In trespass deft. said that this was a freehold of the President & Scholars of a certain place & that he as their servant & by their order entered:—Held*: the plea was good without a deed for there was no need for a deed for every little thing.—*ANON.* (1492), Y. B. 7 Hen. 7, fo. 9, pl. 2.

Annotation:—*Refd.* *Magdalen College, Cambridge Case* (1615), 11 Co. Rep. 66 b.

1316. ——— For condition broken—By bailiff.—A corpn. aggregate cannot without deed authorise their bailiff to enter for a condition broken.—*DUMPER v. SYMS* (1601), Cro. Eliz. 815; 78 E. R. 1042.

Annotation:—*Mentd.* *Bagshaw v. Bossley* (1790), 4 Term Rep. 78.

1317. ——— Seizure of ship.—*HORNE v. IVY*, No. 1107, *ante*.

1318. ——— Reference to arbitration — By

The offer was duly accepted & pltf. sent the keys to the defts., who retained them for three months. Defts. never took possession of the premises, & repudiated the agreement for a lease. On the facts:—*Held*: (1) the lodge, acting by resolution, had delegated its powers with respect to renting club rooms to the house committee, who

had practically delegated their powers to G.; (2) G. was authorised to sign the written offer on behalf of defts., & it was not necessary that his appointment should have been under the seal of the lodge, as pltf. dealt with him in good faith & without notice of any informality in his appointment.—*PULFORD v. LOYAL ORDER OF MOOSE*

attorney.—This was a rule calling on the mayor & corpn. of L. to show cause why a certain order in reference made in this cause, & all the proceedings had under it should not be set aside, & why the attorney for the corpn. should not pay the costs of the application. The cause which was at issue had been referred to arbn. in 1842, by a judge's order, & several meetings held under it, but the order to refer was not under the corporate seal, nor was the attorney of the corpn. authorised under their seal to refer. It was contended that all the proceedings were void for want of an authority under the corporate seal to the attorney to refer:—*Qu.*: whether it is necessary for a corpn. to authorise their attorney under their corporate seal to refer a cause to arbn.—*CHARLTON v. LUDLOW CORPN.* (1845), 5 L. T. O. S. 39.

1319. ——— By secretary of company.—*COLLINS v. SOUTH STAFFORDSHIRE RY. CO.*, No. 1180, *ante*.

1320. ——— Notice to terminate tenancy—Tenancy from year to year—By steward.—In an ejectment by a corpn. against a tenant from year to year a notice to quit given by a person acting as steward of the corpn. is sufficient, without evidence that he had an authority under seal from the corpn. for this purpose.—*ROE d. ROCHESTER (DEAN & CHAPTER) v. PIERCE* (1809), 2 Camp. 96, N. P.

Annotation:—*Refd.* *Smith v. Birmingham & Staffordshire Gas Light Co.* (1834), 1 Ad. & El. 526.

1321. ——— Tenancy at will—By servant of canal company.—On ejectment upon the demise of a corpn., who were a canal co., it appeared deft.'s admissions that he had taken the land by permission of H., a servant of the corpn., & that F., another servant of the corpn., had given him notice to deliver up possession. No lease, nor notice, nor appointment of F., or H., as agent under seal, was produced:—*Held*: the jury were rightly directed to find for pltf. if they thought H. & F. were authorised by the company to act.—*DOE d. BIRMINGHAM CANAL NAVIGATIONS CO. OF PROPRIETORS v. BOLD* (1847), 11 Q. B. 127; 10 L. T. O. S. 184; 12 Jur. 350; 116 E. R. 423.

Annotations:—*Consd.* *Tupper v. Foulkes* (1861), 9 C. B. N. S. 797. *Mentd.* *Hogan v. Hand* (1861), 14 Moo. P. C. C. 310.

1322. ——— Creation of tenancy at will—By servant of canal company.—*DOE d. BIRMINGHAM CANAL NAVIGATIONS CO. OF PROPRIETORS v. BOLD*, No. 1321, *ante*.

1323. ——— Appointment of agent—To negotiate.—*COPE v. THAMES HAVEN DOCK & RY. CO.*, No. 1098, *ante*.

Request for issue of bankruptcy notice—By solicitor.—*See BANKRUPTCY & INSOLVENCY*, Vol. IV., p. 86, No. 774.

What amounts to—Removal of officer—Evidence heard by committee.—*See No. 507, ante*.

Scope of authority—To prosecute bankruptcy petition.—*See BANKRUPTCY & INSOLVENCY*, Vol. IV., p. 126, Nos. 1149, 1150.

To vote on appointment of trustee in bankruptcy.—*See BANKRUPTCY & INSOLVENCY*, Vol. IV., p. 208, No. 1925.

To prove in bankruptcy.—*See BANKRUPTCY & INSOLVENCY*, Vol. IV., p. 246, Nos. 2332–2334.

(1913), 25 W. L. R. 868.—*CAN.*

To appoint an arbitrator.—The authority of an agent of a corpn. to appoint an arbitrator need not be under its seal.—*Ex p. ALBERT MINING CO.* (1854), 3 All. 39.—*CAN.*

Part XIV.—External Government and Visitation.

1324. Corporations for public advantage—Must be governed according to general law.]—*PHILIPS v. BURY*, No. 23, *ante*.

1325. Jurisdiction of courts—Over corporations for public advantage—To examine validity & question of bye-laws & constitutions.]—*PHILIPS v. BURY*, No. 23, *ante*.

1326. — Lay corporations—Trinity Hall, Cambridge.]—*R. v. GREGORY*, No. 451, *ante*.

See, also, CHARITIES, Vol. VIII., p. 387, Nos. 2036–2038.

1327. — Over visitors.]—*A.-G. v. LOCK*, No. 245, *ante*.

1328. — — Refusal of visitors to inquire into exercise of statutory powers—Mandamus

refused.]—Mandamus requiring the visitors named in the charter of the College of Doctors' Commons to inquire into the mode in which the College, under Court of Probate Act, 1857 (c. 77), ss. 116 & 117 had exercised their discretion as to the surrender of their charter & the disposition of their property, was refused.—*Ex p. LEE* (1858), E. B. & E. 863; 28 L. J. Q. B. 114; 5 Jur. N. S. 218; 120 E. R. 731.

— Of charitable corporations.]—See, generally, CHARITIES, Vol. VIII., p. 390, Nos. 2098 *et seq.*

— Where also governors.]—See CHARITIES, Vol. VIII., p. 387, No. 2053.

— Over charitable corporations.]—See CHARITIES, Vol. VIII., p. 388.

Part XV.—Legal Proceedings by and against Corporations, their Members and Officers.

SECT. 1.—IN GENERAL.

1329. Whether can be bound in recognisance.]—In my opinion a corpn. cannot be bound in a recognisance or statute merchant (*DYER, J.*).—*ANON.* (1564), Moore, K. B. 68; 72 E. R. 445.

Annotation:—*Reid. Cortis v. Kent Water-Works Co.* (1827), 7 B. & C. 314. I should pause before I said that a corpn. is not competent to enter into a recognisance. I am aware that there is a dictum to show that they cannot do so; but as they may appoint an attorney for a variety of purposes, I am not satisfied that they may not do so for the purpose of entering into a recognisance (*BAYLEY, J.*).

1330. — By member or officer.]—In the case of corpn. it is the practice to accept the recognisances of some members of the body, usually a director.—*SOUTHERN COUNTIES DEPOSIT BANK, LTD. v. BOALER* (1895), 73 L. T. 155; 59 J. P. 536; 11 T. L. R. 568; 15 R. 506.

—.]—See No. 1387, *post*.

1331. May give undertaking—To bind corporate property—Pending appeal.]—Where in a suit against exrs. for the payment of a legacy the amount claimed had been brought into ct. & invested, & the bill was afterwards dismissed at the hearing, the ct., in granting a motion by plffs. to stay the transfer of the fund pending an appeal to the House of Lords from the decree, required from plffs. an undertaking to submit to any order the ct. might thereafter make for payment of interest & costs, & an objection that plffs., who were a corpn. were incapable of giving any undertaking which would be binding on the corporate property, was overruled.—*GLOUCESTER CORPN. v. WOOD* (1844), 1 Ph. 493; 14 L. J. Ch. 122; 3 L. T. O. S. 1; 9 Jur. 673; 41 E. R. 720, L. C.; *subsequent proceedings, sub nom. GLOUCESTER CORPN. v. OSBORN* (1847), 1 H. L. Cas. 272, H. L.

Annotations:—*Reid. Mackintosh v. G. W. Ry.* (1865), 13 L. T. 155. *Mentd. A.-G. v. Windsor* (1858), 24 Beav. 679; *Lord v. Colvin* (1861), 1 Drew. & Sm. 475; *Aston v. Wood* (1868), L. R. 6 Eq. 419; *Willoughby v. Storer* (1870), 22 L. T. 896; *Re Dutton, Ex p. Peake* (1879), 40 L. T. 430; *Polini v. Gray, Sturla v. Freccia* (1879), 12 Ch. D. 438.

PART XIV.

q. Matters within jurisdiction of visitor.]—Visitors have the power to visit a statutory corpn. upon every matter in respect of which the Act of Incorporation gives the corpn. power.

—*Re MILLER* (1885), 3 Man. L. R. 367. —CAN.

r. —.]—The visitors of the College of Physicians & its corpn. are empowered to examine & determine any matter or course relating to the

1332. Jurisdiction of courts—Misapplication of corporation funds—Court of Chancery.]—The Ct. of K. B. will not grant a criminal information against the members of a corpn. for a misapplication of the corpn. money.

An order made by a corpn. & entered in their books, stating that B., against whom a jury had found a verdict with large damages in an action for a malicious prosecution for perjury, which verdict had been confirmed in the Common Bench, was actuated by motives of public justice etc. in preferring the indictment, is such a libel reflecting on the administration of justice for which the ct. will grant an information against the members making that order.

If the only charge alleged against defts. were the mispending the corpn. money I should have been of opinion that the information ought not to be granted, because this is not the ct. in which redress could be given in such a case, but application should be made to the Ct. of Ch. (*ASHURST, J.*).—*R. v. WATSON* (1788), 2 Term Rep. 199; 100 E. R. 108.

Annotations:—*Reid. A.-G. v. Carmarthen Corpn.* (1805), Coop. G. 30; *Mill v. Hawker* (1874), L. R. 9 Exch. 309.

1333. — County court.]—The county ct. has jurisdiction to entertain a plaint against a corpn.—*BOURNE v. SOUTH EASTERN RY. CO.* (1856), 26 L. T. O. S. 196; 20 J. P. Jo. 51.

Annotation:—*Mentd. Shiels v. G. N. Ry.* (1861), 30 L. J. Q. B. 331.

See, generally, COUNTY COURTS.

1334. — Mayors Court London—No jurisdiction.]—An action was brought in Mayor's Ct. against two defts., one of whom was a corpn. aggregate. Deft. corpn. applied to have the action transferred to the Ch. D. of the High Ct. on the grounds that accounts were required from persons who were not within the jurisdiction of the Mayor's Ct.; that it would be necessary to bring several persons into the action as third parties, which could not be effectually done if action remained in the Mayor's Ct.; & that a

internal conduct, management, regulation, & due government of the college & corpn., or to the exercising of the authorities vested in them by 40 Geo. III. (Ir.) c. 84.—*GRATTAN v. LENDRICK* (1829), 2 Hud. & B. 409.—IR.

Sect. 1.—In general. Sects. 2 & 3: Sub-sects. 1 & 4.]

corp'n. aggregate could not be made debts. in an action in the Mayor's Ct.:—*Held*: under these circumstances it was fit that the whole proceeding should be transferred from the inferior ct. to the High Ct.—*VICKERS v. STEVENS & CONCEPTION GOLD MINING CO., LTD.* (1881), 44 L. T. 679; 29 W. R. 562.

1335. ————.]—The process against a garnishee, to enforce obedience to the jurisdiction of the Mayor's Ct. in foreign attachment, is personal, & cannot be applied to a corp'n. aggregate.

A corp'n. aggregate was cited as garnishee to appear in the Mayor's Ct.:—*Held*: it was entitled to maintain prohibition.—*LONDON CORPN. v. LONDON JOINT STOCK BANK* (1881), 6 App. Cas. 393; 50 L. J. Q. B. 594; 45 L. T. 81; 29 W. R. 870, II. L.; *affg.* S. C. *sub nom.* *LONDON JOINT STOCK BANK v. LONDON CORPN.* (1880), 5 C. P. D. 494, C. A.

Annotations:—*Reid.* *Vickers v. Stevens & Conception Gold Mining Co.* (1881), 44 L. T. 679. *Mentd.* *St. Leonard's, Shoreditch Grdns. v. Franklin* (1878), 47 L. J. Q. B. 727; *Re Price, Ex p. Sear* (1881), 17 Ch. D. 74; *R. v. Tyler & International Commercial Co.*, [1891] 2 Q. B. 588; *Robson v. Smith* (1895), 72 L. T. 559; *Martin v. Nadel*, [1906] 2 K. B. 26.

See, generally, MAYOR'S COURT, LONDON.

—— **Over Livery companies.**—*See* No. 444, *ante*, No. 1611, *post*.

1336. Representation of corporation—Non-appointment of officers—Governing body for time being sufficient.—By charter Edward VI. granted a building to the German & French Protestants, & directed that there should be a superintendent & four ministers, who should be a body corporate with perpetual succession. The office of superintendent was dropped after the first appointment. The churches divided; & the French church had since been governed by its ministers & the elders & deacons. The elders & deacons at a Consistory dismissed one of the pastors. Upon a bill by the pastor for the purpose of obtaining a declaration that he had not been lawfully discharged from his office, & was still pastor:—*Held*: if a corp'n. cannot be made a party to a record in consequence of the non-appointment of officers the governing body for the time being will sufficiently represent the existing interests.—*DAUGARS v. RIVAZ* (1860), 28 Beav. 233; 29 L. J. Ch. 685; 3 L. T. 109; 6 Jur. N. S. 854; 8 W. R. 225; 54 E. R. 355.

Annotation:—*Mentd.* *Hayman v. Rugby School* (1874), L. R. 18 Eq. 28.

—— **By officer—As plaintiff.**—*See* Sect. 3, sub-sect. 2, *post*.

As defendant.—*See* Nos. 1357, 1358, *post*.

1337. Admissibility of evidence—Statement by member—Inadmissible against corporation.—In an action at the suit of a corp'n. what is said by an individual member of it is not admissible evidence for debts.—*LONDON CORPN. v. LONG* (1807), 1 Camp. 22, N. P.

Annotations:—*Reid.* *Moody v. L. & B. Ry.* (1861), 1 B. & S. 290. *Mentd.* *R. v. Adderbury East* (1843), 8 J. P. 375.

—— **Corporation books.**—*See* Part VIII., Sect. 2, *ante*.

1338. Abatement of action—By death of head of corporation.—An action by the mayor & commonalty abates by the death of the mayor.—*WOOD v. LONDON CORPN.* (1701), 1 Salk. 397; Holt, K. B. 396; 91 E. R. 344.

Annotations:—*Mentd.* *R. v. Rogers* (1702), 2 Ld. Raym. 777; *Hesketh v. Braddock* (1766), 3 Burr. 1847; *Piper v. Chappell* (1845), 14 M. & W. 624; *R. v. Rochester* (1851), 17 Q. B. 1; *Dimes v. Grand Junction Canal Co.* (1852), 19 L. T. O. S. 317.

1339. ——— **Not by death of some members—Unless suit brought by members in individual character.**—A suit by a corp'n. does not become defective on the death of some of the members, but it is otherwise of a suit by the members in their individual characters.—*BLACKBURN v. JEPSON* (1823), 3 Swan. 132; 36 E. R. 802, L. C.

Annotation:—*Mentd.* *Gronow v. Edwards* (1830), 2 Russ. & M. 102.

See, now, R. S. C., Ord. 17.

—— **By misnomer of corporation.**—*See* No. 156, *ante*.

1340. Issue of process—In county court—By joint stock company.—A co. incorporated under Companies (Consolidation) Act, 1908 (c. 69), may lawfully employ an agent, who is not a solr., to institute proceedings in the county ct. & file the necessary *praecipe* on its behalf & with the leave of the judge, to represent it in ct.

The ancient rule that a corp'n. can only act by attorney, which involved an appointment under the seal of the corp'n., does not extend to prevent joint stock cos. from issuing process in the county ct. as ordinary individuals can do, seeing that they are able to comply with all the provisions of the County Ct. Rules, & without appointing any attorney under their common seal to do those acts for them (*SWINFEN EADY, L.J.*).—*KINNELL (CHARLES P.) & CO. v. HARDING, WACE & CO.*, [1918] 1 K. B. 405; 87 L. J. K. B. 342; 118 L. T. 429; 34 T. L. R. 217; 62 Sol. Jo. 267, C. A.

SECT. 2.—RIGHT TO SUE.

1341. General rule.—*SUTTON'S HOSPITAL CASE*, No. 3, *ante*.

1342. Proof of constitution necessary—Action to recover property.—Evidence of the constitution of a society must be given to enable them to recover in ejectment copyhold property under a devise.

Is there enough to show who the London Annuity was? Whether they were a corp'n. or a voluntary society, & whether they were competent to take land or not, you have no evidence. You did not go far enough with your evidence (*COLERIDGE, J.*).—*DOE d. LE KEUX v. HARRISON* (1844), 6 Q. B. 631; 14 L. J. Q. B. 77; 4 L. T. O. S. 156; 115 E. R. 237; *sub nom.* *R. v. HARRISON*, *DOE d. LE KEUX v. HARRISON*, 9 Jur. 104.

Annotations:—*Mentd.* *Smith v. Glascock* (1858), 4 C. B. N. S. 357; *Walters v. Webb* (1869), L. R. 9 Eq. 83.

1343. To establish rights of individual members.—*LONDON CORPN. v. LYNN CORPN.*, No. 1305, *ante*.

1344. ——— **As co-plaintiff.**—Corp'n. may join in a suit to establish a claim of exemption on behalf of its individual members. A plea, stating that pl'ts., who claimed as citizens of London never were resident there or paying scot & lot, & that they were admitted freemen by fraud, for the purpose of enjoying the exemption claimed is bad for duplicity.—*LONDON CORPN. v. LIVERPOOL CORPN.* (1796), 3 Anst. 738; 145 E. R. 1024.

1345. Action for use & occupation—Corporation aggregate.—An action for use & occupation may be maintained by a corp'n. aggregate. In such an action by a dean & chapter, if the name of the present dean is mentioned at the beginning of the declaration, & it is afterwards laid that the occupation was, "by the permission of the said dean & chapter," and it appears in evidence that deft. occupied only in the time & by the permission of a former dean, this is a fatal variance.—*ROCHESTER (DEAN & CHAPTER) v. PIERCE* (1808),

1 Camp. 466; *subsequent proceedings, sub nom.* ROE d. ROCHESTER (DEAN & CHAPTER) v. PIERCE (1809), 2 Camp. 96, N. P.

Annotations.—*Consd.* Stafford Corpn. v. Till (1827), 4 Bing. 75; *Beverley v. Lincoln Gas Light & Coke Co.* (1837), 6 Ad. & El. 829; *Lowe v. L. & N. W. Ry.* (1852), 18 Q. B. 632. *Refd.* Arnold v. Poole Corpn. (1842), 2 Dowl. N. S. 574; *Fishmongers' Co. v. Robertson* (1843), 5 Man. & G. 131; *Finlay v. Bristol & Exeter Ry.* (1852), 7 Exch. 409; *Eocl. Comrs. v. Merral* (1869), L. R. 4 Exch. 162. *Mentd.* Hull v. Vaughan (1818), 6 Price, 157; *Re De Keyser's Royal Hotel, De Keyser's Royal Hotel v. R.*, [1919] 2 Ch. 197.

1346. To set aside fraudulent transaction—Though carried into effect by members of governing body.]—A.-G. v. WILSON, No. 1391, *post*.

1347. — Though concurrent right of action in Attorney-General.]—A.-G. v. WILSON, No. 1391, *post*.

Churchwardens.]—See No. 15, *ante*.

Where alternative remedy provided.] — See No. 1353, *post*.

Proceedings by individual members.] — See No. 212, *ante*, Nos. 1377, 1378, *post*.

SECT. 3.—IN WHAT NAME ACTION BROUGHT.

SUB-SECT. 1.—IN GENERAL.

1348. Civil proceedings—In corporate name—Though express power to sue by another.]—PHYSICIANS (PRESIDENT & COLLEGE OF) v. TALBOIS, No. 111, *ante*.

1349. — — — — —.]—PHYSICIANS (PRESIDENT & COLLEGE OF) v. SALMON, No. 112, *ante*.

1350. — — — — — Misnomer.] — STAFFORD CORPN. v. BOLTON, No. 156, *ante*.

1351. — Abatement of action in name of individuals—Revived in name of corporation—No want of privity.]—The members of a corp'n. having filed an original bill in their individual names, but stating their corporate character, upon an abatement of their suit, file a bill of revivor in their corporate name only. A demurrer for want of privity between pl'ts. in the original bill & the bill of revivor was overruled in the ct. below & on appeal.—WALKER v. CHRIST'S COLLEGE, MANCHESTER (WARDEN & FELLOWS) (1827), 1 Bli. N. S. 9; 4 E. R. 777, II. 1.

See, also, No. 1305, *ante*.

See Part XII.

Actions by companies.]—See COMPANIES.

SUB-SECT. 2.—ACTION IN NAME OF OFFICER.

1352. Clerk to turnpike trustees—Good.]—NEWMAN v. FLETCHER, No. 1092, *ante*.

1353. Clerk to navigation commissioners—Under local Act—Though alternative remedy provided.]—Where, by a navigation Act, certain rates & duties were imposed on coals, etc., landed within a certain district, to be paid to comrs. therein named; & the comrs. were empowered to sue

in the name of their clerk for the time being for "any penalty or sum of money due or payable by virtue of the Act":—*Held*: an action of debt might be brought in the name of the clerk for arrears of rates & duties; although, by another clause, a power was given of detaining & selling the vessel & goods in case of neglect or refusal to pay the rates & duties.—GOODY v. PENNY (1842), 9 M. & W. 687; 11 L. J. Ex. 289; 152 E. R. 290.

Annotations.—*Mentd.* Smith v. Cartwright (1851), 6 Exch. 927; Phillips v. Williams (1901), 18 T. L. R. 223.

1354. Clerk to local board of health—Not a body corporate within Public Health Act, 1848 (c. 63).]—*Ex p.* LIANELLY LOCAL BOARD OF HEALTH, No. 31, *ante*.

1355. Clerk to common conservators—For trespass to common—By stranger—Or surcharge by commoners.]—The clerk of conservators appointed by Act of Parliament for the purpose of preserving a common for the benefit of the public, with the least interference with the commoners, whose rights were reserved, was declared by the Act "to have a sufficient possession of the common to enable the conservators to maintain in the name of their clerk an action of trespass with regard thereto":—*Held*: the conservators were entitled to maintain an action of trespass in the name of their clerk, not merely against strangers committing trespass, but also against commoners putting cattle on the common in excess of their right.—MORLEY v. CLIFFORD (1882), 46 L. T. 561; 30 W. R. 606.

Annotation.—*Mentd.* Malvern Hill Conservators v. Whitmore (1909), 100 L. T. 841.

SECT. 4.—LIABILITY TO BE SUED.

1356. General rule.] — SUTTON'S HOSPITAL CASE, No. 3, *ante*.

1357. In what name—Master & wardens of livery company—By name, not in corporate name—Proceedings in spiritual court.]—T. & J., etc., were cited in the Spiritual Ct., by the names of baptism & their surnames, with the addition of Master & Wardens of the Co. of Waxchandlers; & this was for not paying a rate set upon the hall for their co., for reparation of their parish church; upon this they moved for a prohibition, & showed for cause that they were cited by their surnames & names of baptism, so sued in their natural capacity, when it should be in their politic capacity:—*Held*: there was no other way of citing them than this; they could not cite the body politic; & therefore, unless by this way, they had no remedy.—THUSFELD & JONES' CASE (1681), Skin. 27; 90 E. R. 14.

1358. — While charter suspended—Former officers.]—NAYLOR v. CORNISH (1684), 1 Vern. 311; 23 E. R. 489.

— Companies.]—See COMPANIES.

1359. For recovery of rentcharge—Though cor-

PART XV. SECT. 3, SUB-SECT. 1.

a. Civil proceedings—In corporate name—Not by officer.]—ST. JOHN'S CORPN. v. BALDWIN (1847), 3 Kerr. 477.—CAN.

b. — — — — — Not in name of individual members—Leave to amend.]—BATTLEMAN v. MCKENZIE (1865), 2 Old. 159.—CAN.

c. — — — — —.]—Pl'ts. sued in their individual names, describing themselves as trustees of a church; an amendment was allowed at the trial by striking out the names & allowing them to sue as a statutory

corp'n.:—*Held*: the amendment was authorised.—AINLEYVILLE CONGREGATION OF WESLEYAN METHODIST CHURCH IN CANADA, TRUSTEES v. GREWER (1874), 23 C. P. 533.—CAN.

d. — — — — —.]—COLEMAN v. MOORE (1879), 44 U. C. R. 328.—CAN.

e. — — — — —.]—FRANKLIN CHURCH, TRUSTEES v. MAGUIRE (1876), 23 Gr. 102.—CAN.

PART XV. SECT. 3, SUB-SECT. 2.

d. Treasurer of municipality—Good.]—TODD v. PERRY (1861), 20 U. C. R.

649.—CAN.

PART XV. SECT. 4.

1356 i. General rule.]—A co. once incorporated is a body corporate, & can be sued, notwithstanding registration is a condition precedent to the commencement of business.—POWELL REES, LTD. v. ANGLO-CANADIAN MORTGAGE CORPN. (1912), 26 O. L. R. 490; 23 O. W. R. 456; 3 O. W. N. 144.—CAN.

e. For non-performance of public duty—Information by Attorney-General.]—A.-G. v. INTERNATIONAL BRIDGE CO. (1879), 27 Gr. 37.—CAN.

Sect. 4.—Liability to be sued. Sect. 5: Sub-sects.

poration lands sequestrated.]—Lands of a corp'n. were sequestrated:—*Held*: this did prevent one entitled to a rentcharge payable by the corp'n. from pursuing his remedy at law to recover it.—*A.-G. v. COVENTRY CORPN.* (1715), 2 Vern. 713; 1 P. Wms. 306; 23 E. R. 1069, L. C.

Annotations:—*Reid. Walker v. Bell* (1816), 2 Madd. 21; *Russell v. East Anglian Ry.* (1850), 3 Mac. & G. 104.

1360. To enforce general Act of Parliament—Who may sue—Non-member of corporation.]—A rule had been obtained for an information in the nature of a *quo warranto* against defts. as common councilmen of Y. to show by what authority they claimed to be such. The objection was that they had not received the sacrament within twelve months previous to their election under 13 Car. 2, st. 2, c. 1, the prosecution being within six months after their election according to 5 Geo. 1, c. 6.

Where the application is made merely to disturb the local peace of corpns., it is right to inquire into the motives of the party to see how far he is connected with the corp'n. But the ground on which this application is made to enforce a general Act of Parliament, which interests all the corp'n. in the kingdom, & therefore it is no objection that the party applying is not a member of the corp'n. Another reason why we may more safely interfere in this case is, because this application does not tend to a dissolution of the corp'n. (*ASHHURST, J.*).—*R. v. BROWN* (1789), 3 Term Rep. 574, n.; 100 E. R. 740; *subsequent proceedings* (1791), 4 Term Rep. 276.

Annotations:—*Expld. R. v. Peacock* (1792), 4 Term Rep. 684. *Consd. R. v. Speyer, R. v. Cassel*, [1916] 1 K. B. 595. *Mentd. R. v. Whitwell* (1792), 5 Term Rep. 85; *R. v. Leyland* (1814), 3 M. & S. 184.

1361. For wrongfully retaining officer's fees.]—*HALL v. SWANSEA CORPN.*, No. 406, *ante*.

1362. For non-performance of public duty—By indictment—Or action by party suffering damage.]—*LYME REGIS CORPN. v. HENLEY*, No. 243, *ante*.

1363. ——— Corporation aggregate.]—*R. v. BIRMINGHAM & GLOUCESTER RY. CO.*, No. 1292, *ante*.

1364. For ultra vires acts—At instance of relator.]—*A.-G. v. GREAT NORTHERN RY. CO.*, No. 927, *ante*.

1365. ——— Action by Crown or stranger—Only in case of public mischief.]—*Held* (*BAGGALLAY, L.J., diss.*): the mere fact that a corp'n. is acting *ultra vires* does not warrant a suit on behalf of the Sovereign or the public to stop the act complained of, unless it is shown that some plain & substantial public mischief is being done.—*A.-G. v. GREAT EASTERN RY. CO.* (1879), 11 Ch. D. 449; 48 L. J. Ch. 428; 40 L. T. 265; 27 W. R. 759, C. A.

—.]—*See* Part IX., Sect. 5, *ante*.

1366. Committee annually elected—Committee for time being—For contract by previous committee—Within scope of authority.]—A committee, who were elected annually from among the justices of a county, were authorised by 8 & 9 Vict. c. 126, s. 17, to make certain contracts; & by sect. 16 they might be sued in the name of their clerk:—*Held*: an action was maintainable against the committee for the time being in the name of their clerk, upon a contract entered into by a former committee within the scope of their authority. *Semle*: pl'tfs.' remedy to enforce their judgment would be by bill in equity or mandamus.—*KENDALL v. KING* (1856), 17 C. B. 483; 25

L. J. C. P. 132; 20 J. P. 246; 4 W. R. 389; 139 E. R. 1163.

Annotations:—*Apprvd. & Apld. Hall v. Taylor* (1858), E. B. & E. 107. *Distd. Itchin Bridge Co. v. Southampton L. B. of Health* (1858), 6 W. R. 223; *Ward v. Lowndes* (1859), 5 Jur. N. S. 1124. *Apld. Bush v. Beavan* (1862), 1 H. & C. 500. *Reid. Coe v. Wise* (1864), 5 B. & S. 440.

1367. Governing body of church—Church forming part of corporate body—No public officer of corporate body.]—*DAUGARS v. RIVAZ*, No. 1336, *ante*.

1368. Corporation to be sued by officer—Breach of contract—Pleading.]—39 Geo. 3, c. lxix., which deals with the West India Dock provides that twenty-one persons shall be directors of the affairs of the co. & that all suits for any cause of action against the co. shall be brought against the treasurer for the time being. In *assumpsit* against the treasurer, the declaration stated that, by order of the ct. of directors, debt. put up goods to sale, subject to certain conditions; & that, in consideration that pl'tfs. at the request of the directors had promised them to perform the conditions of sale, they, the directors, promised to perform the same on their part. The declaration then alleged a breach of the conditions by the directors, & concluded that pl'tfs. brought their suit against the treasurer according to the stat. At the trial it appeared that the goods had been put up & sold by order of the directors on account of the co.:—*Held*: (1) there was no variance between the declaration which charged the directors & the evidence which showed that the contract was the co.'s; (2) the declaration was sufficient, because the contract alleged was, in legal effect, a contract by the co. for breach of which an action was maintainable against the treasurer.—*SOULBY v. SMITH* (1832), 3 B. & Ad. 929; 1 L. J. K. B. 222; 110 E. R. 342.

1369. ——— Not limited to acts of malfeasance or misfeasance—Construction of local Act.]—(1) In case against the clerk of certain comrs. under 59 Geo. 3, c. cxviii., the declaration stated, that pl'tf. advanced to the comrs. a sum of money for the purchase of an annuity, & that five of the comrs., by a grant made according to the form of the stat. did, by virtue of the Act, grant an annuity out of the rates granted, & to arise by virtue of the Act, & that afterwards a quarterly payment of the annuity became due, & that the comrs. had in their hands out of the rates granted by the Act, more than sufficient to pay it, & that it became their duty to pay it, but that they did not. The local Act enacted that the comrs. might sue & be sued in the name of their clerk, for or concerning any thing which should be done by virtue or in pursuance of the Act; & also, by another sect. that no action should be brought for any thing done in pursuance of the Act, until fourteen days' notice had been given to the clerk:—*Held*: an action for non-payment of the annuity was concerning a thing done in pursuance of the Act, & was properly brought against the clerk, as the sect. authorising actions to be brought against the clerk was not to be construed as limited to acts of malfeasance or misfeasance only.

(2) I do not see how the comrs. could ever be personally responsible. These five are deputed to act in this respect for the whole body, & any action concerning any act done by the whole body by virtue of or in pursuance of the Act of Parliament is to be brought against the clerk & not against the comrs. (*LORD DENMAN, C.J.*).—*CANE v. CHAPMAN* (1836), 5 Ad. & El. 647; 2 Har. & W. 355; 1 Nev. & P. K. B. 104; 6 L. J. K. B. 49; 111 E. R. 1310. *Annotations*:—*As to* (1) *Consd. R. v. Southampton Port & Harbour Comrs.* (1861), 30 L. J. Q. B. 244. The principle

of *Cane v. Chapman*, to say the least, has not been much acted on (CROMPTON, J.). *Refd.* *Moffatt v. Dickson* (1853), 1 O. L. R. 294. *As to* (2) *Consd.* *Bogg v. Pearse* (1851), 10 O. B. 534. *Distd.* *Edwards v. Lowndes* (1852), 1 E. & B. 81. *Generally*, *Refd.* *Brown v. London Corpn.* (1861), 7 Jur. N. S. 729. *Mentd.* *Seymour v. Maddox* (1851), 16 Q. B. 326; *Addison v. Preston Corpn.* (1852), 16 Jur. 643; *Dent v. Basham* (1854), 2 W. R. 201.

1370. — Clerk for time being—Action to recover salary of previous clerk.]—Comrs. were appointed, to be annually elected, for executing a local Act, 9 Geo. 4, c. xxvi. They had power to levy rates. By the Act they had power to appoint clerks & other officers, & to pay them salaries out of the money to be raised under the Act. They had power to execute many works. By the Act they might sue & be sued by their clerk, & the comrs. were exempted from personal liability for any contracts entered into by them as comrs.:—*Held*: (1) a clerk, appointed by the comrs. for one year, might maintain an action for his salary against the clerk of the comrs. in a subsequent year; (2) it was within the scope of the authority of the comrs. to employ an attorney, & that he might recover in an action against the clerk of the comrs. in a succeeding year.—*HALL v. TAYLOR* (1858), E. B. & E. 107; 27 L. J. Q. B. 311; 31 L. T. O. S. 151; 23 J. P. 20; 4 Jur. N. S. 877; 120 E. R. 447.

Annotation:—*As to* (1) *Refd.* *Bush v. Beavan* (1862), 1 H. & C. 500.

1371. — Action for remuneration by attorney lawfully employed.]—*HALL v. TAYLOR*, No. 1370, *ante*.

See, also, No. 1366, *ante*.

Liability of clubs.]—*See* CLUBS, Vol. VIII., p. 515 *et seq.*

SECT. 5.—PROCEEDINGS BY INDIVIDUAL MEMBERS.

SUB-SECT. 1.—AGAINST CORPORATION OR ITS OFFICERS.

1372. Action for damages—Occasioned by wrongful dissolution.]—*R. v. SACHEVERELL*, No. 1563, *post*.

1373. To restrain ultra vires acts—By member in own name—Need not sue on behalf of others.]—An individual member of a corpn. may maintain a bill in his own name, without suing on behalf of other persons as well as himself, to restrain the corpn. from doing an act which is *ultra vires*.—*HOOLE v. GREAT WESTERN RY. CO.* (1867), 3 Ch. App. 262; 17 L. T. 453; 16 W. R. 260, L. JJ. *Annotations*:—*Distd.* *Yool v. G. W. Ry.* (1870), 39 L. J. Ch. 562. *Refd.* *Bloxham v. Met. Ry.* (1868), 3 Ch. App. 343, n. *Mentd.* *Wood v. Odessa Waterworks Co.* (1889), 42 Ch. D. 636.

1374. — By member having only nominal interest—Action brought for improper purposes—Restrained.]—A bill filed by a member of a building society on behalf of himself & the other members, against the directors of the society, to restrain certain proceedings alleged to be *ultra vires*, was ordered to be taken off the file upon evidence that pltf. was a person of small means, & had purchased one share in the society for the purpose of insti-

tuting the suit, & that the suit was really instituted by his solr., who was not a shareholder, for the purpose of annoying two of the directors.—*ROBSON v. DODDS* (1869), L. R. 8 Eq. 301; 38 L. J. Ch. 547; 20 L. T. 968; 17 W. R. 782.

1375. — When injunction granted—Transaction likely to cause forfeiture & destruction of society.]—*JENKIN v. PHARMACEUTICAL SOCIETY OF GREAT BRITAIN*, No. 944, *ante*.

— **Jurisdiction of courts.]—***See* No. 1611, *post*.

— **Limited companies.]—***See* COMPANIES.

— **Railway Companies.]—***See* RAILWAYS & CANALS.

1376. May act as relators.]—The relators, in an information, may consist of certain members of a corpn. against other members of the same corpn.—*A.-G. v. COOPER* (1837), 3 My. & Cr. 258; 1 Jur. 790; 40 E. R. 923, L. C.

Annotations:—*Refd.* *Re Mathews, Oates v. Mooney*, [1905] 2 Ch. 460. *Mentd.* *Brown v. Sawyer* (1841), 3 Beav. 598.

SUB-SECT. 2.—ON BEHALF OF CORPORATION.

1377. Corporation able to obtain redress in corporate character—Action not maintainable by members.]—Bill by two of the proprietors of shares in a co. incorporated by Act of Parliament, on behalf of themselves & all the other proprietors of shares except defts., against the five directors, three of whom had become bankrupt, & against a proprietor who was not a director, & the solr. & architect of the co., charging defts. with concerting & effecting various fraudulent & illegal transactions, whereby the property of the co. was misapplied, aliened, & wasted; that there had ceased to be a sufficient number of qualified directors to constitute a board; that the co. had no clerk or office; that in such circumstances the proprietors had no power to take the property out of the hands of defts., or satisfy the liabilities or wind up the affairs of the co.; praying that defts. might be decreed to make good to the co. the losses & expenses occasioned by the acts complained of; & praying the appointment of a receiver to take & apply the property of the co. in discharge of its liabilities, & secure the surplus; defts. demurred:—*Held*: upon the facts stated, the continued existence of a board of directors *de facto* must be intended; the possibility of convening a general meeting of proprietors capable of controlling the acts of the existing board was not excluded by the allegations of the bill; in such circumstances there was nothing to prevent the co. from obtaining redress in its corporate character in respect of the matters complained of; therefore pltf. could not sue in a form of pleading which assumed the practical dissolution of the corpn.; & the demurrers must be allowed.

Some forms prescribed for the government of a corpn. may be imperative & others directory only.—*FOSS v. HARBOTTLE* (1843), 2 Hare, 461; 67 E. R. 189.

Annotations:—*Consd.* *Mozley v. Alston* (1847), 1 Ph. 790. *Expld.* *Lord v. Copper Miners' Co.* (1848), 1 H. & Tw. 85. *Expld. & Distd.* *Bagshaw v. Eastern Union Ry.* (1849),

PART XV. SECT. 5, SUB-SECT. 1.

1. To restrain ultra vires acts—By member in own name—On behalf of others.]—A bill will lie by a corporator, on behalf of himself & all other members, to correct & prevent alleged breaches of trust by the corpn. To such bill the attorney-general is not a necessary party.—*BOULTON v. TORONTO DIOCESE CHURCH SOCIETY* (1867), 14 Gr. 123; 15 Gr. 450.—*CAN.*

g. — By member having only
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nominal interest—Must sue on behalf of others.]—A suit will lie by an individual corporator complaining of an illegal diversion of the funds which the corpn. holds as trustee, though pltf. may himself have no pecuniary interest in the funds so alleged to have been diverted; but he must sue on behalf of himself & all other corporators.—*ARMSTRONG v. TORONTO DIOCESE CHURCH SOCIETY* (1867), 13 Gr. 552.—*CAN.*

h. Against governing body of public

corporation—By member in own name—When action lies.]—A member of a public corpn. cannot institute a suit against its governing body, unless there be also an infringement of a personal or proprietary right, or an injury to him as an individual. It must be by the corpn. itself, or by information by the Attorney-General, if it is for an injury to the public.—*McCORMAC v. QUEEN'S UNIVERSITY* (1867), 15 W. R. 733.—*IR.*

Sect. 5.—Proceedings by individual members: Subsect. 2. Sects. 6, 7 & 8.]

7 Hare, 114. *Consd.* Edwards v. Shrewsbury & Birmingham Ry. (1849), 2 De G. & Sm. 537. *Expld. & Apld.* Taunton v. Royal Insee. (1864), 2 Hem. & M. 135. *Expld.* Seaton v. Grant (1867), 36 L. J. Ch. 638. *Consd.* Clinch v. Financial Corp'n. (1868), L. R. 5 Eq. 450; Gray v. Lewis, Parker v. Lewis (1873), 8 Ch. App. 1035. *Expld.* Trade Auxiliary Co. v. Vickers (1873), 21 W. R. 836. *Expld. & Distd.* Ward v. Sittingbourne & Sheerness Ry. (1874), 9 Ch. App. 490, n. *Expld.* MacDougall v. Gardiner (1875), 10 Ch. App. 606; MacDougall v. Gardiner (1875), 1 Ch. D. 13. *Consd.* Russell v. Wakefield Waterworks Co. (1875), L. R. 20 Eq. 474. *Apld.* Duckett v. Gover (1877), 25 W. R. 554; Willing v. Met. Dist. Ry. (1888), 4 T. L. R. 723. *Expld.* Baillie v. Oriental Telephone & Electric Co., [1915] 1 Ch. 503. *Refd.* Cooper v. Shropshire Union Ry. & Canal Co. (1849), 6 Ry. & Can. Cas. 136; Salomons v. Laing (1850), 6 Ry. & Can. Cas. 289; Hodgkinson v. National Live Stock Insee. (1859), 26 Beav. 473; Hare v. L. & N. W. Ry. (1861), 2 John. & H. 80; White v. Carmarthen, etc., Ry. (1863), 1 Hem. & M. 786; East Pant Du United Lead Mining Co. v. Merryweather (1864), 5 New Rep. 166; Fraser v. Whalley (1864), 2 Hem. & M. 10; Gregory v. Patchett (1864), 33 Beav. 595; Hallows v. Fernie (1867), L. R. 3 Eq. 520; Atwool v. Merryweather (1868), L. R. 5 Eq. 464, n.; Gray v. Lewis (1869), L. R. 8 Eq. 526; Featherstone v. Cook (1873), 21 W. R. 835; Menier v. Hooper's Telegraph Works (1874), 9 Ch. App. 350; Pender v. Lushington (1877), 6 Ch. D. 70; Isle of Wight Ry. v. Tahourdin (1883), 25 Ch. D. 320; Studdert v. Grosvenor (1886), 33 Ch. D. 528; Lever v. Land Securities Co., De Carteret v. Land Securities Co. (1893), 70 L. T. 323; Southern Counties Deposit Bank v. Rider & Kirkwood (1895), 73 L. T. 374; Wall v. London & Northern Assets Corp'n. (1898), 79 L. T. 249; Whitwam v. Watkin (1898), 78 L. T. 188; Alexander v. Automatic Telephone Co., [1900] 2 Ch. 56; Burland v. Earle, [1902] A. C. 83; Steele v. South Wales Miners' Federation (1907), 96 L. T. 260; Kirsopp v. Highton (1911), 28 T. L. R. 129; Dominion Cotton Mills Co. v. Amyot, [1912] A. C. 546; Fruit & Vegetable Growers Assocn. v. Kekewich, [1912] 2 Ch. 52; Foster v. Foster, [1916] 1 Ch. 532. *Mentd.* Yetts v. Norfolk Ry. (1848), 5 Ry. & Can. Cas. 487; Kent v. Jackson (1851), 14 Beav. 367; Re Norwich Yarn Co., *Ex p.* Bignold (1856), 22 Beav. 143; Henry v. G. N. Ry. (1857), 4 K. & J. 1; Hoole v. G. W. Ry. (1867), 3 Ch. App. 262; Turquand v. Marshall (1869), 4 Ch. App. 376; Pickering v. Stephenson (1872), L. R. 14 Eq. 322; Tomkinson v. S. E. Ry. (1887), 56 L. T. 812; La Compagnie De Mayville v. Whitley, [1896] 1 Ch. 788; Tieszen v. Henderson, [1899] 1 Ch. 861; Punt v. Symone, [1903] 2 Ch. 506; Normandy v. Ind. Coope, [1908] 1 Ch. 84; Lawson v. Financial News (1917), 34 T. L. R. 52; Piercy v. Mills (1919), 122 L. T. 20.

1378. — Unless majority acting in fraud of minority.]—Where there is a corporate body capable of suing, that body only is the proper pltf. in a suit for the recovery of property, whether from its officers or directors or from any other person, & a bill for that purpose cannot be sustained by one shareholder on behalf of himself & all others except defts. The only exception to this rule is where the directors or majority of shareholders are doing something fraudulent against the minority, who are overwhelmed by them.—*GRAY v. LEWIS, PARKER v. LEWIS* (1873), 8 Ch. App. 1035; 43 L. J. Ch. 281; 29 L. T. 12, 199; 21 W. R. 923, 928; *reversg.* (1869), L. R. 8 Eq. 526, L. J.J.

Annotations:—Apprvd. Russell v. Wakefield Waterworks Co. (1875), L. R. 20 Eq. 474. *Refd.* Hardy v. Metropolitan Land & Finance Co. (1871), L. R. 12 Eq. 386; Menier v. Hooper's Telegraph Works (1874), 43 L. J. Ch. 330; MacDougall v. Gardiner (1875), L. R. 20 Eq. 383. *Mentd.* Re Disderi (1870), L. R. 11 Eq. 242; British & American Telegraph Co. v. Albion Bank (1872), L. R. 7 Exch. 119; Lafitte v. Lafitte (1873), 42 L. J. Ch. 716; Parker v. M'Kenna (1874), 43 L. J. Ch. 802; Plumer v. Gregory (1874), L. R. 18 Eq. 621; Lloyd v. Dimmack (1877), 38 L. T. 173; New Sombbrero Phosphate Co. v. Erlanger (1877), 46 L. J. Ch. 425; Mercantile Investment & General Trust Co. v. River Plate Trust, Loan, & Agency Co., [1894] 1 Ch. 578.

PART XV. SECT. 6.

k. Liable—Where no corporate funds—To same extent as partner—Unless act of incorporation exempts member from liability.]—*SCOTT v. ROYAL HALIFAX YACHT CLUB* (1880), 1 R. & G. 322.—*CAN.*

1. — For refusal to admit

minister—By Presbytery of Church. A Presbytery of the Dutch Reformed Church refused admission to its meetings to the minister of a congregation. In an action by the minister for a declaration that he was entitled to the privileges of membership of the Presbytery & that defts. had unlawfully hindered him in the enjoyment

1379. Inhabitants of parish incorporated—Action by one inhabitant to enforce rights of whole—Not maintainable.]—*CHILTON v. LONDON CORPN.*, No. 212, *ante*.

Actions in name of officer.]—See Sect. 3, subsect. 2, *ante*.

Actions by shareholders.]—See COMPANIES.

SECT 6.—LIABILITY OF INDIVIDUAL MEMBERS FOR CORPORATE ACTS.

1380. Not personally liable—For charge on corporation.]—For a duty or charge upon a corp'n., every particular member thereof is not liable, but process ought to go in their public capacity.—*LONDON CITY (DUTY OF WATER-BAILAGE) CASE* (1680), 1 Vent. 351; 86 E. R. 226.

Annotations:—Refd. R. v. Gardner (1774), 1 Cowp. 79; Mill v. Hawker (1874), 43 L. J. Ex. 129.

1381. — For misapplication of corporate money.]—*R. v. WATSON*, No. 1332, *ante*.

1382. — Dissenting member.]—Where a local board of health misapplied the rates toward defraying the expenses of a bill in Parliament, the ct. granted an injunction to restrain the further prosecution of the bill, which, however, had been abandoned before the hearing. A member of the board, proved that he had opposed the scheme embodied in the bill:—*Held*: he was not personally liable, & the information was dismissed as against him, with costs against the relator. *Semble*: where the clerk or secretary to a corp'n. aggregate puts in an answer in his own name, he might not be able to get his costs; but, *secus*, where he acts only for the board, & no further answer is asked from the latter.—*A.-G. v. TOTTENHAM LOCAL BOARD OF HEALTH* (1872), 27 L. T. 440.

1383. — Master of college — For act of master & fellows.]—Where it was moved for a mandamus to the master & fellows of Wadham College, to compel them to put the college seal to a return which they were required to make, & to which W., the master, had great objection, with respect to the facts agreed upon by a majority to be returned, conceiving that he should thereby make himself individually liable to the consequences, Lord Mansfield overcame his difficulty by an explicit declaration that what he thus did in his corporate capacity could not hurt him in his individual character.—*R. v. WADHAM COLLEGE (MASTER & FELLOWS)* (prior to 1788), cited in 1 East, 560; 162 E. R. 216.

1384. — Without proof of malice.]—A party who has been amoved from being a member of a corp'n. & who has been restored by mandamus cannot maintain an action for damages against the members of the corp'n. who amoved him by an act done in their corporate capacity, at least, not without proof of malice.—*HARMAN v. TAPPENDEN* (1801), 1 East, 555; 3 Esp. 278; 102 E. R. 214. *Annotations:—Refd.* Mill v. Hawker (1874), L. R. 9 Exch. 309; Allen v. Flood, [1898] A. C. 1. *Mentd.* Ferguson v. Kinnoull (1842), 9 Cl. & Fin. 251; Fletcher v. Calthorpe (1845), 5 L. T. O. S. 432.

1385. — For abuses of former corporators.]—The principles upon which the account is to be taken against corpns. who are trustees of charities,

thereof:—*Held*: as the refusal of admission was in no way a judicial proceeding, the action had been properly brought against the individual members of the Presbytery instead of against the Presbytery as a corporate body.—*BURGESS v. DU PLESSIS* (1866), 1 R. 385.—*S. AF.*

& have misapplied the funds are that corporators as individuals never can be made responsible for what others have done or omitted to do; but in their hands, & under their administration, the abuses of former corporators, that is, of the same corp'n. in former times, may fall upon the corporate property.—*A.-G. v. NEWBURY CORPN.* (1831), 3 My. & K. 647; 40 E. R. 246.

1386. — Non-payment of annuity—Granted under statutory powers.]—*CANE v. CHAPMAN*, No. 1369, *ante*.

1387. — On recognisance.]—When two defts., members of a corporate body, entered into their recognisances to appear & plead to an indictment for non-repair of a highway, the judge ordered them to be discharged from such recognisances on the ground that they were entered into *per incuriam*.—*R. v. BURY IMPROVEMENT COMRS.* (1870), 11 Cox, C. C. 641.

See Nos. 1329, 1330, *ante*.

1388. Liable—Where no corporate funds—Usage to make levy on members.]—*SALMON v. HAM-BOROUGH CO.* (1671), 1 Cas. in Ch. 204; 22 E. R. 763.

*Annotations:—**Refd.* *Brickwood v. Harvey* (1836), 8 Sim. 201; *Hallett v. Dowdall* (1852), 18 Q. B. 2; *London Joint Stock Bank v. London Corp'n.* (1875), 1 C. P. D. 1.

1389. — Where charter wrongly surrendered.]—*R. v. SACHEVERELL*, No. 1563, *post*.

1390. — For contempt of court—Resolution reflecting on administration of justice.]—*R. v. WATSON*, No. 1332, *ante*.

1391. — For acts done to injure corporation—Or alienate property.]—A corp'n. may institute a suit for setting aside transactions fraudulent against it, although carried into effect in its name by members of the governing body; & that right is not affected by the A.-G. having also power to call in question such transactions.

The members of the governing body are the agents of a corp'n.; & if they exercise their functions for the purpose of injuring its interests & alienating its property, they are personally liable for any loss occasioned thereby.

Where a liability arises from the wrongful act of several parties, each is liable for all the consequences, & there is no contribution between them, & each case is distinct, depending upon the evidence against each party.

Certain members of the governing body of the corp'n. of L., immediately after the passing of the Municipal Corporation Act, 1835 (c. 76), procured funds belonging to the corp'n. to be applied by the trustees in whom they were vested to purposes not warranted by the Act. An information & bill, in which the corp'n. were the relators & plffs., was filed for the purpose of making five individuals, out of the several members concerned in the transaction, & the trustees, personally liable to make good the funds:—*Held*: the suit was properly framed for that purpose, a decree would be made accordingly, & the other members concerned in the transaction were not necessary parties.—*A.-G. v. WILSON* (1840), Cr. & Ph. 1; 10 L. J. Ch. 53; 4 Jur. 1174; 41 E. R. 389, L. C.

*Annotations:—**Refd.* *London Gas-Light Co. v. Spottiswoode* (1851), 14 Beav. 264; *Carpenter's & Weiss's Case* (1852), 5 De G. & Sm. 402; *Shrewsbury & Birmingham Ry. v. L. & N. W. Ry.* (1853), 4 De G. M. & G. 116. *Mentd.* *Foss v. Harbottle* (1843), 2 Hare, 461.

1392. — Refusal of majority to perform duty.]—Where the refusal to perform a duty is the act of the majority of a corp'n. or other body, the members of the majority are individually liable.—

FERGUSON v. KINNOULL (EARL) (1842), 9 Cl. & Fin. 251; 4 State Tr. N. S. 785; 8 E. R. 412, H. L.

*Annotations:—**Refd.* *Heriot's Hospital Feoffees v. Ross* (1846), 12 Cl. & Fin. 507; *A.-G. v. Murdoch* (1850), 14 Jur. 588; *Rogers v. Rajendro Dutt* (1860), 13 Moo. P. C. C. 209; *Sinclair v. Broughton & Government of India* (1882), 47 L. T. 170; *Allen v. Flood*, [1898] A. C. 1.

1393. — For acts ultra vires—Though committed bona fide.]—A highway board under Highway Act, 1862 (c. 61), has no authority to determine whether a disputed highway is or is not a highway, or to order the removal of an obstruction from a disputed highway. That Act, s. 9 (6), protects the members of the board from liability by reason of any lawful act done by them in execution of any of the powers of the board; but if the board, acting as a corp'n., order the surveyor to commit a trespass on private property for the purpose of removing an obstruction from a disputed highway, such an order is *ultra vires*, & the members of the board who concur in giving the order are personally liable & may be sued for the trespass, though they have acted *bona fide*. The surveyor who obeys such an order & commits the trespass is also liable to be sued; & he is not protected from such a liability by s. 16, which requires him in all respects to conform to the orders of the board in the execution of his duties.—*MILL v. HAWKER* (1875), L. R. 10 Exch. 92; 44 L. J. Ex. 49; 33 L. T. 177; 39 J. P. 181; 23 W. R. 348, Ex. Ch.

*Annotation:—**Mentd.* *Denny v. Thwaites* (1876), 2 Ex. D. 21.

For false return to mandamus.]—*See* No. 536, *ante*.

For effect of dissolution of corporation, *see* Part XVI., Sect. 8, *post*.

See, also, No. 35, *ante*.

SECT. 7.—PROCEEDINGS BY AGAINST OFFICERS AND INDIVIDUAL MEMBERS.

Recovery of penalties under bye-laws.]—*See* Part VI., Sect. 6, sub-sect. 2, C., *ante*.

Enforcement of duty.]—*See* Part IV., Sect. 2, sub-sect. 2, *ante*.

Liability for breach or non-performance of duties.]—*See* Part IV., Sect. 2, sub-sect. 2, *ante*.

Enforcement of removal.]—*See* Nos. 519, 520, *ante*.

SECT. 8.—MANDAMUS.

See, generally, CROWN PRACTICE.

1394. To whom addressed.]—*Semble*: a mandamus directed not to a corp'n. by its corporate name but to more persons than are by the charter required to do the thing enjoined by the mandamus is ill.—*R. v. SMITH* (1814), 2 M. & S. 583; 105 E. R. 499.

1395. Grounds for granting—Recovery of debt from corporation—No other remedy available—Statute of Limitations.]—Where a debt is clearly due from a public body, & for the recovery of which the creditor has no remedy but by a writ of mandamus:—*Semble*: the ct. will grant the writ, although if there were a remedy by action Stat. of Limitations might present a difficulty if pleaded in bar.—*R. v. SHADWELL PAVING ACT COMRS.* (1828), 6 L. J. O. S. M. C. 57.

1396. — —.]—During the progress of a local tramways Act through Parliament the town

PART XV. SECT. 8.

*m. Grounds for granting—To perform statutory duty.]—*A corporate

body is properly made deft. in an action of mandamus to compel performance of a public duty cast on it

by statute.—*STOWELL v. GERALDINE COUNTY COUNCIL* (1890), 8 N. Z. L. R. 720.—N.Z.

Sect. 8.—Mandamus. Sects. 9 & 10: Sub-sects. 1,

council authorised the town clerk to make terms for the purchase of tramways with the co. promoting the bill. Amongst other terms of arrangement he agreed that the corpn. should pay the expenses of the bill if they resolved to take the tramways according to their powers in the bill. The council consented to these terms, & after the Act was passed resolved to take the tramways; they afterwards resolved to pay the expenses agreed to. The surplus of the borough funds in the year of these resolutions was less than the amount of the expenses, but in the subsequent years the surplus was greater than that amount. Upon a rule *nisi* for a mandamus to the town council to pay these expenses:—*Held*: there was nothing in the Municipal Corporations Act, 1835 (c. 76), to prevent the payment of this claim, & a mandamus would lie.—*R. v. LIVERPOOL CORPN.* (1873), 28 L. T. 500; 37 J. P. 773; 21 W. R. 674.

1397. — Repayment of loan—By levying rates.]—On Nov. 2, 1821, five mtges. of the rates of D. for £100 each were made by the then mayor & two justices thereof to L., with interest at five *per cent.*, under the powers of 24 Geo. 3, c. 54, payable half-yearly for five years, at which time the principal was to be discharged. By sect. 11 the whole money borrowed under the authority of the Act was to be repaid within a time to be limited, not exceeding fourteen years from the time of borrowing the same. The money was received & applied towards defraying the expenses of erecting a new gaol. The interest was regularly paid out of the rates, both before & after the passing of Municipal Corporations Act, 1835 (c. 76), down to Sept. 23, 1847, & not afterwards. The principal had not been paid off. On Feb. 16, 1836, thirty mtges. of the rates of the borough for £100 each, & on Apr. 29, 1836, eight other mtges. of the rates for £100 each were made by the then mayor & two other justices of the town & port, in pursuance of the powers of 24 Geo. 3, c. 54, to L. The mtges. were to be discharged pursuant to the directions of the Act; & interest was to be paid at the rate of five *per cent. per annum*. The moneys in consideration of which the mtges. had been made had been advanced by the mtgee. & applied in defraying the expenses of purchasing, pursuant to a presentment & resolution of sessions before Municipal Corporations Act, 1835 (c. 76), & converting into a new gaol & sessions house for the borough & port certain buildings & the land adjoining. It was not known whether 24 Geo. 3, c. 54, s. 9, was complied with in respect of an estimate of the cost of the conversion of the building into a gaol & session house having been made, or in respect of its having been ascertained by means of an estimate whether such cost would exceed one half the amount of the ordinary annual assessment for the rate in nature of a county rate upon the borough, & the limits & precincts of the same; but in fact the actual expenditure did exceed one half the amount of such assessment. The first election of councillors under Municipal Corporations Act, 1835 (c. 76), took place on Dec. 26, 1835, of aldermen on Dec. 31, 1835, & of mayor on Jan. 1, 1836. The principal money had not been paid, & no interest had been paid on the thirty mortgages

since Aug. 16, 1847, or on the eight mtges. since Oct. 29, 1847:—*Held*: (1) L. was entitled to a writ of mandamus commanding the mayor & recorder of D. to levy rates in the nature of county rates for the purpose of paying off levying & paying the principal & interest due under the mtges. of Nov. 1821; (2) the jurisdiction of the justices to make the mtges. was expressly preserved to them down to May 1, 1836, by Municipal Corporations Act, 1835 (c. 76), s. 38, & as to the mtges. of Feb. 1836, & Apr. 1836, L. was also entitled to a writ of mandamus commanding the levy & payment of principal & interest out of the borough rates.—*R. v. DOVER (TOWN COUNCIL & RECORDER)* (1850), 15 J. P. 129.

See, also, No. 1508, *post*.

1398. — To perform statutory duty—After previous mandamus discharged.]—Where a rule for a mandamus to compel a corpn. to make an order has been discharged, on the ground that no demand & refusal have taken place, the ct. will not grant a new rule for a mandamus to the same effect, though a demand & refusal have taken place since the discharge of the former rule.—*Ex p. THOMPSON* (1845), 6 Q. B. 721; 14 L. J. Q. B. 176; 115 E. R. 272.

Annotation:—*Folld. R. v. Bodmin Corpn.*, [1892] 2 Q. B. 21.

1399. — — —.]—Where a rule for a mandamus to compel a corpn. to perform a statutory duty has been discharged on the ground that no demand & refusal have taken place, the ct. will not grant a new rule for a mandamus for the same purpose, although a demand & refusal have taken place since the discharge of the former rule.—*R. v. BODMIN CORPN.*, [1892] 2 Q. B. 21; 61 L. J. M. C. 151; 56 J. P. 504; 40 W. R. 606; 8 T. L. R. 553; 36 Sol. Jo. 489.

Annotation:—*Refd. R. v. Kensington Income Tax Comrs.*, *Ex p. Edmond de Polignac*, [1917] 1 K. B. 486.

— — — Provision of sewers.]—*See SEWERS & DRAINS.*

To levy rates.]—*See RATES & RATING.*

— Payment of salary or compensation to corporate officers.]—*See LOCAL GOVERNMENT.*

— To enforce affixing of seal.]—*See Part I., Sect. 5, sub-sect. 3, B., ante.*

— To hold meetings.]—*See Part VII., Sect. 1, sub-sect. 3, ante.*

— To appoint officers.]—*See Part IV., Sect. 1, sub-sect. 1, ante.*

— To admit officers.]—*See Part IV., Sect. 3, sub-sect. 1, ante.*

— To restore to office.]—*See Part IV., Sect. 5, sub-sect. 2, ante.*

— To compel service in municipal office.]—*See LOCAL GOVERNMENT.*

— To register shares.]—*See COMPANIES.*

1400. Return to—Whether sealing necessary.]—*MORGAN v. CARMARTHEN CORPN.*, No. 164, *ante*.

1401. — — —.]—*R. v. CHALICE*, No. 167, *ante*.

1402. Liability for false return.]—*R. v. RIPPON CORPN.*, No. 536, *ante*.

1403. — — —.]—*R. v. WEEKS*, No. 1410, *post*.

SECT. 9.—QUO WARRANTO.

See, generally, CROWN PRACTICE.

1404. Non-corporate body usurping privileges of corporation—Judgment in corporate name.]—An information was brought against the corpn. by

PART XV. SECT. 9.

n. Against person usurping office in private corporation—Neither Crown

nor public affected.]—An information in the nature of a *quo warranto* will not lie against a person for usurping an office in a private corpn., the rights

of the Crown or the public being in no way affected.—*Re ALBERT MINING CO.*, *Ex p. GILBERT* (1873), 2 Pug. 29. CAN.

its corporate name for usurping the privileges, etc., of a corp'n. without any authority, who pleaded by their corporate name, & entitled themselves by prescription:—*Held*: verdict & judgment would be given against them by their corporate name.—*NEW MALTON CASE* (1808), cited in 2 Term Rep. 547; 100 E. R. 295.

1405. Whether leave necessary.—An information in the nature of a *quo warranto* cannot be filed against a whole corporate body, except by & in the name of the A.-G.

The ct. will grant a *quo warranto* information, at the instance of a private relator, against a member of a corp'n. on grounds affecting his individual title, although it be suggested that the same objections apply to the title of every member, & therefore that the application is in effect against the whole corporate body.

In all cases where there must be an election, not by a majority, but by distinct integral portions of a corp'n., there, if any of the integral parts of a corp'n. is lost, the corp'n. is lost (*WILLIAMS, J.*).—*R. v. WHITE* (1836), 5 Ad. & El. 613; 2 Har. & W. 403; 1 Nev. & P. K. B. 84; 6 L. J. K. B. 23; 111 E. R. 1297.

Annotation:—*Reid. R. v. Parry* (1837), 6 Ad. & El. 810.

1406. Against whole corporation—Not at instance of private relator.—*R. v. CARMARTHEN CORPN.*, No. 287, *ante*.

1407. Against individual corporator—At instance of private relator—Though application in effect against whole corporate body.—*R. v. WHITE*, No. 1405, *ante*.

1408. ——— To try legality of charter.—The ct. will not grant a *quo warranto* information against an individual to try the legality of a charter of municipal incorporations.—*R. v. JONES* (1863), 8 L. T. 503.

1409. ——— By leave—Though tending to dissolution of corporation.—Leave to file a *quo warranto* information against an individual corporator, at the instance of a private person, will not be refused merely because the proceeding may or will have the effect of dissolving the corp'n.—*R. v. PARRY* (1837), 6 Ad. & El. 810; 2 Nev. & P. K. B. 414; Will. Woll. & Dav. 703; 1 J. P. 247; 112 E. R. 311.

Annotations:—*Reid. R. v. Backhouse* (1865), 12 L. T. 579. *Mentd. R. v. Canterbury* (1848), 11 Q. B. 483; *R. v. Ward* (1873), L. R. 8 Q. B. 210; *Julius v. Oxford* (1880), 5 App. Cas. 214.

1410. Return—Return of whole corporation.—The return of a corp'n. to a *quo warranto* information is by the whole corp'n. & it is not proper to examine by affidavits, whether there was a consent of the majority. If the return to a mandamus be false, the proper remedy is against the mayor.—*R. v. WEEKS* (1733), Kel. W. 290; 25 E. R. 620.

1411. Liability for false return.—*R. v. WEEKS*, No. 1410, *ante*.

To test validity of appointment of officer.—See Part IV., Sect. 1, sub-sect. 7, B. (b), *ante*.

To test validity of election of members of municipal corporations or local authorities.—See LOCAL GOVERNMENT.

SECT. 10.—PROCEDURE.

SUB-SECT. 1.—SERVICE OF PROCESS.

See R. S. C., Ord. 9, r. 8.

See PRACTICE & PROCEDURE.

PART XV. SECT. 10, SUB-SECT. 2.

o. Effect of — By corporation — When coupled with plea—Estoppel.

Deft., being sued as a corp'n., & appearing & pleading as such in bar to the action, is estopped from disputing its existence as a body cor-

porate, & its ability to contract in that capacity.—*SHELYN v. LANCASTER MILL CO.* (1841) 1 Kerr, 377.—CAN.

SUB-SECT. 2.—APPEARANCE.

1412. By agent—Bailliff under warrant in writing.—One may not appear in an assize as bailiff to a corp'n. without warrant in writing.—*PANEL v. MOOR* (1554), 1 Plowd. 91; 75 E. R. 145.

Annotation:—*Mentd. Barnett v. Guildford* (1855), 11 Exch. 19.

1413. ——— In county court—With leave of judge.—*KINNELL (CHARLES P.) & CO. v. HARDING, WACE & CO.*, No. 1340, *ante*.

Compare cases in Part VI., Sect. 6, sub-sect. 2, C. (b), *ante*.

1414. By warrant of attorney—Acting for majority of corporation.—*YARMOUTH CORPN. & COWPER'S CASE*, No. 172, *ante*.

1415. ——— Appointed under seal.—*YARMOUTH CORPN. & COWPER'S CASE*, No. 172, *ante*.

.]—(1) Judgment of seizure *quousque* shall be given on non-appearance of a corp'n. to a *quo warranto*.

(2) If a corp'n. neglect to plead after judgment of seizure *quousque*, final judgment shall be given.

(3) Appearance by a corp'n. must be by warrant of attorney under seal.—*R. v. CHESTER CORPN.* (1683), 2 Show. 366; Skin. 154; 89 E. R. 988.

1417. ——— Not by directors.—*Semble*: a corp'n. cannot appear by the directors to enter into recognisances to prosecute an appeal, but should appoint an attorney, under the common seal, to appear & enter into recognisances for it.—*KEARNEY v. SUNDERLAND MARINE INSURANCE CO.* (1851), 17 L. T. O. S. 8, N. P.; *subsequent proceedings, sub nom. SUNDERLAND MARINE INSURANCE CO. v. KEARNEY*, 16 Q. B. 925.

1418. ——— On indictment in Queen's Bench—Not at assizes or sessions.—*R. v. BIRMINGHAM & GLOUCESTER RY. CO.*, No. 1292, *ante*.

1419. Cannot appear in person—By chairman.—The ct. will not allow the chairman of a co. to move on its behalf.—*Re LONDON COUNTY COUNCIL & LONDON TRAMWAYS CO.* (1897), 13 T. L. R. 254.

1420. Time limit for entering appearance—Not after sequestration issued.—After service of a writ of execution of decree against a corp'n., the next process is a *distringas*, & after that a sequestration, which being once awarded, they can never after come & pray to enter their appearance, as they might have done on the *distringas*, which issues for that very purpose, to compel them to appear; but the appearing being past, the process must go on, because the appearance being only in favour of liberty, can be of no service to a corp'n., which cannot be committed.—*HARVEY v. EAST-INDIA CO.* (1700), Prec. Ch. 128; 2 Vern. 395; 24 E. R. 62.

Annotation:—*Reid. London Joint Stock Bank v. London Corp'n.* (1875), 1 C. P. D. 1.

SUB-SECT. 3.—DISCOVERY, INSPECTION AND PRODUCTION OF DOCUMENTS.

A. Discovery.

(a) In General.

See, generally, COMPANIES; DISCOVERY, INSPECTION & INTERROGATORIES.

Security for costs—On application for discovery.—See No. 1559, *post*.

Sect. 10.—Procedure: Sub-sect. 3, A. (b), B. (a), (b) & (c).]

In aid of Execution.

1421. Not against directors—Common Law Procedure Act, 1854 (c. 125), s. 60.]—The above Act enacts that it shall be lawful for any creditor who has obtained a judgment in any of the superior cts. to apply to the court or a judge for a rule or order that the judgment debtor shall be orally examined as to any & what debts are owing to him. In an action in which a corpn. were defts.:—*Held*: there was no power under s. 60 of the Act to order the oral examination of the directors of the corpn.—*DICKSON v. NEATH & BRECON RY. Co.* (1869), L. R. 4 Exch. 87; 38 L. J. Ex. 57; 19 L. T. 702; 17 W. R. 581.

1422. Against any officer of corporation—R. S. C., Ord. 42, r. 32.]—The ct. has no power under the above rule to make an order for the examination of a person not the debtor liable under a judgment or order, where such debtor is an individual, for the purpose of discovery in aid of execution. The words of the rule, "any other person," refer to the case of a corpn. being a judgment debtor, & mean any of its officers.—*IRWELL v. EDEN* (1887), 18 Q. B. D. 588; 56 L. J. Q. B. 446; 56 L. T. 620; 35 W. R. 511; 3 T. L. R. 535, C. A.

Annotation:—Mentd. Hood Barrs v. Heriot, Ex p. Blyth, [1896] 2 Q. B. 338.

B. Inspection.

(a) Who entitled to inspect.

1423. Not stranger to corporation.]—Semble: a stranger to a corpn. has no right to a rule to inspect the books thereof.—*HODGES v. ATKIS* (1773), 3 Wils. 398; 2 Wm. Bl. 877; 95 E. R. 1121.

Annotation:—Consd. Southampton Corpn. v. Graves (1800), 8 Term Rep. 590.

1424. Resident in corporate town—Though not corporator.]—A resident inhabitant of a town corporate has a right to inspect & take copies of a bye-law of the corpn., pending an action against him for a breach of the same, although he is not a corporator; & mandamus will lie for this purpose.—*HARRISON v. WILLIAMS* (1824), 3 B. & C. 162; 4 Dow. & Ry. K. B. 820; 2 Dow. & Ry. M. C. 408; 2 L. J. O. S. K. B. 221; 107 E. R. 694.

See, also, No. 344, ante; Nos. 1431, 1447, 1450, 1451, 1455, 1457, 1459, post.

Right of member to inspect.]—See Part III., Sect. 4, sub-sect. 3, ante.

(b) What Documents may be inspected.

1425. Public books—Not books containing private matters—Books of election & accounts.]—A man shall not be compelled to produce or give a copy of books of a private nature, particularly if the object is to obtain evidence in support of a criminal prosecution against him. The books of the elections, receipts, & disbursements of persons incorporated by a private act for repairing highways, & taking care of a charity, are of a private nature.—*R. v. MEAD* (1704), 2 Ld. Raym. 927; 92 E. R. 119.

Annotation:—Refd. R. v. Purnell (1749), 1 Wils. 239.

1426. — Whether poll books included.]—On a motion for a rule to inspect the poll books of the corpn. of L., where the names of the persons were set down, who were electors of a mayor of that town:—*Held*: such poll books were public books of the corpn. & a rule for the inspection of them was made.—*R. v. HUGHES* (1727), 1 Barn. K. B. 41; 94 E. R. 28.

Annotation:—Mentd. Mead v. Robinson (1743), Wilses, 422.

1427. — —.]—On rule to show cause, why attachment should not be granted against debt., for not allowing pltf. to take copies of certain poll books made at an election of an officer in the city of N. in pursuance of a rule of court made for inspecting all public books, it was contended there ought to have been a particular rule for inspecting the poll books:—*Held*: the rule must be discharged.—*ATESLEY v. BELL* (1731), 2 Barn. K. B. 114; 94 E. R. 391.

See, also, Nos. 1480, 1481, post.

1428. Public books—Whether charter included.]—*R. v. CHAPMAN*, No. 370, *ante*.

1429. — —.]—For the purposes of an election petition relating to the return of a member for a borough, the mayor of the borough was served with notice to produce at the hearing all public books, documents, records, & writings whatsoever in his custody relating to the voters of the said borough:—*Held*: under such notice the mayor was bound to produce the charter of the borough.—*YOUGHAL CASE* (1838), Falc. & Fitz. 385.

1430. — Whether books of charitable corporation public.]—On a motion for a rule to inspect the books of the Charitable Corpn.:—*Held*: the rule must be refused, the ct. doubting whether they were public.—*CHARITABLE CORPN. v. WOODCRAFT* (1735), Lee temp. Hard. 130; 95 E. R. 82.

See, also, No. 1425, ante.

1431. — Bishop's register of presentations.]—A bishop's register of presentations is a public book; & a mandamus lies to him to grant inspection of it to one claiming a right to present to a vacant living, though the bishop claims a right to collate to it.—*FINCH v. ELY* (BP.) (1828), 2 Man. & Ry. K. B. 127; 6 L. J. O. S. K. B. 223.

1432. Charter.]—*ANON.*, No. 1473, *post*.

1433. — On trial of corporate right.]—On the trial of a corporate right, the other party may have an inspection of the charter.— *v. CUTTS* (1700), 12 Mod. Rep. 394; 88 E. R. 1402.

1434. — Enrolled—Refused.]—On a motion to have leave to inspect the charters of the corpn. of L. R.:—*Held*: the ct. never grant such a rule; for copies of them may be taken at the Rolls.—*R. v. TUCKER* (1727), 1 Barn. K. B. 28; 94 E. R. 18.

1435. —.]—In a bill filed against a corpn. by parties, against whom they had brought an action for tolls, it was alleged the corpn. had, in their custody various cases for the opinion of counsel, & charters, deeds, etc., which would show that they had no right to the tolls, & by which the truth of the matters in the bill would appear. The corpn. admitted the possession of several cases, two of which had been prepared long before under mistaken notions of their rights, & made without any reference to the present proceedings, & the remainder prepared with a view to the present proceedings, & various charters, etc., showing their title to the tolls:—*Held*: pltf. were entitled only to the inspection of the two old cases, but not of the charters, etc., nor of the cases prepared with a view to the proceedings.—*BOITON v. LIVERPOOL CORPN.* (1833), Coop. temp. Brough. 19; 1 My. & K. 88; 1 L. J. Ch. 166; 47 E. R. 7, L. C.

Annotations:—Consd. Burrell v. Nicholson (1833), 1 My. & K. 680; *Storey v. Lennox* (1836), 1 Keen, 341; *Smith v. Beaufort* (1843), 1 Ph. 209; *Combe v. London Corpn.* (1845), 15 L. J. Ch. 80; *Minet v. Morgan* (1873), 8 Ch. App. 361. *Refd. Re Collier & Collier, Ex p. Collier* (1834), 4 Deac. & Ch. 364; *Bellwood v. Wetherell* (1835), 1 Y. & C. Ex. 211; *Meath v. Winchester* (1836), 10 Bl. N. S. 330; *Nias v. Northern & Eastern Ry.* (1838), 2 Keen, 76; *Llewellyn v. Badale* (1842), 1 Hare, 527; *Walsingham v. Goodricke* (1843), 3 Hare, 122; *Flight v. Robinson*

(1844), 8 Beav. 22; *Holmes v. Baddeley* (1844), 1 Ph. 476; *A.-G. v. Thompson* (1849), 8 Hare, 106; *Stainton v. Chadwick* (1851), 15 Jur. 1189; *Doe d. Avery v. Langford* (1852), Bail Ct. Cas. 37; *Manser v. Dix* (1855), 1 K. & J. 451; *Jenkins v. Bushby* (1866), 35 L. J. Ch. 400; *Bristol Corp. v. Cox* (1884), 26 Ch. D. 678; *Pearce v. Foster* (1885), 54 L. J. Q. B. 432. *Mentd.* *Greenhough v. Gaskell* (1833), *Coop. temp.* *Brough*, 96; *Weeks v. Argent* (1847), 11 Jur. 525; *Hunt v. Hewitt* (1852), 7 Exch. 236; *Pepper v. Chambers* (1852), 21 L. J. Ex. 81; *Sneider v. Mangino* (1852), 7 Exch. 229; *Scott v. Walker* (1853), 17 Jur. 918; *Chartered Bank of India, Australia, & China v. Rich* (1863), 32 L. J. Q. B. 300; *Wentworth v. Lloyd* (1864), 10 H. L. Cas. 589; *Wilson v. Northampton & Banbury Ry.* (1872), 20 W. R. 938; *Taylor v. Batten* (1878), 39 L. T. 408.

See, also, Nos. 370, 1429, *ante*; Nos. 1446, 1449, *post*.

Corporation books.—*See* Nos. 1446, 1450, 1462, *post*.

1436. Reports & minutes of committees of corporation—Privileged.—(1) Reports & minutes of committees of a corp. with reference to actual or contemplated litigation are privileged communications.

(2) Cases submitted to counsel after a dispute has arisen, & counsel's opinions thereon, are similarly privileged; although the party claiming production is a ratepayer & the opinions were paid out of the rates, at all events, if the action is not one with direct reference to the rates.—*BRISTOL CORPN. v. COX* (1884), 26 Ch. D. 678; 53 L. J. Ch. 1144; 50 L. T. 719; 33 W. R. 255.

Annotations.—*As to* (2) *Consd.* *Gouraud v. Edison Gower Bell Telephone Co. of Europe* (1888), 57 L. J. Ch. 498. *Refd.* *Woodhouse v. Woodhouse* (1914), 30 T. L. R. 559.

1437. Document of title—Entries in corporation books not included.—The Corp. of L. claimed for the Fellowship Porters of that city a prescriptive right of measuring & carrying, for certain fees, all corn landed on either side of the Thames, between Y. & S., & carried into or out of the city; & filed their bill against defts. to establish that right. Defts. contended that the claim was of modern origin & filed their bill of discovery against the corp., suggesting that the porters were established in the time of Henry III. for carrying, within the city only, corn landed by persons other than citizens, at Q., which they alleged was then the only place where corn was permitted to be landed; & they claimed the inspection of certain entries in the corp. books, which purported to be copies of ancient public orders & proclamations, inquisitions, & findings, relating to the landing of corn at Q. & to the charges for carrying it to certain persons within the city. Upon motion to produce these documents, which by the answer of the corp. were admitted to be in their possession, but were insisted upon as part of their title, & that of their grantees, the Fellowship Porters:—*Held*: (1) they were not part of their title, & must be produced; (2) production of cases & opinions of counsel should be refused.—*COMBE v. LONDON CITY* (1840), 4 Y. & C. Ex. 139; 160 E. R. 953.

Annotations.—*As to* (1) *Refd.* *Smith v. Beaufort* (1843), 1 Ph. 209; *Bluck v. Gompertz* (1851), 7 Exch. 67. *Generally*, *Mentd.* *Price v. Harrison* (1860), 8 C. B. N. S. 617.

1438. S. P. COMBE v. LONDON CORPN. (1845), 15 L. J. Ch. 80; 7 L. T. O. S. 153; 10 Jur. 57, L. C.; *affg.* (1842), 1 Y. & C. Ch. Cas. 631.

Annotations.—*As to* (1) *Consd.* *Hastings Corp. v. Ivall* (1873), 8 Ch. App. 1019, n.; *A.-G. v. Emerson* (1882), 10 Q. B. D. 191. *Refd.* *Smith v. Beaufort* (1842), 1 Hare, 507; *Minet v. Morgan* (1873), 8 Ch. App. 361; *Morris v. Edwards* (1890), 15 App. Cas. 309; *A.-G. v. Newcastle-upon-Tyne Corp.*, [1899] 2 Q. B. 478; *Johnson v. Whitaker* (1904), 90 L. T. 535. *As to* (2) *Refd.* *Walsingham v. Goodricke* (1843), 3 Hare, 122; *Holmes v. Baddeley* (1844), 1 Ph. 476; *Manser v. Dix* (1855), 1 K. & J. 451. *Generally*, *Mentd.* *Pearse v. Pearse* (1846), 1 De G. & Sm. 12; *Dipple v. Corles* (1852), 22 L. J. Ch. 15; *Ferrier v.*

Arwool (1866), 12 Jur. N. S. 365; *Frankenstein v. Gavin's House-to-House Cycle-Cleaning & Insee.* (1897), 66 L. J. Q. B. 668.

Corporation as trustee.—*See* No. 1449, *post*.

1439. Case for opinion of counsel—Action pending—Previous proceedings.—*BOLTON v. LIVERPOOL CORPN.*, No. 1435, *ante*.

1440. —.—*COMBE v. LONDON CITY*, No. 1437, *ante*.

1441. —. **Claim by ratepayer.**—*BRISTOL CORPN. v. COX*, No. 1436, *ante*.

1442. Limited to matter in issue.—On a rule to show cause why deft. who was collector of the orphan's tax should not have inspection of the public books relating to the tax & take copies at his own expense:—*Held*: deft. should have inspection of all the books which related to the tax, & take copies only of such part as concerned himself.—*LONDON CORPN. v. SWINLAND* (1731), 1 Barn. K. B. 455; 94 E. R. 306.

1443. —.—*LONDON CORPN. v. LYNN CORPN.*, No. 1305, *ante*.

1444. —. **Corporation deeds.**—In an action brought by the corp. for toll against deft. the ct. on his application granted a rule for inspection of such parts of the deeds, etc., as related to that matter, on the town clerk, which inspection he was to give upon oath.—*BARNSTAPLE CORPN. v. LATHEY* (1789), 3 Term Rep. 303; 100 E. R. 588. *Annotation*.—*N.F.* *Southampton Corp. v. Graves* (1800), 8 Term Rep. 590.

See, also, No. 1471, *post*.

Town books.—*See* No. 876, *ante*.

Parish books.—*See* Nos. 1455–1457, *post*.

Churchwardens' accounts.—*See* No. 1453, *post*.

(c) *When granted.*

1445. In prohibition—Granted.—In prohibition a motion to have liberty to inspect parish books, & to have them produced at the trial, was granted.—*LOCKE v. HYET* (1721), Cooke, Pr. Cas. 21; 125 E. R. 933.

1446. In quo warranto—Granted.—In *quo warranto* a rule will be granted to inspect charters & books of corps.—*R. v. HOLLISTER* (1736), Lee *temp.* Hard. 245; 95 E. R. 157.

1447. —. **Not where private matter in issue.**—No rule to inspect books on claim of right to hold a leet. A rule being made for deft. to show cause, why an information in nature of a *quo warranto* should not be granted, to show by what authority he claimed to hold a ct. leet in the borough of W.; deft. moved for the common rule to inspect the books of the corp., who were the prosecutors, & it was granted. But upon special motion it was afterwards discharged, this being a matter of a private claim between deft., & the corp.; & if this should prevail, one private man would have as good a right to inspect the deeds & evidences of another.—*R. v. BRIDGEMAN* (1744), 2 Stra. 1203; 93 E. R. 1128.

1448. Mandamus—Not to enable prosecutor to plead to return—Disputed operation of Municipal Corporations Act, 1835 (c. 76)—Refused.—*R. v. ST. JOHN'S COLLEGE, OXFORD* (1845), 5 L. T. O. S. 221; 9 J. P. Jo. 388.

1449. In suit by Crown—Corporation a quasi-trustee.—An information being filed against the corp. of London by the A.-G. on behalf of the Crown, stating that the corp. held the office from the Crown of Bailiff of Conservator of the Thames, but they also claimed to be the owners of the bed & soil of the river, which the information alleged to be in the Crown; & that the corp. had lately granted licences to embank parts of the river, to the prejudice of the navigation; & seeking to

Sect. 10.—Procedure: Sub-sect. 3, B. (c), (d) & (e), C.; sub-sect. 4, A.]

have the right of the Crown to the bed & soil of the river declared, & to have the corp'n. restrained from granting such licences, & also to have the embankments put an end to; the corp'n., by their answer, denied the title of the Crown, & set up a prescriptive right in themselves to the ownership of the bed & soil of the river; but they declined to discover the charters & other documents in their possession, alleging that they intended to use them as evidence of their title at the hearing:—*Held*: having regard to the fiduciary relation in which the corp'n. stood to the Crown as conservators of the river, & to the *prima facie* right of the Crown to the bed & soil of navigable rivers, the corp'n. were bound to discover the charters & documents in question.—*A.-G. v. LONDON CORPN.* (1850), 2 Mac. & G. 247; 2 H. & Tw. 1; 19 L. J. Ch. 314; 14 L. T. O. S. 501; 14 Jur. 205; 42 E. R. 95, L. C.; *affg.* (1849), 12 Beav. 8; *subsequent proceedings* (1851), 13 Beav. 313.

Annotations:—*Apld.* *Flitcroft v. Fletcher* (1856), 25 L. J. Ex. 94. *Expld.* *Horton v. Bott* (1857), 2 H. & N. 249; *Stoate v. Rew* (1863), 14 C. B. N. S. 209. *Consd.* *Goodman v. Holroyd* (1864), 15 C. B. N. S. 839; *Saunders v. Jones* (1877), 7 Ch. D. 435. *Refd.* *London Gas Light Co. v. Chelsea Vestry* (1859), 6 C. B. N. S. 411; *Ingilby v. Shafto* (1863), 33 Beav. 31; *Towne v. Cocks* (1874), L. R. 9 Exch. 45; *A.-G. v. Newcastle-upon-Tyne Corp'n.*, [1897] 2 Q. B. 384; *A.-G. v. Storey* (1912), 107 L. T. 430. *Mentd.* *Smith v. Stair* (1849), 2 H. L. Cas. 807; *A.-G. v. Hammer* (1858), 27 L. J. Ch. 837; *Bewicke v. Graham* (1880), 50 L. J. Q. B. 396; *Marriott v. Chamberlain* (1886), 54 L. T. 714; *Emmerson v. Maddison*, [1906] A. C. 569.

1450. General rule.—These rules of inspection, in the cases of copyholds, corp'ns., books of the customs, etc., are never granted but only where civil rights are depending, & by which the very thing in question depends, & must be determined. Doctor W. was prosecuted for practising physic, not being a member of the College of Physicians, nor having a licence, nor being a graduate of either University; he moved for leave to inspect the books of the College of Physicians, upon an imagination that he might find some entry therein in his favour; but the ct. refused to grant the rule, & said the doctor had no right to see the books, he not being a member of the College.—*COLLEGE OF PHYSICIANS v. WEST* (1747), cited in 1 Wils. 240; 95 E. R. 596.

Annotation:—*Mentd.* *Collins v. Carnegie* (1834), 1 Ad. & El. 695.

1451. Action against corporation—Claim of private right—Refused.—Motion to have inspection of the public books, belonging to the vicar and church-wardens of St. S.'s, the question being upon a demise under that corp'n., which was disputed in an ejectment:—*Held*: this was only a matter of private right & motion was refused.—*LEWIS v. BAKER* (1728), 1 Barn. K. B. 100; 94 E. R. 69.

1452. — By non-member—Refused.—*COLLEGE OF PHYSICIANS v. WEST*, No. 1450, *ante*.

1453. — Churchwardens' accounts—Reasons to be given.—Where a party applies for a mandamus to compel churchwardens to allow him to inspect their accounts according to the directions of 17 Geo. 2, c. 38, he must state some special reason for which he wishes to see the accounts. It is no answer to the appl'n., that the statute imposes a penalty upon a churchwarden improperly refusing the inspection.—*R. v. CLEAR* (1825), 4 B. & C. 899; 7 Dow. & Ry. K. B. 393; 3 Dow. & Ry. M. C. 438; 4 L. J. O. S. K. B. 53; 107 E. R. 1293.

Annotations:—*Distd.* *R. v. Wiltshire & Berkshire Canal Navigation Co.* (1835), 5 Nev. & M. K. B. 344. *Apprvd.*

Ex p. *Briggs* (1859), 1 E. & E. 881. *Consd.* *R. v. London & St. Katharine's Docks Co.* (1874), 31 L. T. 588. *Mentd.* *R. v. St. George the Martyr, Southwark Vestry* (1892), 61 L. J. Q. B. 398.

1454. — By party claiming right—Granted.—*FINCH v. ELY* (Bp.), No. 1431, *ante*.

1455. — By inhabitant of parish—Inspection of parish books refused.—An indictment had been preferred against a county for not repairing a bridge, at the instance of the inhabitants of a parish, & the question intended to be tried was, whether the inhabitants of the parish or of the county were liable to repair it? The ct. refused to compel the inhabitants of the parish to allow the parties indicted to inspect the parish books & documents relating to the repair of the bridge.—*R. v. BUCKINGHAM JJ.* (1828), 8 B. & C. 375; 2 Man. & Ry. K. B. 412; 6 L. J. O. S. K. B. 346; 108 E. R. 1082.

1456. — Validity of rate—Granted.—In a suit touching the validity of a parish rate, pltf. is entitled to inspect the parish books without paying any costs.—*NEWELL v. SIMPKIN* (1830), 6 Bing. 565; 4 Moo. & P. 394; 8 L. J. O. S. C. P. 228; 130 E. R. 1398.

Annotation:—*Refd.* *R. v. Staffordshire JJ.* (1837), 6 Ad. & El. 84.

1457. — — — — ——Upon a bill of discovery in aid of an action to try whether pltf.'s house was within the limits of a certain parish, & therefore liable to the parochial rates; the ct. ordered defts., the parish officers, to produce for his inspection the rate-books, account-books, minute-books, orders, & other documents, which related to the matter in question, & were admitted by their answer to be in their possession.—*BURRELL v. NICHOLSON* (1833), 1 My. & K. 680; 39 E. R. 838, L. C.; *subsequent proceedings*, 6 C. & P. 202.

Annotations:—*Expld.* *Combe v. London City* (1840), 4 Y. & C. Ex. 139. *Consd.* *Earp v. Lloyd* (1857), 3 K. & J. 549. *Mentd.* *Smith v. Beaufort* (1842), 1 Hare, 507.

1458. — By freeman—Granted against new corporation.—*R. v. BEVERLEY CORPN.*, No. 344, *ante*.

1459. Action by corporation—Against non-member—Bye-law affecting non-member—Granted.—Action brought on bye-laws against deft., exercising the trade of a brewer, but no member of the co. Bye-laws affecting strangers interest them therein. Rule absolute for deft. to inspect the co.'s books, & take copies.—*BREWERS' Co. v. BENSON* (1746), Barnes, 236; 94 E. R. 893.

Annotation:—*Expld. & Apld.* *Harrison v. Williams* (1824), 4 Dow. & Ry. K. B. 820.

1460. — — — — ——*HARRISON v. WILLIAMS*, No. 1424, *ante*.

1461. — — — — — Documents of title—Refused.—In an action for petit customs upon hemp, flax, & other merchandise, founded on a prescriptive right, deft. moved for leave to inspect the corp'n.'s table of rates & account books of sums received; motion was refused.—*EXETER CORPN. v. COLEMAN* (1755), Barnes, 238; 94 E. R. 894; *subsequent proceedings, sub nom.* *ANON.*, 2 Ves. Sen. 620, L. C.; 5 Q. B. 789, n.

Annotations:—*Consd.* *Southampton Corp'n. v. Graves* (1800), 8 Term Rep. 590. *Mentd.* *Exeter Corp'n. v. Warren* (1844), 5 Q. B. 773.

1462. — — — — — Granted.—Where a corp'n. is pltf. in a civil action, leave to inspect their books is granted to deft. of course.—*LYNN CORPN. v. DENTON* (1787), 1 Term Rep. 689; 99 E. R. 1322. *Annotation*:—*Expld. & Distd.* *Southampton Corp'n. v. Graves* (1800), 8 Term Rep. 590.

1463. — — — — — Refused.—Pending an action by a corp'n. for tolls, the ct. will not grant leave to inspect the corp'n. muniments on the application

of deft., a stranger to the corpn.—SOUTHAMPTON CORPN. v. GRAVES (1800), 8 Term Rep. 590; 101 E. R. 1563.

Annotation.—*Distd.* Harrison v. Williams (1824), 4 Dow. & Ry. K. B. 820.

1464. Criminal proceedings—Against member—Refused.—R. v. PURNELL, No. 358, *ante*.

1465. — Refused.—Rule to compel a corpn. to furnish evidence from their books in a criminal prosecution denied.—R. v. HEYDON (1762), 1 Wm. Bl. 351; 96 E. R. 195.

(d) *Time for granting.*

1466. In mandamus—Not till after return.—A person obtains a mandamus, & some time after, but before the return, he applies to the ct. for a rule to inspect the books of the corpn. But the ct. refused to grant it.

Where a rule is made to show cause for an information in the nature of a *quo warranto*, the ct. granted the motion; because there the ct. almost determines the right of the information upon the motion; & therefore there they see, that it may be requisite to have the inspection of the public books immediately.—ANON. (1727), 1 Barn. K. B. 26; 94 E. R. 18.

1467. — — ——There had been a mandamus to fill up the corpn., to which the corpn. made a return, & then a rule was made to inspect the books of the corpn. afterwards the prosecutors deserted that mandamus, & moved for a new one. Motion for an attachment against the mayor, etc. for not obeying the rule to inspect the books:—*Held*: the course was in information in nature of *quo warranto*, to grant such rule for inspection, pending the rule to show cause; but in mandamus's not till after the return.—R. v. NOTTINGHAM (1750), 1 Wm. Bl. 59; 96 E. R. 32.

1468. — — ——The ct. will not make a rule for the inspecting of books, until a return is made to a mandamus.—R. v. SURREY COUNTY QUARTER SESSIONS JJ. (1754), Say. 144; 96 E. R. 832.

1469. In quo warranto—Pending rule to show cause.—R. v. BELL (1730), 1 Barn. K. B. 373; 94 E. R. 251.

1470. — — ——R. v. NOTTINGHAM, No. 1467, *ante*.

(e) *Other Cases.*

1471. Compliance with order—Only relevant parts produced—Officer acting *bonâ fide*—Sufficient.—Where a rule had been granted for an information in the nature of *quo warranto* against A. to show by what authority he claimed to be mayor of G. on the relation of some of the corporators, & another rule on that cause for inspecting all the corpn. books, papers, etc., directed to the town clerk; an inspection of such only as related to the election & office of mayor was held to be a sufficient compliance with the latter rule, so as to protect the town clerk from an attachment as for a contempt of ct.; it appearing that he had acted *bonâ fide*.—R. v. BABB (1790), 3 Term Rep. 579; 100 E. R. 743.

1472. When quo warranto depending—Rule absolute.—The rule is absolute in the first instance for an inspection of the corporation books, where a *quo warranto* is pending.—R. v. TRAVANION (1818), 2 Ohit. 366.

C. *Production of Documents.*

1473. Charter—Enrolled—Refused.—We never order charters to be brought into ct. on trials, when copies of them may be had at the Rolls; but we will compel them to give you sight of them (HOLT, C.J.).—ANON. (1700), 12 Mod. Rep. 414; 88 E. R. 1419.

1474. — Not enrolled—Granted.—Motion for a rule upon the town clerk of C. to attend with the charter of 37 Car. 2, at the trial, because it was not enrolled & a copy of it would not be evidence. Motion granted.—ANON. (1733), 2 Barn. K. B. 404; 94 E. R. 582.

1475. Corporation books.—Where things are evidence of themselves, as corpn. books, we make no rule to produce them but only that the party may have copies, which copies are evidence (*per* CUR.).—R. v. SMITH (1718), 1 Stra. 126; 93 E. R. 426.

1476. — On affidavit of alterations.—GUNSMITHS' CO. v. TURVILLE (1717), cited in 1 Stra. 307; 93 E. R. 538.

1477. — — Confined to books containing alterations—Common council books.—In an information in the nature of a *quo warranto*, relating to a common council man of the borough of M., motion was made, that the clerk of the common council might attend at the trial with the common council books, upon an affidavit, that there were many interlineations in one of the books:—*Held*: the proper officer should attend with that book.—ANON. (1731), 1 Barn. K. B. 429; 94 E. R. 289.

1478. — — — Public books.—Motion that the officer, who has the custody of the public books of the corpn., might attend with them at the trial, upon an affidavit, that there was an erasure in one of them:—*Held*: the officer should attend with that particular book, at the prosecutor's expense.—R. v. SHREWSBURY CORPN. (1733), 2 Barn. K. B. 317; 94 E. R. 525.

1479. Parish books—In prohibition—Granted.—LOCKE v. HYET, No. 1445, *ante*.

1480. Poll books—On affidavit of erasure.—MARLBOROUGH'S CASE (prior to 1720), cited in 1 Stra. 308; 93 E. R. 538.

Annotation.—*Refd.* Brocas v. London Corpn. (1720), 1 Stra. 307.

1481. — Where copy evidence—Refused unless particular reason shown.—The ct. never orders a poll to be produced without a particular reason.

We never order the original to be produced, where the copy is evidence, without such a particular foundation as has been mentioned (PRATT, C.J.).

In *Marlborough's Case*, No. 1480, *ante*, the original was ordered to be produced, but then it was upon an affidavit of a rasure (EYRE, J.).

This poll is either a public thing, like corpn. books; or else it is only in the nature of the officer's own private memorandum. If the first, then a copy is as much as you can ask, without some particular foundation. If it be only of a private nature, then you cannot have so much as a copy (FORTESCUE, J.).—BROCAS v. LONDON CORPN. (1720), 1 Stra. 307; 93 E. R. 538.

Annotation.—*Mentd.* R. v. Plymouth Borough (1728), 1 Barn. K. B. 81.

1482. Books of East India Company.—The East India Co. is compellable to produce their transfer books in evidence.—GERY v. HOPKINS (1702), 6 Mod. Rep. 129; 87 E. R. 1142.

SUB-SECT. 4.—JUDGMENT.

A. *By Default.*

1483. On non-appearance—To quo warranto—Seizure quousque.—R. v. CHESTER CORPN., No. 1416, *ante*.

1484. — After distringas—Sequestration.—HARVEY v. EAST-INDIA CO., No. 1420, *ante*.

1485. By refusal to plead—After judgment of

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seizure quousque — Final judgment.] — R. v. CHESTER CORPN., No. 1416, ante.

1486. On return of nulla bona—After distringas — Judgment pro confesso.]—There being other debts. besides a corpn., & no answer coming in from the corpn., a *subpoena* & a *distringas* should issue, & upon a return of *nulla bona*, then the bill may be taken *pro confesso* against the corpn.—*BRICKWOOD v. HARVEY* (1838), 8 Sim. 201; 2 Jur. 297; 59 E. R. 80.

B. In Summary Proceedings.

1487. R. S. C., Ord. 14 applies.]—The provisions of Order 14 apply to cases where the debts. are a corpn. By r. 1 cause may be shown against an application under that rule by affidavit "or otherwise"; r. 3 shows that this affidavit must be made by debt. Consequently, a debt. corpn. not being able to make an affidavit, can only show cause under the words "or otherwise."—*MUIRHEAD v. DIRECT UNITED STATES CABLE CO., LTD.* (1879), 27 W. R. 708.

1488. —.]—Where a writ is specially indorsed under Ord. III., r. 6, pltf. may apply for judgment under Ord. XIV., r. 1, though debts. are a corpn.—*SHELFORD v. LOUTH & EAST COAST RY. CO.* 4 Ex. D. 317; 28 W. R. 407, C. A.

1489. Affidavit of defence—How made.]—*MUIRHEAD v. DIRECT UNITED STATES CABLE CO., LTD.*, No. 1487, *ante*.

SUB-SECT. 5.—ENFORCEMENT OF JUDGMENT ORDERS.

1490. By attachment—Of property—In London.]—The goods of a corpn. may be attached in London.—*MERCHANT ADVENTURERS' CO.* (1676), 1 K. B. 206; 89 E. R. 147.

Reid. London Joint Stock Bank v. London Corpn. (1875), 1 C. P. D. 1.

1491. — In hands of third party.]—Property of a corporate trading body, in the hands of a third party, was attached in London, whereupon the corpn. entered a common appearance to the action, & applied to dissolve the attachment without putting in special bail:—*Held*: the attachment could not be dissolved without debts. also putting in special bail, although it was objected that the ordinary form of bail, to pay or render, was inapplicable to the case of a corporate body.—*ROUPELL v. GREAT LUXEMBOURG CO.* (1855), 24 L. T. O. S. 328.

See, also, No. 1507, *post*.

1492. — Of directors—Lack of corporate funds owing to mismanagement.]—*LEWIS v. PONTY-PRIDD, CAERPHILLY & NEWPORT RY. CO.* (1895), 11 T. L. R. 203, C. A.

1493. — Personal service of order disobeyed necessary.]—Obedience to an order made against a corpn. will not be enforced, under R. S. C., Ord. 42, r. 31, by the attachment of a director of the corpn. unless the order has been served personally upon the director.—*McKEOWN v. JOINT STOCK INSTITUTE, LTD.*, [1899] 1 Ch. 671; 6 Mans. 338; 68 L. J. Ch. 320; 80 L. T. 641. *Annotation*:—*Reid.* R. v. Poplar B. C., [1922] 1 K. B. 95.

See, also, No. 1495, *post*.

1494. — Not of corporation.]—*MORGAN v. OARMARTHEN CORPN.*, No. 164, *ante*.

1495. — Individual corporators disobey-

ing mandamus.]—An attachment cannot be granted against the mayor, aldermen, & burgesses of a borough for disobedience to a peremptory writ of mandamus, which had been served on the mayor & several aldermen & councillors, requiring them to pay a sum of money secured by a compensation bond under the corpn. seal, but the particular individuals, who have been concerned in disobeying the writ must be named in the rule for the attachment.—*R. v. LEDGARD* (1841), 1 Q. B. 616; 113 E. R. 1268; *sub nom.* *R. v. POOLE CORPN.*, 1 Gal. & Dav. 728.

Annotation:—*Reid.* R. v. Grimshaw (1847), 11 Jur. 965.

1496. — — —.]—Where a corporate body is guilty of disobedience to a mandamus, but some only of the members are in contempt, a rule *nisi* for a writ of attachment, together with the affidavits in support thereof, ought not to be addressed to the corporate body itself but to the recalcitrant members individually, & should specify the particular contempt alleged against each such member. If, however, the writ has been addressed to the corporate body instead of the individual members in contempt, this irregularity can be waived by the appearance of the individual members to show cause against the rule *nisi* for the writ or by their filing affidavits for that purpose.—*R. v. POPLAR BOROUGH COUNCIL* (No. 2), [1922] 1 K. B. 95; *sub nom.* *R. v. POPLAR BOROUGH COUNCIL, Ex p. LONDON COUNTY COUNCIL, Ex p. METROPOLITAN ASYLUMS BOARD* (No. 2), 91 L. J. K. B. 174; 126 L. T. 138; 85 J. P. 259; 38 T. L. R. 5; 66 Sol. Jo. (W. R.) 10; 19 L. G. R. 731, C. A.

1497. — — — For non-performance of arbitrator's award.]—Attachment does not lie against a corpn., *e.g.* an incorporated ry. co. for non-performance of an award.—*MACKENZIE v. SLIGO & SHANNON RY. CO.* (1850), 9 C. B. 250; 19 L. J. C. P. 142; 14 L. T. O. S. 397; 137 E. R. 889.

1498. By foreign attachment—Not against corporation aggregate.]—*LONDON CORPN. v. LONDON JOINT STOCK BANK*, No. 1335, *ante*.

See, also, No. 1334, *ante*.

1499. By sequestration—For contempt—Non-compliance with order of court.]—*R. v. WINDHAM*, No. 189, *ante*.

1500. — — —.]—*A.-G. v. LEICESTER CORPN.* (1834), Shelford's Law of Mortmain, 444, n.

1501. — Breach of injunction—Plea of public interest no defence.]—Where a breach of an injunction has been clearly committed:—*Held*: a writ of sequestration would issue against a board of health.

It is no defence, as against the rights of an individual pltf., that such breach has been incurred in behalf of public interests.—*SPOKES v. BANBURY BOARD OF HEALTH* (1865), L. R. 1 Eq. 42; 35 L. J. Ch. 105; 13 L. T. 453; 30 J. P. 54; 11 Jur. N. S. 1010; 14 W. R. 169, L. J.

Annotation:—*Reid.* *A.-G. v. Colney Hatch Lunatic Asylum Committee* (1863), 19 L. T. 708.

1502. — Corporation not in wilful contempt—Suspension of order.]—*A.-G. (AT THE RELATION OF LEYTON (ESSEX) URBAN DISTRICT COUNCIL) v. WALTHAMSTOW URBAN DISTRICT COUNCIL (WALTHAMSTOW SEWAGE QUESTION)* (1895), 11 T. L. R. 533.

Annotation:—*Fold.* Stancomb v. Trowbridge U. C., [1910] 2 Ch. 190.

1503. — — —.]—The principles on which the ct. acts when it is asked to sequester the property of a co. upon the ground of dis-

PART XV. SECT. 10, SUB-SECT. 5.

p. By sequestration—Against corporation—Non-compliance with order of court.]—*A.-G. v. BRANTFORD* (1859), 1 Ch. Ch. 26.—**CAN**

obedience to one of its orders are the same as those applicable where it is sought to commit a private individual to prison for contempt. In these cases, casual, or accidental & unintentional disobedience to an order of the ct. is not enough to justify either sequestration or committal; the ct. must be satisfied that a contempt of ct. has been committed, in other words, that its order has been contumaciously disregarded.—**FAIRCLOUGH v. MANCHESTER SHIP CANAL CO.** (1896), 13 T. L. R. 56, C. A.

Annotation:—**Fold. Stancomb v. Trowbridge U. C.**, [1910] 2 Ch. 190.

1504. — Breach of undertaking.—R. S. C., Ord. 42, r. 31, is not intended to alter the practice of the ct. as it existed before the promulgation of the rules, & therefore an undertaking is equivalent to an order for the purposes of that rule, & can be enforced against a corp. by sequestration.—**MILBURN v. NEWTON COLLIERY** (1908), 52 Sol. Jo. 317.

Annotation:—**Montd. R. v. Wigand, Re Wigand** (1913), 29 T. L. R. 509.

1505. — Through acts of servants.—If a person or corp. is restrained by injunction from doing, or has undertaken to do, some particular thing & commits a breach of that injunction or undertaking, he or it is liable to process for contempt if he or it in fact does or omits to do the thing; & it is no answer to say that the act or omission is not contumacious, in the sense that in doing or omitting it the person or corp. had no direct intention to disobey the order. Nor in the case of a corp. is it any answer to say that the acts are done or omitted to be done by the servants of the corp. & not by the corp. itself. The expression, wilfully disobey, in Ord. XLII., r. 38, is intended to exclude from the operation of the rule only casual, accidental or unintentional acts.—**STANCOMB v. TROWBRIDGE URBAN COUNCIL**, [1910] 2 Ch. 190; 79 L. J. Ch. 519; 102 L. T. 647; 74 J. P. 210; 26 T. L. R. 407; 54 Sol. Jo. 458; 8 L. G. R. 631.

1506. — Service of order on solicitor for company sufficient.—A motion to sequester, which is the only remedy against a co. which disobeys a prohibitive order of the ct., will not be invalidated by reason of the order disobeyed not having been personally served upon the co., although duly served upon the solicitors of the co. In the case of an individual, committal would have been the proper remedy for breach of a prohibitive order, & such committal could be had without personal service of the order disobeyed.—**ABERDONIA CARS, LTD. v. BROWN, HUGHES & STRACHAN, LTD.** (1915), 59 Sol. Jo. 598.

Effect of sequestration—On right of action against corporation.—*See* No. 1359, *ante*.

1507. By charge on corporate property—Not for breach of trust.—Where a decree has declared that a corp. is liable to make good the loss occasioned by a breach of trust; the ct. will not specifically charge the loss upon the general corporate property, but will leave pltf. to enforce his remedy by the usual process against a corp. An order, therefore, contained in such a decree, directing inquiries into the corporate property & the special trusts to which it was subject, with a view to charge the loss upon such portions of that property as should not be subject to any special trust:—*Held*: would be reversed.—**A.-G. v. EAST RETFORD CORPN.** (1838), 3 My. & Cr. 484; 8 L. J. Ch. 49; 2 Jur. 1079; 40 E. R. 1013, L. C. *Annotations*:—**Consd. A.-G. v. Newark-upon-Trent Corp.** (1842), 1 Hare, 395. *Refd.* **Solicitor-General v. Bath Corp.**, **A.-G. v. Blair** (1849), 18 L. J. Ch. 375; **Mill v. Hawker** (1874), L. R. 9 Exch. 309.

Appointment of receiver.—*See, generally, COMPANIES; RECEIVERS.*

1508. By mandamus—Form of writ.—A writ of mandamus to a corp., commanding them to pay a poor rate, omitted to state that defts. had no effects upon which a distress could be levied:—*Held*: this was a fatal objection to the writ, & might be taken after the return, or at any time before the issuing of the peremptory mandamus. *Qu.*: whether, in such a case, a mandamus will lie.—**R. v. MARGATE PIER CO.** (1819), 3 B. & Ald. 220; 106 E. R. 642.

Annotations:—**Consd. R. v. Ledgard** (1841), 1 Q. B. 616; **R. v. Poole Corp.** (1841), 1 Gal. & Dav. 728; **Clarke v. Leicestershire, etc. Canal Co.** (1845), 6 Q. B. 898; **London Corp. v. R.** (1848), 13 Q. B. 30. *Refd.* **Delamere v. R.** (1867), L. R. 2 H. L. 419.

1509. — Addressed to treasurer & directors.—The St. K. Dock Co. were incorporated by Act of Parliament, which directed that all actions against the co. should be prosecuted against the treasurer or a director for the time being; but that the body or goods, lands, etc. of such treasurer or director should not, by reason of his being deft. in such action, be liable to execution. An action having been brought by C. against the treasurer as such, & another by the co., in the name of the treasurer, against C., all matters in difference were referred to an arbitrator, who awarded that C. had cause of action against deft., as such treasurer, for a certain sum, & directed that the treasurer should pay C. that sum on demand; & as to the other suit, he awarded that the treasurer, as such, had no cause of action, and ordered him, as such treasurer, to pay C. the costs on demand:—*Held*: a mandamus would lie to the treasurer & directors, commanding them to pay the sums awarded.—**R. v. ST. KATHARINE DOCK CO.** (1832), 4 B. & Ad. 360; 1 Nev. & M. K. B. 121; 110 E. R. 491.

Annotations:—**Consd. R. v. Victoria Park Co.** (1841), 1 Q. B. 288. *Refd.* **R. v. Nottingham Old Waterworks Co.** (1837), 1 Nev. & P. K. B. 480; **Harrison v. Timmins** (1838), 4 M. & W. 510; **R. v. Eastern Counties Ry.** (1840), 2 Ry. & Can. Cas. 260; **Moffatt v. Dickson** (1853), 1 C. L. R. 294.

1510. — When granted.—Where a pltf. has obtained judgment against a corp., the ct. will not issue a mandamus to them ordering them to pay the amount of judgment merely on the ground that an execution may turn out fruitless.

Where the directors of an incorporated co., authorised to make calls on the shareholders, had made such calls, but they had not been paid, & the original directors had all ceased to be so, & no new directors had been appointed, the ct. refused a mandamus to compel the co. to enforce the payment of the calls that had been made.—**R. v. VICTORIA PARK CO.** (1841), 1 Q. B. 288; 4 Per. & Dav. 639; 113 E. R. 1142.

Annotations:—*Refd.* **Ward v. Lowndes** (1859), 1 E. & E. 940. *Montd.* **R. v. Poplar Borough Council** (No. 1), [1922] 1 K. B. 72.

See, also, No. 1395, ante.

1511. By distress infinite—To compel appearance on indictment—After removal by certiorari—From assizes or sessions.—**R. v. BIRMINGHAM & GLOUCESTER RY. CO.**, No. 1292, *ante*.

1512. By elegit—Lands conveyed for purposes of Public Health Acts—Used for other purposes.—Land which had been conveyed to a local board of health, for the purposes of the above Acts, was used as a reservoir for the supply of water to the district of the local board. A judgment having been obtained against the local board in the name of their clerk:—*Held*: the land was liable to be taken under a writ of *elegit*.—**WORRAL WATERWORKS CO. v. LLOYD** (1866), L. R. 1 C. P. 719.

Annotation:—*Refd.* **Jersey v. Uxbridge R. S. A.**, [1891] 3 Ch. 183.

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1513. — Not lands held in trust by local authority—For contributory place within district.]—In 1885 pltf. obtained an injunction against defts., restraining them from fouling a stream, & defts. were ordered to pay the costs. Pltf. did not tax his costs until 1890. In 1891 he sued out a writ of *elegit* to restrain them, & after an inquisition the sheriff delivered in execution to pltf. certain lands which had been acquired by defts. for the purpose of sewage works for the parish of N., a contributory place within their district. These lands were purchased out of moneys raised on the security of the separate rates of N. Defts. moved to set aside the *elegit*:—*Held*: (1) the lands were held by defts. in trust for the parish of N., & could not be taken in execution for a judgment debt not chargeable exclusively against that parish; (2) the costs of the action were general expenses, not chargeable against the parish of N. or the separate rates levied within it, but against the common fund of the district; & (3) the judgment could only be enforced against property acquired by means of the common fund.

The ct., however, refused to set aside the writ & inquisition, but in the exercise of its discretion under Judicature Act, 1873 (c. 66), s. 24 (5), ordered a stay of all further proceedings thereunder.—*JERSEY (EARL) v. UXBRIDGE RURAL SANITARY AUTHORITY*, [1891] 3 Ch. 183; 60 L. J. Ch. 833; 64 L. T. 858; 7 T. L. R. 568.

Annotations:—As to (1) Rejd. Croydon Corpn. v. Croydon R. C., [1908] 2 Ch. 321; *Wakefield R. C. v. Hull*, [1912] 2 K. B. 265.

See, also, No. 1421, *ante*.

SUB-SECT. 6.—COSTS.

1514. When corporation liable—Costs of new trial—To repeal charter.]—*R. v. BEWDLEY CORPN.* (1712), 1 P. Wms. 207; 24 E. R. 357.

Annotations:—Rejd. Burford Corpn. v. Lenthall (1743), 2 Atk. 551. *Mentd. R. v. Hare & Mann* (1719), 1 Stra. 146; *R. v. Pritchard* (1733), 7 Mod. Rep. 232; *Merrick v. Osselstone Hundred* (1737), Andr. 115; *R. v. Harman* (1740), 7 Mod. Rep. 402; *Richards v. Symes* (1742), 2 Atk. 319; *A.-G. v. Allgood* (1743), Park. 1; *Bright v. Eynon* (1757), 2 Keny. 53; *Money v. Leach* (1765), 1 Wm. Bl. 555; *Wilkes v. R.* (1768), Wilm. 322.

1515. — For acts ultra vires.]—*SALOP TOWN v. A.-G.* (1726), 2 Bro. Parl. Cas. 402; 1 E. R. 1025, H.L.

1516. — Costs incurred by corporator—On instructions of corporation—Though no formal resolution.]—Informations in the nature of *quo warranto* were filed against some members of a corpn. the validity of whose appointment depended on the validity of an old bye-law of the corpn. At a meeting of the corporate body the members agreed that the town clerk should defend the informations & one of the members was requested to attend to the defence on behalf of himself & the other members, but no resolution to that effect was passed & entered in their books. The

defence was unsuccessful, & the member paid the expenses, for the amount of which the corpn. gave him a bond. A bill was filed to have this bond delivered up to be cancelled:—*Held*: the bill would be dismissed with costs.—*CLIFTON DARTMOUTH HARDNESS CORPN. v. HOLDSWORTH* (1844), 13 L. J. Ch. 178; 8 Jur. 741, L. C.; *sub nom. DARTMOUTH CORPN. v. HOLDSWORTH*, 2 L. T. O. S. 454.

1517. When prosecutor liable—Record withdrawn in absence of witness—Witness member of corporation—No collusion.]—Where, in a case in which a corpn. are defts., the record is withdrawn in consequence of the absence of a material witness who is one of the corpn., & it does not appear that such absence arises from the act of or is in collusion with the other corporators, the prosecutor will be compelled to pay the costs of not proceeding to trial pursuant to notice.—*R. v. GREAT YARMOUTH CORPN.* (1822), 5 B. & Ald. 531; 106 E. R. 1285.

1518. Security for costs—On transfer of action from county to superior court—By bond with sureties.]—By County Courts Act, 1856 (c. 108), s. 36 it is provided that if in any action of tort pltf. shall claim a sum exceeding £5, & deft. shall give notice that he objects to the action being tried in the county ct., & shall give security, to be approved by the registrar, for the amount claimed, & the costs of the trial in the superior ct., all proceedings in any such action shall be stayed in the county ct. By s. 70 of the same Act it is provided that the security to be given should be a bond with sureties:—*Held*: the registrar of a county ct. is bound to take the bond of a corpn. with sureties.—*Re YOUNG v. BROMPTON, ETC. WATERWORKS CO.* (1861), 1 B. & S. 675; 31 L. J. Q. B. 14; 26 J. P. 118; 121 E. R. 865; *sub nom. R. v. KENT COUNTY COURT REGISTRAR, Re YOUNG v. BROMPTON, CHATHAM, ETC. WATERWORKS CO.*, 5 L. T. 310; *sub nom. R. v. ROCHESTER COUNTY COURT REGISTRAR*, 10 W. R. 57.

1519. — Grounds for requiring—Not appointment of receiver of plaintiff corporation.]—A corpn., pltf. in an action, cannot be required to give security for costs on the ground that a receiver of its property has been appointed by the ct.—*DARTMOUTH HARBOUR COMRS. v. DARTMOUTH HARDNESS CORPN.* (1886), 55 L. J. Q. B. 483; 34 W. R. 774.

— *By foreign corporation.]—See* Nos. 1558, 1559, *post*.

SUB-SECT. 7.—TRANSFER OF PROCEEDINGS.

1520. Transfer to Queen's Bench—By certiorari—Indictment at assizes—Or sessions.]—*R. v. BIRMINGHAM & GLOUCESTER RY. CO.*, No. 1292, *ante*.

SECT. 11.—LIMITATION OF ACTIONS.

Sec, generally, LIMITATION OF ACTIONS; PUBLIC AUTHORITIES & PUBLIC OFFICERS.

PART XV. SECT. 10, SUB-SECT. 6.

*a. Security for costs—Libel action against corporation—Security ordered—Publication in good faith.]—*Words published by defts. alleged that pltf. had tried to bribe aldermen: defts. showed publication in good faith. On an appln. for security for costs:—*Held*: entitled to security.—*GEORGIAN BAY SHIP CANAL CO. v. WORLD NEWS-PAPER CO.* (1894), 16 P. R. 320.—CAN.

—*ADCOCK v.*

MANITOBA FREE PRESS CO. (1909), 19 Man. L. R. 160.—CAN.

s. Not liable to attachment for costs.]—GREENOCK CHURCH, TRUSTEES v. LOVE (1846), 3 Kerr. 179.—CAN.

t. —.]—DOE d. ST. JOHN'S CHURCH (RECTOR) v. CRAWFORD (1855), 3 All. 266.—CAN.

a. Of application to examine officer of debtor corporation—Corporation not liable.]—JUKES v. WINNIPEG & HUDSON'S BAY RY. CO. (1888), 5

Man. L. R. 14.—CAN.

b. Discreditable defence—Corporation not allowed costs.]—DARBY v. TORONTO CITY (1889), 17 O. R. 554.—CAN.

*c. Of attorney not appointed under seal—Corporation not liable.]—*An attorney appointed by a municipal corpn., but not under seal, to conduct suits on their behalf cannot recover his costs against the corpn.—*LAURENCE v. TRURO TOWN* (1894), 26 N. S. R. 231.—CAN.

SECT. 12.—FOREIGN CORPORATIONS.

SUB-SECT. 1.—JURISDICTION OF COURTS.

1521. English directors—Restrained from applying funds ultra vires.]—PICKERING v. STEPHENSON, No. 836, ante.

To wind up foreign companies.]—See COMPANIES.

SUB-SECT. 2.—RIGHT TO SUE.

1522. In corporate name.]—A foreign corpn. may sue in their corporate name here.—HENRIQUES v. GENERAL PRIVILEGED DUTCH CO. TRADING TO WEST INDIES (1728), 2 Ld. Raym. 1532; 92 E. R. 494; *sub nom.* DUTCH WEST INDIA CO. v. HENRIQUES VAN MOSES, 1 Stra. 612.

Annotations:—*Mentd.* Doe d. Lushington v. Landaff (1807), 2 Bos. & P. N. R. 491; Alivon v. Furnival (1834), 1 Cr. M. & R. 277; Woolf v. City Steam-boat Co. (1849), 13 Jur. 456; Newby v. Colt's Patent Firearms Co. (1872), L. R. 7 Q. B. 293.

1523. — On proof of incorporation abroad—Question for jury.]—NATIONAL BANK OF ST. CHARLES v. DE BERNALES, No. 113, ante.

1524. — Effect of misnomer.]—NATIONAL BANK OF ST. CHARLES v. DE BERNALES, No. 113, ante.

1525. In name of director—Foreign bank—Not body corporate.]—La Banca Nazionale sede di Torino sued debt. as indorsee of certain bills of exchange. He pleaded that pltf's. were not a body corporate, nor entitled to sue in this country by that name & style. The ct. then permitted the name of the director of the T. branch to be inserted in the writ & subsequent proceedings, as pltf. on behalf of that branch bank, or that the pltf's. be described as represented by that director.—BANCA NAZIONALE SEDE DI TORINO v. HAMBURGER (1863), 2 H. & C. 330; 2 New Rep. 369; 8 L. T. 548; 11 W. R. 1074; 159 E. R. 137.

Annotations:—*Refd.* Mills v. Scott (1873), L. R. 8 Q. B. 496; Tetlow v. Orela (1920), 89 L. J. Ch. 465. *Mentd.* Clay v. Oxford (1866), L. R. 2 Exch. 54; Bolingbroke v. Townsend (1873), L. R. 8 C. P. 645.

SUB-SECT. 3.—LIABILITY TO BE SUED.

1526. Corporation carrying on business in jurisdiction—Though not incorporated according to *lex fori*—Cause of action arising within jurisdiction.]—

(1) A foreign corpn. carrying on business in England, although not incorporated according to English law, may be sued as debts. in an English ct. in respect of a cause of action which arose within the jurisdiction.

(2) Service of a writ of summons on the head officer of an English branch of a foreign corpn. carrying on business in England is good service, & it is not necessary to serve the process on the officer at the head office abroad.—NEWBY v. VON OPPEN & COLT'S PATENT FIREARMS MANUFACTURING CO. (1872), L. R. 7 Q. B. 293; 41 L. J. Q. B. 148; 26 L. T. 164; 20 W. R. 383.

Annotations:—*As to* (1) *Folld.* Haggin v. Comptoir D'Escompte de Paris, Mason & Barry v. Same (1889), 23 Q. B. D. 519. *Refd.* Westman v. Akt. Ekmans Mekaniska

Snickerfabrik (1876), 45 L. J. Q. B. 327; Watkins v. Scottish Imperial Insce. (1889), 5 T. L. R. 511; La Bourgogne, [1899] P. 1. *As to* (2) *Distd.* Maquereth v. G. & S. W. Ry. (1873), L. R. 8 Exch. 149. *Consd.* Royal Mail Steam Packet Co. v. Braham (1877), 2 App. Cas. 381; Haggin v. Comptoir D'Escompte de Paris, Mason & Barry v. Same (1889), 23 Q. B. D. 519. *Refd.* Nutter v. Messageries Maritimes de France (1885), 54 L. J. Q. B. 527; Baillie v. Goodwin (1886), 55 L. J. Ch. 849; Palmer v. Calc. Ry., [1892] 1 Q. B. 823; Dunlop Pneumatic Tyre Co. v. Act. für Motor und Motortfahrzeugbau vorm. Cudell, [1902] 1 K. B. 342; Saccharin Corp'n. v. Chemische Fabrik von Heyden Akt., [1911] 2 K. B. 516. *Generally, Refd.* Wood v. Anderston Foundry Co. (1888), 38 W. R. 918; Golding v. Order of Sainte Union des Sacrees Coerns (1892), 67 L. T. 309; Logan v. Bank of Scotland, [1904] 2 K. B. 495; Okura v. Forsbacka Jernverks Akt., [1914] 1 K. B. 715. *Mentd.* Cesena Sulphur Co. v. Nicholson, Calcutta Jute Mills Co. v. Same (1876), 1 Ex. D. 428; Pearks, Gunston, & Tee v. Richardson (1901), 85 L. T. 616.

1527. — Liability as English corporation.]—

A foreign corpn. carrying on business in this country is liable to be sued in an English ct., & may be served in the same manner as an English corpn. aggregate. Therefore service of a writ of summons on the head officer at the place of business in England of such a foreign corpn. is good service on the corpn. under Ord. 9, r. 8.—HAGGIN v. COMPTOIR D'ESCOMPTE DE PARIS, MASON & BARRY v. SAME (1889), 23 Q. B. D. 519; 58 L. J. Q. B. 508; 61 L. T. 748; 37 W. R. 703; 5 T. L. R. 606, C. A.

Annotations:—*Consd.* Badcock v. Cumberland Gap Park Co., [1893] 1 Ch. 362. *Refd.* Russell v. Camberfort (1889), 23 Q. B. D. 526; Palmer v. Calc. Ry. (1892), 66 L. T. 771; La Bourgogne, [1899] P. 1; Logan v. Bank of Scotland, [1904] 2 K. B. 495. *Mentd.* St. Gobain, Chauny & Cirey Co. v. Hoyermann's Agency, [1893] 2 Q. B. 96; Pearks, Gunston & Tee v. Richardson (1901), 85 L. T. 616; De Beers Consolidated Mines v. Howe (1905), 21 T. L. R. 460.

1528. Corporation not carrying on principal or material part of business—Though majority of shareholders in England—& agent & office within jurisdiction.]—(1) A foreign corpn., though having the majority of its shareholders in England, & having a London agent with a London office, but carrying on no principal or material part of its business in this country, is not liable to be sued in an English ct.

(2) Service of a writ of summons on the agent in London will be set aside on the ground of want of jurisdiction.—BADCOCK v. CUMBERLAND GAP PARK CO., [1893] 1 Ch. 362; 62 L. J. Ch. 247; 68 L. T. 155; 41 W. R. 204; 9 T. L. R. 113; 37 Sol. Jo. 116; 3 R. 188.

Annotation:—*As to* (1) *Refd.* Act. Dampskib Hercules v. Grand Trunk Pacific Ry., [1912] 1 K. B. 222.

SUB-SECT. 4.—SERVICE OF PROCESS.

A. Whether carrying on Business within Jurisdiction.

1529. General rule.]—The test of residence is not where a foreign corpn. is registered, but where it really keeps house & does its real business. The real business is carried on where the central management & control actually abides.

Whether any particular case falls within that rule is a pure question of fact, to be determined

PART XV. SECT. 12, SUB-SECT. 3.

d. Corporation carrying on business in jurisdiction—Liability on contract made & to be performed outside jurisdiction.]—If a foreign corpn. does business in N. S. W. in such manner as to make it a resident there & has a head office through whom it may be served it can be sued there upon a contract made & to be performed out of the jurisdiction.—BOWDON BROTHERS & CO. v. IMPERIAL MARINE & TRANSPORT INSURANCE CO. (1902), 2 S. R. N. S. W.

257; 19 N. S. W. W. N. 36, 177.—AUS.

1527 i. — Liability as home corporation.]—If a foreign corpn., having a branch office in N. S. W. carries on business there in such way as to be resident for the purposes of service of process then such corpn. can be properly sued in N. S. W. for every cause of action arising there on which a home corpn. may be sued.—GREAT CORAB COPPER MINING CO. v. COMPTOIR D'ESCOMPTE DE PARIS (1880), 10

N. S. W. L. R. 55; 5 N. S. W. W. N. 100.—AUS.

PART XV. SECT. 12, SUB-SECT. 4.—A.

e. General rule—Principal part of business must be carried on.]—A foreign corpn. incorporated under foreign laws, & not shown to carry on one of the principal parts of its business in O., is not "within O." & not subject to process.—PARKER v. ODETTE (1894), 16 P. R. 69.—CAN.

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not according to the construction of this or that regulation or bye-law, but upon a scrutiny of the course of business & trading.—**DE BEERS CONSOLIDATED MINES, LTD. v. HOWE**, [1906] A. C. 455; 75 L. J. K. B. 858; 95 L. T. 221; 22 T. L. R. 756; 50 Sol. Jo. 666; 13 Mans. 394; 5 Tax Cas. 198, H. L.

Annotations:—**Consd.** *New Zealand Shipping Co. v. Stephens* (1906), 96 L. T. 50. **Expld.** *American Thread Co. v. Joyce* (1913), 108 L. T. 353. **Consd.** *Smith v. Incorporated Council of Law Reporting for England & Wales*, [1914] 3 K. B. 674. **Expld.** *The Polzeath* (1916), 85 L. J. P. 241. **Consd.** *Hood v. Magee* (1918), 7 Tax Cas. 327. **Refd.** *New Zealand Shipping Co. v. Stephens* (1907), 24 T. L. R. 172; *Mitchell v. Egyptian Hotels* (1915), 59 Sol. Jo. 649; *Daimler Co. v. Continental Tyre & Rubber Co. (Great Britain)*, [1916] 2 A. C. 307; *Re Hilckes, Ex p. Muhesa Rubber Plantations*, [1917] 1 K. B. 48. **Mentd.** *Usher's Wiltshire Brewery v. Bruce*, [1915] A. C. 433.

1530. — Business carried on by agent.]—In order that a foreign corpn. may be liable to be sued in this country by reason of the fact that it has a business residence here it is necessary that the business carried on by its agents within the jurisdiction should be the business of the corpn. It is not sufficient that the corpn.'s agents are merely doing work ancillary to the business of the corpn.—**ALLISON v. INDEPENDENT PRESS CABLE ASSOCN. OF AUSTRALASIA, LTD.** (1911), 28 T. L. R. 128, C. A.

1531. — —.]—A foreign corpn. may be served within the jurisdiction if it is carrying on business in this country. It does so if contracts have been habitually made for a reasonably substantial period of time at a fixed place of business within the jurisdiction by a firm or a person there, without referring each time to the foreign corpn. for instructions, & with the result that the foreign corpn. has become bound to another party. The test in each case is to ascertain whether the agent, in carrying on the foreign corpn.'s business, makes a contract for the foreign corpn., or, in carrying on the agent's own business, sells a contract with the foreign corpn. In the former case the foreign corpn. is, & in the latter it is not, carrying on business at the agent's place.

If a firm are carrying on the foreign corpn.'s business in this country they are the proper persons to be served, & service upon one member of the firm is service upon the firm, for each member is agent for every other. In such a case there is no question of "head officer," as referred to in rule 8 of Ord. 9, as distinguished from subordinate officer. The foreign corpn. is served by service on the firm or some member of the firm.—**THAMES & MERSEY MARINE INSURANCE Co. v. SOCIETA DI NAVIGAZIONE A VAPORE DEL LLOYD AUSTRIACO** (1914), 111 L. T. 97; 30 T. L. R. 475; 12 Asp. M. L. C. 491, C. A.

1532. Stand at exhibition within jurisdiction.]—A foreign corpn., manufacturers abroad of motor cars, hired a stand at the Crystal Palace to exhibit their goods at a cycle show for a period of nine days. They had the exclusive use of the stand, which was in charge of a person whom they had sent from abroad for the purpose, whose duty it was to explain the working of the articles exhibited, to press their sales, & to obtain orders. A motor car exhibited at the stand was fitted with tyres

which pl'tfs. alleged to be an infringement of their patent. The writ in an action for the alleged infringement was served upon the servant of the foreign corpn. at the stand at the Crystal Palace:—**Held**: defts. were carrying on business & were resident within the jurisdiction, & the writ was properly served under Ord. IX., r. 8.—**DUNLOP PNEUMATIC TYRE Co. v. ACT. FÜR MOTOR UND MOTORFAHRZEUGBAU VORM. CUDELL & Co.**, [1902] 1 K. B. 342; 71 L. J. K. B. 284; 86 L. T. 472; 50 W. R. 226, C. A.

Annotations:—**Consd.** *Saccharin Corpn. v. Chemische Fabrik von Heyden Akt.*, [1911] 2 K. B. 516. **Expld.** *Okura v. Forsbacka Jernverks Akt.*, [1914] 1 K. B. 715. **Refd.** *De Beers Consolidated Mines v. Howe*, [1905] 2 K. B. 612.

1533. London office with samples—Office stationery stamped with address.]—Although an American co. has a real domicile in New York it does not follow that they have not a good domicile here for purposes of business & service. They had an office in London, where all the paper & envelopes were stamped "Gould's Manufacturing Co." as residing & carrying on business there, where samples could be inspected & machines supplied when ordered:—**Held**: this was a carrying on of business by defts. in this country.—**PALMER v. GOULD'S MANUFACTURING Co.**, [1884] W. N. 63; Bitt. Rep. in Ch. 194.

1534. Agent with authority to contract on sole responsibility—Paid by commission.]—Defts., a foreign corpn., carrying on business in Germany, employed a sole agent for England, who rented an office in London, & was paid by commission on orders obtained by him. The agent had authority to enter into contracts for the sale of defts.' goods without submitting the orders to defts. for approval, & deliveries in respect of these orders were made in some cases out of goods of defts. at wharves in London & also out of a stock of defts.' goods kept by the agent at his office. Payments for goods were made to the agent at his office, & receipts, & invoices were sent by him from there. The agent also acted as agent for another foreign firm:—**Held**: the defts. were carrying on business at the office of their agent, & so were resident within the jurisdiction, & the agent could be served there with a writ as their "head officer" within Ord. IX., r. 8.—**SACCHARIN CORPN., LTD. v. CHEMISCHE FABRIK VON HEYDEN AKT.**, [1911] 2 K. B. 516; 80 L. J. K. B. 1117; 104 L. T. 886, C. A.

Annotation:—**Consd.** *Okura v. Forsbacka Jernverks Akt.*, [1914] 1 K. B. 715.

1535. —.]—**THAMES & MERSEY MARINE INSURANCE Co. v. SOCIETA DI NAVIGAZIONE A VAPORE DEL LLOYD AUSTRIACO**, No. 1531, ante.

1536. No authority to contract on sole responsibility.]—Resps., a foreign corpn. incorporated under Swedish law, had a firm with an office in London who acted as their agents for the purpose of transmitting orders to the resps., but were without any general authority to enter into contracts without referring to the resps.:—**Held**: resps. were not carrying on business here so as to make a service on a member of their agent's firm at the firm's London office of the writ of summons in an action brought against resps. a valid service under Order IX., r. 8.—**OKURA & Co., LTD. v. FORSBACKA JERNVERKS AKT.**, [1914] 1 K. B. 715; 83 L. J. K. B. 561;

1530 i. — Business carried on by agent.]—A writ of summons may be served in O. upon a foreign corpn. in a case where the corpn. are carrying on business in O. by an agent of the corpn., who transacts or carries on

in O., or controls or manages for them in O., some part of the business which the corpn. profess to do & for which they were incorporated.—**MURPHY v. PHOENIX BRIDGE Co.** (1899), 18 P. R. 495.—**CAN.**

f. Where head office of corporation not within jurisdiction.—*R. S.* 1877, c. 47, s. 62.]—*Re GUY v. GRAND TRUNK Ry. Co.* (1884), 10 P. R. 372.—**CAN.**

110 L. T. 464; 30 T. L. R. 242; 58 Sol. Jo. 232, C. A.

Annotation.—*Refd.* Thames & Mersey Marine Insee. v. Soc. di Navigazione a Vapore del Lloyd Austriaco (1914), 111 L. T. 97.

See, also, ADMIRALTY, Vol. I., p. 172, Nos. 836, 837.

B. Sufficiency of Service.

(a) Where Business carried on within Jurisdiction.

1537. On branch office within jurisdiction—Notice admitted at head office out of jurisdiction.]—

Service of a notice of motion at the office in London is, for the purposes of a corpn., a good service, where it is admitted that at the head office in Scotland the corpn. had notice.—*MACLAREN v. STANTON* (1852), 16 Beav. 279; 22 L. J. Ch. 274; 20 L. T. O. S. 150; 1 W. R. 70; 51 E. R. 786; *on appeal, sub nom.* CARRON IRON CO. v. MACLAREN (1855), 5 H. L. Cas. 416, H. L.

Annotations.—*Expld. & Distd.* Nutter v. Messageries Maritimes de France (1885), 54 L. J. Q. B. 527. *Consd.* Haggin v. Comptoir D'Escompte de Paris, Mason & Barry v. Comptoir D'Escompte de Paris (1889), 23 Q. B. D. 519; La Bourgogne, [1899] P. 1; De Beers Consolidated Mines v. Howe, [1905] 2 K. B. 612. *Expld. & Apprvd.* Saccharin Corpn. v. Chemische Fabrik von Heyden Akt., [1911] 2 K. B. 516. *Consd.* Okura v. Forsbacka Jernverks Akt., [1914] 1 K. B. 715. *Refd.* Newby v. Colt's Patent Firearms Co. (1872), L. R. 7 Q. B. 293; Ewing v. Orr Ewing (1885), 10 App. Cas. 460, n. *Mentd.* Pennell v. Roy (1853), 22 L. J. Ch. 409; Walker v. Brooks (1856), 4 W. R. 347; Venning v. Loyd (1859), 1 De G. F. & J. 193; Maunder v. Lloyd (1862), 2 John. & H. 718; Re Boyse, Crofton v. Crofton (1880), 15 Ch. D. 591; McHenry v. Lewis (1882), 22 Ch. D. 397; Hyman v. Helm (1883), 24 Ch. D. 531; Pena Copper Mines v. Rio Tinto Co. (1911), 105 L. T. 846.

1538. — *Head branch office.*]—A co. having its registered office in Scotland, but also carrying on its business within the jurisdiction of the High Ct., & having branches in England with a head branch office for England in London, cannot be served with a writ of summons within the jurisdiction.—*WATKINS v. SCOTTISH IMPERIAL INSURANCE Co.* (1889), 23 Q. B. D. 285; 58 L. J. Q. B. 495; 60 L. T. 639; 37 W. R. 670; 5 T. L. R. 511, D. C.

Annotations.—*Refd.* Palmer v. Cale. Ry. (1892), 66 L. T. 771; Logan v. Bank of Scotland, [1904] 2 K. B. 495.

1539. — *Office of district traffic superintendent.*]—Defts., a ry. co. incorporated by Act of Parliament, had the principal part of their line in Scotland, & the office from which the whole was controlled & managed was at Glasgow. A small portion of the line was in England, & at Carlisle defts. had goods & locomotive depots, joint use of the passenger station, & an office for their district traffic superintendent. Defts.' special Act incorporated generally Companies Clauses Consolidation (Scotland) Act, 1845 (c. 17), & also incorporated Companies Clauses Consolidation Act, 1845 (c. 16), so far as might be necessary for carrying into effect the object & purposes of the Act in relation to the portion of the ry. & works in England. Pltf. sued defts. for false imprisonment & breach of contract, & served the writ by leaving it at the office of the district traffic superintendent at Carlisle. On an appln. to set aside the writ & service of the writ:—*Held*: the writ & service must be set aside, since (1) defts. were *prima facie* a Scottish co., & the incorporation of the English Act for a limited purpose, & the fact that a part of the line was in England, did not make them an English co.; (2) defts.' principal office was that at which the control & management of the undertaking was carried on, & the service at Carlisle was consequently not service

at a principal office of the deft. within s. 135 of Companies Clauses Consolidation Act, 1845 (c. 16); (3) the application of Ord. 9, r. 8, was excluded by the incorporation in defts.' special Act of the statutory provisions relating to service of process contained in Companies Clauses Consolidation (Scotland) Act, 1845 (c. 17).—*PALMER v. CALEDONIAN RY. Co.*, [1892] 1 Q. B. 823; 61 L. J. Q. B. 552; 66 L. T. 771; 40 W. R. 502; 8 T. L. R. 502; 36 Sol. Jo. 425, C. A.

Annotations.—*As to* (1) *Refd.* Logan v. Bank of Scotland (1904), 20 T. L. R. 640; The Polzeath, [1916] P. 117. *As to* (2) *Consd.* The Polzeath, [1916] P. 241.

1540. *On head office of English branch.*]—A foreign corpn. which does business in England in such a way as to be resident here may be sued here, & the writ may be served on its officer here.—*COMPAGNIE GÉNÉRALE TRANS-ATLANTIQUE v. LAW (THOMAS) & Co., LA BOURGOGNE*, [1899] A. C. 431; 68 L. J. P. 104; 80 L. T. 845; 15 T. L. R. 424; 8 Asp. M. L. C. 550, H. L.

Annotations.—*Consd.* Dunlop Pneumatic Tyre Co. v. Act. für Motor und Motorfahrzeugbau vorm. Cudell, [1902] 1 K. B. 342. *Expld.* Logan v. Bank of Scotland, [1904] 2 K. B. 495; Okura v. Forsbacka Jernverks Akt. (1914), 1 K. B. 715. *Refd.* De Beers Consolidated Mines v. Howe, [1905] 2 K. B. 612.

1541. — *NEWBY v. VON OPPEN & COLT'S PATENT FIREARMS MANUFACTURING Co., No. 1526, ante.*

1542. — *HAGGIN v. COMPTOIR D'ESCOMPTE DE PARIS, MASON & BARRY v. SAME, No. 1527, ante.*

1543. — *Booking clerk at railway station.*]—Defts. were a Scottish corpn. with running powers over an English railway to C., & their only officer in England was a booking clerk at a station at C., whose sole duty was to issue tickets to travellers. The station at C. was wholly under the control of the English co., but defts. had use of it at a rental payable to that co. Defts.' head office was in Scotland:—*Held*: the booking clerk was not a head officer or clerk of defts., who could be properly served with a writ issued against defts.—*MACKERETH v. GLASGOW & SOUTH WESTERN RY. Co.* (1873), L. R. 8 Exch. 149; 28 L. T. 167; 21 W. R. 339.

Annotations.—*Distd.* Haggin v. Comptoir D'Escompte de Paris, Mason & Barry v. Comptoir D'Escompte de Paris (1889), 23 Q. B. D. 519. *Refd.* Golding v. Order of Sainte Union des Sacrés Cœurs (1892), 8 T. L. R. 567; Saccharin Corpn. v. Chemische Fabrik von Heyden Akt., [1911] 2 K. B. 516. *Mentd.* Armstrong v. Elbinger Act. für Fabrication von Eisenbahn Materiel (1874), 23 W. R. 94.

1544. — *Manager of London agency of banking corporation.*]—Where a banking corpn., with head office & directorate abroad established an agency office in London, & carried on business there:—*Held*: the service of a writ in an action against the corpn., the cause of which action arose out of the jurisdiction, could properly be effected upon the manager of the London agency.—*LHONEUX, LIMON & Co. v. HONG KONG & SHANGHAI BANKING CORPN.* (1886), 33 Ch. D. 446; *sub nom.* DE LHONEUX, LIMON (A.) & Co. v. HONG KONG & SHANGHAI BANKING CORPN., 55 L. J. Ch. 758; 54 L. T. 863; 34 W. R. 753.

Annotations.—*Distd.* Wood v. Anderston Foundry Co. (1888), 36 W. R. 918. *Consd.* Golding v. Order of Sainte Union des Sacrés Cœurs (1892), 8 T. L. R. 605. *Appld.* La Bourgogne (1898), 79 L. T. 310. *Refd.* Haggin v. Comptoir D'Escompte de Paris, Mason & Barry v. Comptoir D'Escompte de Paris (1889), 23 Q. B. D. 519; Watkins v. Scottish Imperial Insee. (1889), 5 T. L. R. 511; Compagnie Générale Trans-Atlantique v. Law, La Bourgogne, [1899] A. C. 431.

1545. — *Mother superior of convent.*]—Action brought by pltf., who had been a nun

Sect. 12.—Foreign corporations: Sub-sect. 4, B. (a)
, C.; sub-sects. 5 & 6.]

in the debt. Order of La Sainte Union des Sacrées Cœurs, to recover a sum of money that had been paid out of her income during the years she was in the order. Pltf. was admitted a member of the order in England, & her income was always paid to the order in England. The writ was taken out & served upon the Mother Superior at the convent in England; she had no authority or duty in connection with the management or government of the debt. order. The head house of the association being in France, the affairs were managed there by the Mother-General & a council, residing in France.

Ord. 9, r. 8, says that "in the absence of any statutory provision regulating service of process, every writ of summons issued against a corpn. aggregate may be served on the mayor, or other head officer, or on the town clerk, treasurer, or secretary of such corpn."—*Held*: the Mother Superior of the convent in England was not a person within the meaning of Ord. 9, r. 8, & service upon her was bad.—*GOLDING v. SAINTE UNION DES SACRÉES CŒURS (ORDER OF)* (1892), 67 L. T. 605; 9 T. L. R. 1; 4 R. 93, C. A.

1546. — Secretary.]—Defts. were a co. incorporated by a stat. of the Dominion of Canada for the purpose of constructing & working a railway in that country; their office was in Montreal. Four of the directors, resident in this country, formed the London committee, which, under powers conferred by the co.'s bye-laws, dealt with the issue of loan capital to be used for the construction of the railway. The whole of the loan capital, amounting to many millions, was raised by the London committee & remitted by them to Canada. The London committee, which had a secretary & staff, met at an office in the city of London, for which they paid no rent; the minute-books, ledgers, pass-books, etc. of the committee were kept at that office. The money raised by the committee was paid into an account at a London bank, out of which account remittances were made to Canada. No business of the co., other than the financial business of raising the loan capital, was transacted by the London committee. A writ in an action of demurrage having been issued by pltf. against defts.:—*Held*: defts. were carrying on their business at the office used by the London committee so as to be resident at a place within the jurisdiction, & the secretary could, therefore, be properly served there with the writ.—*ACT. DAMPSKIB HERCULES v. GRAND TRUNK PACIFIC RY. CO.*, [1912] 1 K. B. 222; 105 L. T. 695; 28 T. L. R. 28; 56 Sol. Jo. 51; *sub nom.* *AKT. DAMPSKIB HERCULES v. GRAND TRUNK PACIFIC RY.*, 81 L. J. K. B. 189, C. A.

Annotation:—*Consd. Okura v. Forsbacka Jernverks Akt.*, [1914] 1 K. B. 715.

1547. Firm acting as agent—Service on one member.]—*THAMES & MERSEY MARINE INSURANCE CO. v. SOCIETA DI NAVIGAZIONE A VAPORE DEL LLOYD AUSTRIACO*, No. 1531, *ante*.

1548. Corporation carrying on business by licence.]—Pltf. were English solrs. & defts. were bankers in Berlin. Pltf. had an account with the Berlin office of defts., who had also a branch in London. On Aug. 1, 1914, pltf. had a credit balance. On Aug. 4 war broke out between England & Germany. On Aug. 10 a licence under the Aliens Restriction Act, 1914 (c. 12), was

issued to the branch to carry on business. On Aug. 27 pltf. issued a writ for the amount of the balance & it was served on the branch, & an appearance was entered by defts.:—*Held*: the service was good, & as it was therefore no answer to the claim to say that it could not be discharged by the branch, pltf. were entitled to judgment, & as Courts (Emergency Powers) Act, 1914, c. 78, did not apply in the case of alien enemies it was not necessary to ask for leave to issue execution.—*LEADER, PLUNKET, & LEADER v. DIRECTION DER DISCONTO-GESELLSCHAFT* (1914), 31 T. L. R. 83; 59 Sol. Jo. 147; *subsequent proceedings*, [1915] 3 K. B. 154, C. A.

Annotation:—*Mentd. Clare v. Dresdner Bank*, [1915] 2 K. B. 576.

(b) Where Business not carried on within Jurisdiction.

1549. Service on secretary—Temporarily within jurisdiction.]—By 8 & 9 Vict. c. clxii. incorporating the Caledonian Ry. Co., six miles of which are in England & the rest in Scotland, the Companies Clauses Consolidation Act, 1845 (c. 16), is incorporated with the co.'s Act, so far as is necessary for carrying into effect the English portion of the line. The principal office of the co. was in Scotland, & they had no office out of Scotland, except a station at Carlisle, used only for receiving passengers & goods. Pltf. having a claim in debt against the co., in respect of their amalgamation with another Scottish Ry.:—*Held*: service of the writ of summons on the secretary of the co. while attending a meeting in London was good service.—*WILSON v. CALEDONIAN RY. CO.* (1850), 5 Exch. 822; 1 L. M. & P. 731; 6 Ry. & Can. Cas. 772; 20 L. J. Ex. 6; 16 L. T. O. S. 215; 15 Jur. 17; 155 E. R. 360.

Annotations:—*Refd. Palmer v. Cale. Ry.*, [1892] 1 Q. B. 607. *Mentd. Kilkenny & G. S. & W. Ry. v. Feilden* (1851), 20 L. J. Ex. 14; *Naef v. Mutter* (1862), 12 C. B. N. S. 816.

1550. Service on director—Temporarily within jurisdiction.]—Service of a writ of summons in an action against an Irish joint stock co. having no office or place of business in England cannot be made on one of the directors while in England.—*TOWNE v. LONDON & LIMERICK S. S. CO.* (1859), 5 C. B. N. S. 730; 28 L. J. C. P. 217; 32 L. T. O. S. 277; 5 Jur. N. S. 846; 7 W. R. 189; 141 E. R. 294. *Annotation*:—*Refd. Watkins v. Scottish Imperial Insee.* (1889), 5 T. L. R. 511.

1551. Service on agent.]—Deft. co., having head offices in France, had agents & correspondents, among other places, in London. Service of a writ of summons on an agent in London was set aside on the ground that it was not service on the "head officer, clerk, treasurer, or secretary of such corpn." within R. S. C., Ord. 9, r. 8.—*NUTTER (WALTER) & CO. v. MESSAGERIES MARITIMES DE FRANCE* (1885), 54 L. J. Q. B. 527; 1 T. L. R. 644.

Annotations:—*Distd. Haggin v. Comptoir D'Escompte de Paris, Mason & Barry v. Comptoir D'Escompte de Paris* (1889), 23 Q. B. D. 519. *Expld. La Bourgogne* (1898), 68 L. J. P. 9. *Refd. Tharsis Sulphur & Copper Co. v. Soc. des Métaux* (1889), 58 L. J. Q. B. 435; *Golding v. Order of Sainte Union des Sacrés Cœurs* (1892), 8 T. L. R. 567.

1552. —.]—*BADCOCK v. CUMBERLAND GAP PARK CO.*, No. 1528, *ante*.

1553. Special provision in contract.]—A contract for delivery & acceptance of certain quantities of copper between a co. whose registered office was in the United Kingdom, & a co. incorporated under decrees & articles of assocn. according to the law of France, with their principal office in Paris & having no place of business in the United

PART XV. SECT. 12, SUB-SECT. 4.—B. (b).

k. Service on officers—Not sufficient to serve agent—O. S. c. 49, s. 19.]—*HUDSON BAY CO. v. PUGSLEY* (1888), 27 N. B. R. 15.—*CAN.*

Kingdom, contained a clause that it should be construed according to English law, & that a firm of metal brokers in London should be agents for the French co., on whom any writ or other legal process arising out of the contract might be served. Subsequently the French co. was declared to be in judicial liquidation under the direction & supervision of the Tribunal of Commerce of the Seine:—*Held*: service of a writ in an action by the English co. upon a member of the firm named in the contract was a good service, although not a service within the rules of the Supreme Ct.—**THARSIS SULPHUR & COPPER CO., LTD. v. SOCIÉTÉ DES MÉTAUX** (1889), 58 L. J. Q. B. 435; 60 L. T. 924; 38 W. R. 78; 5 T. L. R. 618, D. C.

Annotations:—**Expld.** *British Wagon Co. v. Gray*, [1896] 1 Q. B. 35. **Expld. & Apprvd.** *Montgomery, Jones v. Liebhenthal*, [1898] 1 Q. B. 487.

1554. Service out of jurisdiction—Service of notice of writ—By leave.—Leave may be given under R. S. C., Ord. 2, r. 4, to issue a writ of summons against a foreign corpn., but service of notice of the writ only, & not of the writ itself, can be allowed under R. S. C., Ord. 11, r. 1.—**WESTMAN v. AKT. EKMANS MEKANISKA SNICKARE-FABRIK** (1876), 1 Ex. D. 237; 45 L. J. Q. B. 327; 40 J. P. 712; 24 W. R. 405; 2 Char. Pr. Cas. 217. *Annotations*:—**Folld.** *Re Howard, Padley v. Camphausen* (1878), 10 Ch. D. 550. **Expld.** *Sedgwick v. Yodras Mining Co.* (1887), 35 W. R. 780.

1555. — Application of R. S. C., Ord. 11, r. 1.—(1) R. S. C., Ord. 11, r. 1, which provides for service of a writ of summons out of the jurisdiction, applies to actions against a foreign corpn. resident out of the jurisdiction.

(2) When in such an action pltf. has issued the writ & served notice thereof by leave of the ct. or a judge he need not obtain any further leave to proceed & sign judgment for default of appearance under R. S. C., Ord. 13.—**SCOTT v. ROYAL WAX CANDLE CO.** (1876), 1 Q. B. D. 404; 45 L. J. Q. B. 586; 34 L. T. 683; 24 W. R. 668; 2 Char. Pr. Cas. 179.

Annotation:—**Generally, Mentd.** *Bacon v. Turner* (1876), 3 Ch. D. 275.

— **Writ in personam.**—*See* ADMIRALTY, Vol. I., p. 172, No. 835.

C. Other Cases.

1556. Whether Common Law Procedure Act, 1852 (c. 76), applicable.—Sects. 16–19 of the above Act do not apply to the case of a foreign corpn. resident abroad.—**INGATE v. LLOYD AUSTRIACO** (1858), 4 C. B. N. S. 704; 27 L. J. C. P. 323; 31 L. T. O. S. 236; 4 Jur. N. S. 975; 6 W. R. 659; 140 E. R. 1269.

Annotations:—**Consd.** *Newby v. Colt's Patent Firearms Co.* (1872), L. R. 7 Q. B. 293; *Armstrong v. Die Elbinger Act. für Fabrication von Eisenbahn Material* (1874), 23 W. R. 94; *Westman v. Akt. Ekmans Mekaniska Snickarefabrik* (1876), 1 Ex. D. 237; *Scott v. Royal Wax Candle Co.* (1876), 1 Q. B. D. 404. **Expld. & Distd.** *Haggin v. Comptoir D'Escompte de Paris, Mason & Barry v. Comptoir D'Escompte de Paris* (1889), 23 Q. B. D. 519. **Refd.** *Royal Mail Steam Packet Co. v. Braham* (1877), 2 App. Cas. 381; *Golding v. Order of Sainte Union des Sacrés Cœurs* (1892), 8 T. L. R. 567.

1557. "Statutory provisions regulating service of process"—Citation (Amendment) Scotland Act, 1882 (c. 77)—**Confined to Scottish process.**—Ord. 9, r. 8, provides for the service of writs of summons

on corps. "in the absence of any statutory provisions regulating service of process." The writ of summons in an action against the Bank of Scotland, upon a cause of action which apparently arose in Scotland, was served upon the manager of a branch of deft. bank at the office of that branch in London in accordance with Ord. 9, r. 8. Deft. bank was constituted under stats. which contained no provision for the service of process upon the bank. The above Act relates exclusively to process issued from cts. in Scotland, & contains no provision applicable to the service of process issuing from an English ct.:—*Held*: the service effected upon deft. bank was valid under Ord. 9, r. 8.—**LOGAN v. BANK OF SCOTLAND**, [1901] 2 K. B. 495; 73 L. J. K. B. 794; 91 L. T. 252; 53 W. R. 39; 20 T. L. R. 640; 48 Sol. Jo. 603, C. A.

SUB-SECT. 5.—SECURITY FOR COSTS.

1558. Company with office in jurisdiction—Majority of shareholders resident in jurisdiction.—An Irish railway co. carrying on business at Westminster was compelled to give security for costs, though it had personal property in England, & most of its shareholders resided there.

This co., being an Irish corpn., we must consider it on the same footing as an individual resident in Ireland. In order to prevent the operation of the general rule it is not enough to show that, at the time of the application, pltf. has personal property in this country sufficient to satisfy the costs, because such property is of a fluctuating nature, & might not be available when judgment was obtained. The only exceptions to the rule are where one of several pltf.s. resides in this country, or where there is real estate here. We must treat this co. as an Irish individual, & the fact of some of the shareholders being resident here is no sufficient reason to take the case out of the general rule (**PARKE, B.**).—**KILKENNY & GREAT SOUTHERN & WESTERN RY. CO. v. FEILDEN** (1851), 6 Exch. 81; 2 L. M. & P. 124; 6 Ry. & Can. Cas. 785; 20 L. J. Ex. 141; 16 L. T. O. S. 418; 15 Jur. 191; 155 E. R. 462.

Annotations:—**Distd.** *Cesena Sulphur Co. v. Nicholson, Calcutta Jute Mills Co. v. Nicholson* (1876), 1 Ex. D. 428. **Refd.** *Swinbourn v. Carter* (1853), 23 L. J. Q. B. 16.

See, now, Judgments Extension Act, 1858 (c. 54).

1559. On application for discovery.—That the party seeking discovery is a foreigner & has, therefore, already given security for costs, is no ground for dispensing with the required deposit.

In the case of a very poor man who had a *bond fide* claim for a large amount I might possibly dispense with this requirement. But the party seeking discovery in this case is a foreign corpn. (**FIELD, J.**).—**COMPAGNIE DU PACIFIQUE v. GUANO CO.**, [1883] W. N. 166; Bitt. Rep. in Ch. 81.

See, now, R. S. C., Ord. 31, r. 26.

SUB-SECT. 6.—JUDGMENT.

1560. Judgment by default—After leave to serve out of jurisdiction—No further leave necessary to sign judgment.—**SCOTT v. ROYAL WAX CANDLE CO.**, No. 1555, *ante*.

1. *Service out of jurisdiction—Service of notice of writ.*—**CROTTY v. OREGON TRANSCONTINENTAL RY. CO.** (1885), 3 Man. L. R. 182.—**CAN.**

m. — *At head office of corporation.*—**YOUNG v. DOMINION CONSTRUCTION CO.** (1900), 19 P. R. 139.—**CAN.**

PART XV. SECT. 12, SUB-SECT. 5.

n. *Company carrying on business through agent—Property within juris-*
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diction not available in execution—Whether assets to answer motion for security.—**WEISBACH INCANDESCENT GAS LIGHT CO. v. ST. LEGER** (1895), 16 P. R. 382.—**CAN.**

o. *Affidavit in support of summons for security not stating chief place of business of corporation—Summons dismissed.*—**COMMERCIAL BANK v. KIRKHAM** (1899), 6 Terr. L. R. 479.—**CAN.**

p. *Company with no office in*

jurisdiction—& having no corporate property within jurisdiction.—**NORTH AMERICAN COLONIZATION SOCIETY v. ARCHER** (1843), 1 L. T. O. S. 264.—**IR.**

PART XV. SECT. 12, SUB-SECT. 6.

q. *Application for final judgment—Affidavit in support not establishing plaintiff's incorporation—Application dismissed.*—**PACIFIC COMMERCIAL CO. v. BARNETT**, [1921] V. L. R. 196.—**AUS.**

Part XVI.—Dissolution.

SECT. 1.—BY SURRENDER OF CHARTER OR PROPERTY.

1561. Whether corporation dissolved by—Surrender of possessions by dean & chapter—Without consent of bishop.]—A dean & chapter may surrender to the King without the consent of the bishop & the corpn. will be dissolved thereby.—DUBLIN (ARCHBP.) v. BRUERTON (1569), 3 Dyer, 282 b; 73 E. R. 633.

1562. ———.]—NORWICH'S (DEAN & CHAPTER) CASE, No. 81, *ante*.

1563. ——— Surrender of charter—New charter granted.]—(1) If the charter of a corpn. is surrendered & a new charter granted the old corpn. is dissolved & lands which were given to it by private persons revert to the estates of the donors.

(2) If the mayor or other members of a corpn. without the consent of the major part of the body corporate occasion the surrender of the charter any particular person damnified by such surrender may recover his damages from those who occasioned it.

(3) If corporators object to a proposal to grant a new charter alleged to be in infringement of these rights they may enter *caveats* with the Lord Chancellor or the A.-G.—R. v. SACHEVERELL (1864), 10 State Tr. 30.

Annotation :—*Generally*, *Mentd.* Cope v. Barber (1872), 20 W. R. 885.

1564. ——— Terms effecting dissolution.]—R. v. GREY (1725), 8 Mod. Rep. 358; 88 E. R. 256.

1565. Surrender against consent of members—Whether restrained by court.]—WARD v. SOCIETY OF ATTORNIES, No. 185, *ante*.

Recovery of damages.]—See No. 1563, *ante*.

Creation of corporations by charter, *see* Part II., Sect. 3, sub-sect. 3, *ante*.

New charters, *see* Part II., Sect. 5, *ante*.

SECT. 2.—BY ALIENATION OF PROPERTY.

1566. Alienation of all lands & possessions—Corporation not extinguished.]—If the abbot & convent give all their lands & possessions to another in fee, yet the corpn. remains.—ANON. (1528), Bro. N. C. 82; 73 E. R. 883.

1567. ———.]—A corpn. in general can exist without lands or possessions annexed to it, for this reason, although it grants away its possessions still the corpn. continues.—HAYWARD v. FULCHER (1628), W. Jo. 166; Palm. 491; 82 E. R. 88.

Annotation :—*Reid.* R. v. London Corpn. (1690), 12 Mod. Rep. 17.

Surrender of possessions, *see* Sect. 1, *ante*.

PART XVI. SECT. 1.

r. Whether corporation dissolved by—Surrender of charter—Appointment of receiver.]—GRAND COUNCIL PROVINCIAL WORKMEN'S ASSOCN. v. MCPHERSON (1912), 12 E. L. R. 229; 16 D. L. R. 853.—CAN.

PART XVI. SECT. 3.

a. How forfeiture occasioned—By breach of conditions of incorporation—Not necessarily total dissolution.]—A bank suspended specie payments, & before sixty days thereafter assigned their property to trustees, & ceased to do business as a bank. It was provided by the charter that a suspension of specie payment for sixty days should operate as a forfeiture of the charter:—*Held*: the loss of the charter was not a dissolution for all purposes; but some formal process

was necessary finally to determine it & put an end to all the functions of the corporation: that the bank was still a corporate body.—BROOKE v. BANK OF UPPER CANADA (1867), 4 P. R. 162.—CAN.

t. ——— Not *ipso facto* forfeiture.]—R. S. (1887), c. 160, s. 54, provided that if a timber slide co. did not complete its works within two years from the date of incorporation it should forfeit all its corporate & other powers unless further time was granted, by the county or counties, district or districts, in or adjoining which the work was situate, or by the Comr. of Public Works:—*Held*: the non-completion of the work within two years would not, *ipso facto*, forfeit the charter, but only afford grounds for proceeding by the A.-G. to have a forfeiture declared.—HARDY LUMBER

SECT. 3.—BY FORFEITURE.

1568. How forfeiture occasioned—Breach of trust—Rule applicable to Corporation of London.]—A corpn. aggregate may be forfeited by a breach of the trust upon which it was granted, & the Corpn. of London is in this respect like every other corpn., & therefore if the mayor & common council extort, under pretence of a bye-law, money from all the King's subjects who shall resort to the city markets, or make & publish a scandalous & libellous petition, it is a forfeiture of their franchises, for the acts of the mayor & council are the acts of the corpn. for which an information in the nature of a *quo warranto* may be maintained, & on judgment for the King the franchises may be seized into the King's hands.—R. v. LONDON CORPN. (1682), 2 Show. 263; 8 State Tr. 1039; E. B. & E. 122, n.; 89 E. R. 930.

Annotations :—*Reid.* R. v. Starkey (1837), 7 Ad. & El. 95; Newcastle v. Workson U. C., [1902] 2 Ch. 145.

1569. ——— Maladministration.]—R. v. LONDON CITY, No. 5, *ante*.

1570. ———.]—A corpn. may be dissolved for it is created upon a trust & if that be broken it is forfeited (*per cur.*).—SMITH'S CASE (1691), 4 Mod. Rep. 52; 87 E. R. 258; *sub nom.* R. v. LONDON CORPN., 12 Mod. Rep. 17; Holt, K. B. 168; 1 Show. 274.

Annotations :—*Reid.* R. v. Grosvenor (1734), 7 Mod. Rep. 198; Colchester Corpn. v. Seaber (1766), 3 Burr. 1866; R. v. Amery (1788), 2 Term Rep. 515; Colchester Corpn. v. Brooke (1845), 7 Q. B. 339.

1571. ———.]—EASTERN ARCHIPELAGO CO. v. R., No. 1578, *post*.

1572. ——— Breach of conditions of incorporation—Injunction to restrain proposed breach.]—RENDALL v. CRYSTAL PALACE CO., No. 940, *ante*.

1573. ———.]—JENKIN v. PHARMACEUTICAL SOCIETY OF GREAT BRITAIN, No. 944, *ante*.

1574. Rights arising on forfeiture—Seizure of franchises of corporation.]—R. v. LONDON CORPN., No. 1568, *ante*.

1575. ——— Without dissolving corporation.]—R. v. LONDON CITY, No. 5, *ante*.

1576. ———.]—The King may, at his discretion, seize the franchise of a corpn. guilty of an offence amounting to a forfeiture.—R. v. PONSONBY (1755), 1 Ves. 1; 1 Keny. 1; Say. 245; 30 E. R. 201.

Annotations :—*Reid.* Lynn Regis Corpn. v. London Corpn. (1791), 4 Term Rep. 130; R. v. Whitwell (1792), 5 Term Rep. 85.

SECT. 4.—BY REVOCATION.

1577. Right of Crown—General rule.]—R. v. CAMBRIDGE (VICE-CHANCELLOR), No. 42, *ante*.

Co. v. PICKEREL RIVER IMPROVEMENT CO. (1898), 29 S. C. R. 211.—CAN.

a. ——— Information by Attorney-General.]—DOMINION SALVAGE & WRECKING CO. v. A.-G. OF CANADA (1892), 21 S. C. R. 72.—CAN.

PART XVI. SECT. 4.

1577 i. Right of Crown—General rule.]—Where the Crown has created a corpn. by charter it cannot alter or recall the charter except in three cases: (1) Where the Crown has in the original charter, or in a subsequent charter made valid by acceptance, expressly reserved power to alter the charter; (2) where the corpn. is wholly or partially moribund; (3) where the corpn. consents to the alteration.—GRAY & CATHART v. TRINITY COLLEGE, DUBLIN (PROVOST, ETC.), [1910] 1 I. R. 370.—IR.

1578. — Breach of condition subsequent—Express provision for revocation under Great Seal.]—*Sci. fa.* to repeal a charter incorporating a trading co. The charter directed amongst other things, that the co. should not begin business until it had been certified to the President of the Board of Trade by at least three of the directors that at least one-half of the capital had been subscribed for, & at least £50,000 paid up. The charter contained a proviso, that in case the corpn. should not comply with any of the directions & conditions in the letters patent contained, it should be lawful for the Queen, by any writing, under the Great Seal or under the sign manual, to revoke the charter either absolutely or under such terms & conditions as she should think fit. The declaration in *sci. fa.* which was at the relation of a private prosecutor, contained, amongst other things, a suggestion that before the co. began business a certificate was given by the directors that £50,000 had been paid up, which was false, in fact, to their knowledge; & this suggestion being traversed, the verdict was found for the Crown. On a rule to arrest the judgment on the ground that the declaration did not show that the Queen had by writing under the Great Seal or sign manual revoked the charter, the Ct. of Q. B. was equally divided in opinion:—*Held*: the express power reserved by the charter to revoke it wholly, or in part, was in addition to, & consistent with, the implied right of the Crown to revoke it by *sci. fa.* on breach of a condition subsequent; there was no distinction in this respect between a *sci. fa.* by a private prosecutor in the name of the Crown, & under the fiat of the A.-G., & one at the instance of the Crown; & the declaration in *sci. fa.* was sufficient.

A corpn. may be dissolved for either misuser or abuse, & there is a tacit or implied condition annexed to all such grants as the present that they shall not be misused or abused, & that if they are the charter or franchise is forfeited (MARTIN, B.).—*EASTERN ARCHIPELAGO CO. v. R.* (1853), 2 E. & B. 856; 23 L. J. Q. B. 82; 22 L. T. O. S. 198; 18 Jur. 481; 2 W. R. 77; 2 C. L. R. 145; 118 E. R. 988, Ex. Ch.; *subsequent proceedings, sub nom.* *R. v. EASTERN ARCHIPELAGO CO.* (1854), 4 De G. M. & G. 199, L. C.

Annotations.—*Consol. British South Africa Co. v. De Beers Consolidated Mines*, [1910] 1 Ch. 354. *Reid. Rendall v. Crystal Palace Co.* (1858), 22 J. P. 321; *R. v. Hughes* (1866), L. R. 1 P. C. 81; *Riche v. Ashbury Ry. Carriage & Iron Co.* (1874), L. R. 9 Exch. 224; A.-G. of Duchy of Lancaster *v. Devonshire* (1884), 14 Q. B. D. 195; *Simpson v. A.-G.*, [1904] A. C. 476. *Mentd. Jackson v. Beaumont* (1855), 19 J. P. 532.

Effect of new charter.]—See Part II., Sect. 5, sub-sect. 5, ante.

SECT. 5.—INCAPACITY BY ABSENCE OF INTEGRAL PART.

1579. General rule.]—When an integral part of a corpn. is gone, & the corpn. has no power of restoring it, or of doing any corporate act, the corpn. is so far dissolved that the Crown may grant a new charter.

Then has this new charter been accepted or not? The majority of the grantees are stated to have accepted it, & the refusal by a few of the body was certainly not sufficient to repel the acceptance

of the rest (LORD KENYON, C.J.).—*R. v. PASMORE* (1789), 3 Term Rep. 199; 100 E. R. 531.

Annotations.—*Reid. R. v. Bellringer* (1792), 4 Term Rep. 810; *Colchester Corpn. v. Brooke* (1845), 7 Q. B. 339; *Re Higginson & Dean, Ex p. A.-G.*, [1899] 1 Q. B. 325.

1580. Head of corporation not chosen within time prescribed—No provision for continuing in office till new officer chosen.]—Previous to 11 Geo. 1, c. 4, the election of a mayor must have been on the charter day.

If a mayor be not chosen by the time prescribed by the charter, & there be no provision in the charter for the old mayor's continuing on until a new mayor is chosen in, the corpn. is dissolved & consequently cannot proceed to a new election (PARKER, C.J.).—*BANBURY CORPN. CASE* (1716), 10 Mod. Rep. 346; 88 E. R. 758.

Mayor of municipal corporation.]—See LOCAL GOVERNMENT.

1581. Corporators of one class—Dead.]—The corpn. of S. was founded by the name of the Co-brethren & Sisters. All the sisters were dead, & the co-brethren made a lease:—*Held*: the lease was void, for then there was no corpn.—*LOVELACE v. MANWOOD* (1594), 2 D'Anvers Abr. 217, pl. 1; 3 Dyer, 282 b, pl. 27; 73 E. R. 634.

1582. — Reduced below proper number.]—The number of capital burgesses required by a charter had not been elected by filling up vacancies on death.

I do not think the corpn. were dissolved, but I doubt whether they could act (POWELL, J.).—*R. v. BEWDLEY CORPN.* (1712), 1 P. Wms. 207; 24 E. R. 357.

Annotations.—*Reid. R. v. Hare & Mann* (1719), 1 Stra. 146; *Musgrave v. Nevinston* (1724), 1 Stra. 584; *R. v. Pritchard* (1733), 7 Mod. Rep. 232; *Merrick v. Osselstone Hundred* (1737), Andr. 115; *Smith d. Dormer v. Parkhurst* (1738), Andr. 315; *R. v. Harman* (1740), 7 Mod. Rep. 402; A.-G. *v. Allgood* (1743), Park. 1; *Burford Corpn. v. Lenthall* (1743), 2 Atk. 551; *Money v. Leach* (1765), 1 Wm. Bl. 555; *Wilkes v. R.* (1768), Wilm. 322; *Nottingham Town Case* (1866), 15 L. T. 57. *Mentd. Daniel v. Parkhurst* (1732), 2 Barn. K. B. 214; *Richards v. Sims* (1742), 9 Mod. Rep. 328; *Bright v. Eynon* (1757), 2 Keny. 53.

1583. — —.]—The election of mayor was to be made by the majority of an assembly composed of several integral definite parts of a corpn. & other burgesses & inhabitants for the time being:—*Held*: one of such definite integral parts, being reduced below a majority of its proper number, could no longer be represented in the corporate assembly, & the whole corpn. was thereby dissolved, being no longer capable of continuing itself.—*R. v. MORRIS* (1803), 4 East, 17; 102 E. R. 736.

Annotations.—*Reid. R. v. Bower* (1823), 1 B. & C. 492; *R. v. Slythe* (1827), 6 B. & C. 240.

1584. — —.]—*R. v. WHITE*, No. 1405, ante.

1585. Judgment of ouster against members—Corporation becoming incapable of continuing—Revival by new charter.]—A corpn. being disabled to act & therefore accepting a new charter is not dissolved but dormant, & after such acceptance is the same corpn. as before, & may sue on a bond given to the original corpn.

The fact has happened, & may often happen, that by judgment of ouster against persons illegally elected, no regular election can again be had, & the corpn. is commonly said to be thereby dissolved. But till this case it was never doubted but that by a new charter it was revived, unless where there is a change in the name or constitution, & even there, it has been determined to be still

PART XVI. SECT. 5.

b. Majority of members in exist-

ence—*Corporation capable of exercising all its functions.]—RUTTER v. ZEEHAN DISTRICT HOSPITAL, HARRIS v. ZEEHAN*

DISTRICT HOSPITAL (1912), 8 Tas. L. R. 90.—AUS.

Sect. 5.—Incapacity by absence of integral part.
Sects. 6, 7 & 8. Part XVII.]

the same (LORD MANSFIELD, C.J.).—COLCHESTER CORPN. v. SEABER (1766), 1 Wm. Bl. 591; 3 Burr. 1866; 96 E. R. 340.

Annotations:—Consd. R. v. Pasmore (1789), 3 Term Rep. 199. **Reid.** Colchester Corpn. v. Brooke (1845), 7 Q. B. 339; *Re* Higginson & Dean, *Ex p.* A.-G., [1899] 1 Q. B. 325.

1586. ————.]—COLCHESTER CORPN. v. BROOKE, No. 315, ante.

Effect of acceptance of new charter.]—See Part II., Sect. 5, sub-sect. 5, *ante*.

See, also, CHARITIES, Vol. VIII., p. 373, No. 1821.

SECT. 6.—FAILURE OF OBJECTS.

1587. General rule.]—If a corpn. were made to a particular purpose, & they divest themselves of all right so that they cannot answer the end of their institution, it is thereby dissolved (HOLT, C.J.).—R. v. LONDON CORPN. (1691), as reported in 12 Mod. Rep. 17; Holt, K. B. 168; 1 Show. 274; 88 E. R. 1135; *sub nom.* Smith's Case, 4 Mod. Rep. 52.

Annotations:—**Reid.** R. v. Grosvenor (1734), 7 Mod. Rep. 198; Colchester Corpn. v. Seaber (1766), 3 Burr. 1866; R. v. Amery (1788), 2 Term Rep. 515; Colchester Corpn. v. Brooke (1845), 7 Q. B. 339.

1588. Grant of land by Crown rendering rent—Release of rent.]—*Semble*: a grant by the Crown of land to the good men of I., rendering a rent, creates a corpn. to this intent alone; & if the Crown release the rent, the corpn. is *ipso facto* dissolved.—ANON. (1554), Dyer, 100 a; 73 E. R. 219. **Annotations:—****Reid.** Canterbury's Case (1596), 2 Co. Rep. 46 a; R. v. Mashiter (1837), 6 L. J. K. B. 121; Lockwood v. Wood (1844), 6 Q. B. 50; Rivers v. Adams, *Same v.* Isaacs, *Same v.* Ferrett (1878), 48 L. J. Q. B. 47. **Mentd.** Sutton's Hospital Case (1612), 10 Co. Rep. 1 a.

SECT. 7.—BY LEGAL PROCEEDINGS.

As to *Quo Warranto* & *Scire Facias*, generally, see CROWN PRACTICE.

As to winding up building societies, see Vol. VII., p. 502 *et seq.*

As to winding up companies, see COMPANIES.

1589. General rule.]—Then it was argued that admitting the old corpn. to be in a state to be dissolved, that would not be effected without a *sci. fa.* to repeal the former grant, or a judgment on a *quo warranto*. But I think those modes are only necessary to be pursued in the following cases. A *sci. fa.* is proper where there is a legal existing body, capable of acting, but who have been guilty of an abuse of the power entrusted to them; for as a delinquency is imputed to them, they ought not to be condemned unheard; but that does not apply to the case of a non-existing body. A *quo warranto* is necessary where there is a body corporate *de facto*, who take upon themselves to act as a body corporate, but from some defect in their constitution they cannot legally exercise the powers they affect to use. But where there is no corporate body in existence in law or in fact, it would be an absurdity to proceed by either of those modes, neither would it be of any use. For if the fact be that a corpn. is so reduced that it cannot act as a body corporate it is fit the Crown should interpose; if it be not, then any new charter granted upon that idea would be void,

as the Crown would be deceived in its grant (ASHURST, J.).—R. v. PASMORE (1789), 3 Term Rep. 199; 100 E. R. 531.

Annotations:—**Reid.** Colchester Corpn. v. Brooke (1845), 7 Q. B. 339. **Mentd.** R. v. Bellringer (1792), 4 Term Rep. 810; *Re* Higginson & Dean, *Ex p.* A.-G., [1899] 1 Q. B. 325.

1590. Whether by quo warranto.]—An usage in contradiction to a charter is void. Upon a judgment in a *quo warranto* information, the corpn. itself cannot be dissolved, but only the particular franchises abused are seizable by the Crown.—R. v. GROSVENOR (1734), Ridg. temp. H. 41; Kel. W. 280; 7 Mod. Rep. 198; 27 E. R. 751.

1591. ———— Against member of corporation.]—R. v. WHITE, No. 1405, *ante*.

1592. ————.]—R. v. PARRY, No. 1409, *ante*.

1593. ————.]—R. v. JONES, No. 1408, *ante*.

1594. Scire facias—Right to proceed by—Proviso for revocation in charter—Flat of Attorney-General.]—EASTERN ARCHIPELAGO Co. v. R., No. 1578, *ante*.

1595. Winding up inapplicable—Franchise held in trust for members.]—*Re* FREE FISHERMEN OF FAVERSHAM (CO. OR FRATERNITY OF), No. 281, *ante*.
See, also, No. 944, ante.

SECT. 8.—EFFECT OF DISSOLUTION.

1596. On rights & liabilities of individual members—Bond sealed in name of corporation & signed by principal members—Members not chargeable on dissolution.]—An obligation was sealed in the name of a corpn. & with their seal & two of the principal members of the corpn. added their name to the obligation as was usual in that corpn. The corpn. was dissolved:—*Held*: the two were not chargeable on the obligation.—EDMUNDS v. BROWN & TILLARD (1668), 1 Lev. 237; 83 E. R. 385.

Annotation:—**Mentd.** Merchants of Staple of England Corpn. v. Bank of England (1887), 21 Q. B. D. 160.

1597. ———— Right to payment postponed to creditors—Money paid to members treated as assets for payment of non-members.]—Creditors of a corpn. who are not members are entitled to have their debts paid in priority to debts of members, & moneys paid to such members are still assets of the corpn. for payment of non-members' debts.—NAYLOR v. BROWN (1673), Cas. temp. Finch 83; 23 E. R. 44.

1598. ———— Right to account & distribution of property—Jurisdiction of courts of equity to grant relief.]—Cts. of eq. have an original jurisdiction to grant relief at the suit of members of a corpn. which is extinct, or whose powers have expired, against the managers or directors of the corpn., on a bill praying for an account & for distribution of the property of the corpn.—CRAMER v. BIRD (1868), L. R. 6 Eq. 143; 37 L. J. Ch. 835; 18 L. T. 315; 16 W. R. 781.

1599. On lands of corporation—Whether lands revert to original donor.]—Where land is sold or granted to a corpn. & its successors, & then the corpn. is dissolved, the land will not escheat to the grantor.—SOUTHWELL v. WADE (1595), 1 Roll. Abr. 816.

Annotation:—**Mentd.** Thomason v. Mackworth (1666), O. Bridg. 502.

1600. ————.]—If a man give lands to the dean & canons, & their successors, & they are

PART XVI. SECT. 7.

c. Scire facias—Right to proceed by—Where charter obtained by fraud or misrepresentation—Total annulment of charter.]—BANQUE D'HOCHELAGA v. MURRAY (1890), 15 App. Cas. 414,

P. C.—CAN.

PART XVI. SECT. 8.

1599 i. On lands of corporation—Whether lands revert to original donor.]—A corpn., constituted under C. s. 63, & 29 Vict. c. 21, purchased lands,

&, without having disposed thereof, allowed the period named for the continuance of the corpn. to expire:—*Held*: the lands reverted to grantors.—LINDSAY PETROLEUM Co. v. PARDEE (1875), 22 Gr. 18.—CAN.

dissolved; or to any other corps. :—*Held*: the donor should have back the lands again, for the same was a condition in law annexed to the gift; & in such case no writ of escheat lay, yet the land was in him in the nature of an escheat.—WINSOR (DEAN & CANONS) & WEBB'S CASE (1613), Godb. 211; 78 E. R. 128.

Annotation:—*Mentd.* Page v. Wilson (1821), 2 Jac. & W. 513.

1601. — — —.]—R. v. SACHEVERELL, No. 1563, *ante*.

1602. — — —.]—A.-G. v. GOWER (LORD) (1740), 9 Mod. Rep. 224; 88 E. R. 412; *sub nom.* A.-G. v. GORE (LORD), Barn. Ch. 145, L. C.

Annotations:—*Mentd.* A.-G. v. Magwood (1811), 18 Ves. 315; A.-G. v. Wilson (1812), 18 Ves. 518.

1603. — — —.]—*Re* WOKING URBAN COUNCIL (BASINGSTOKE CANAL) ACT, 1911, No. 935, *ante*.

1604. Lease to corporation—Determined—Lessor's reversion accelerated.]—A lease to a corp. for a term of years determines if the corp. is dissolved without having assigned the lease. On dissolution of the corp. the lease does not

in the Crown as *bona vacantia*, but the reversion is accelerated & the land reverts to the lessor. Therefore, where a lease was made to a limited co. & payment of the rent during the term was guaranteed by sureties. on dissolution of the co. under Companies Act, 1862 (c. 89), ss. 142, 143 :—*Held*: the lease, not having been assigned, had determined & with it the liability of the sureties.—HASTINGS CORPN. v. LETTON, [1908] 1 K. B. 378; 77 L. J. K. B. 149; 97 L. T. 582; 23 T. L. R. 456; 15 Mans. 58, D. C.

Annotation:—*Re* Woking U. C. (Basingstoke Canal) Act, 1911, [1914] 1 Ch. 300.

Distribution of assets of building societies.]—*See* BUILDING SOCIETIES, Vol. VII., p. 513.

Personality held by trustee in bankruptcy.]—*See* BANKRUPTCY, Vol. IV., p. 340, No. 3200.

Right of Crown to property of corporation as *bona vacantia* in bankruptcy proceedings.]—*See* BANKRUPTCY & INSOLVENCY, Vol. IV., p. 340, No. 3200.

See, generally, DESCENT & DISTRIBUTION.

Testing authority of officer to act by *quo warranto*—Not granted after dissolution.]—*See* No. 440, *ante*.

Part XVII.—Livery Companies, Trade Guilds, etc.

As to regulations & bye-laws of Livery Companies, Trade Guilds, etc., *see* Part VI., Sect. 3, sub-sect. 3, D., *ante*.

1605. Nature of—Distinguished from corporations.]—A corp. may make a fraternity, & also bye-laws to bind strangers for public convenience.

A corp. is properly an investing of the people of the place with the local govt. thereof, & therefore their law shall bind strangers; but a fraternity is some people of a place united together, in respect of a mystery & business, into a co., & their laws & ordinances cannot bind strangers, for they have not a local power or govt. (*per* CUR.).—CUDDON v. EASTWICK (1704), 1 Salk. 192; 6 Mod. Rep. 123; Holt, K. B. 433; 91 E. R. 174.

Annotations:—*Dbtd.* R. v. Coopers' Co., Newcastle-upon-Tyne (1798), 7 Term Rep. 543. In the case of *Cuddon v. Eastwick* in Salkeld it is said that a corporation may make a fraternity; but no notice is taken of that point in the other reports of that case, & I cannot conceive that they have such a power: it can only be effected by the Legislature or by the Crown (LORD KENYON, C.J.). *Mentd.* Fazakerley v. Wiltshire (1721), 1 Stra. 462; Layburn v. Crisp (1838), 8 C. & P. 397.

1606. — Livery companies of City of London.]

(1) By s. 19 of Revenue Act, 1869, a person who by right of office uses the arms of a corp. or royal borough is exempt from taking out a licence for armorial bearings. Applts., who were an ancient guild of the city of London, used armorial bearings on their official notepaper without having a licence :—*Held*: the above sect. did not exempt applts. from the obligation to take out a licence.

(2) The Worshipful Co. of Plumbers are a corp. by virtue of a charter of James I. but are not a corp. enjoying the services of a mayor who is obliged to keep servants, carriages, or horses during his year of service.—WORSHIPFUL CO. OF PLUMBERS v. LONDON COUNTY COUNCIL (1913), 108 L. T. 655; 77 J. P. 302; 29 T. L. R. 424; 23 Cox, C. C. 355; *sub nom.* PLUMBERS' Co. v. LONDON COUNTY COUNCIL, 11 L. G. R. 480, D. C.

1607. — — — Not charities.]—Livery companies of the city of L. are not, unless there is something special in their charter, charities in any legal sense of the word.

Where property was devised to trustees in fee simple, upon trust for & to be held by the Masters, Wardens, & Commonalty of the Butchers' Co. of the city of L. "for the general purposes of the said company," & testator authorised the co. or the trustees "to make & formulate any scheme, rules, regulations, bye-laws, or trusts for the temporary or permanent administration of the charity hereby created," & gave other directions applicable to a charitable bequest :—*Held*: the gift was not a charitable gift, & the co. was entitled, subject to obtaining the proper licence, to have the property conveyed for the general purposes of the company free from any charitable trust.—*Re* MEECH'S WILL, BUTCHERS' CO. v. RUTLAND, [1910] 1 Ch. 426; 79 L. J. Ch. 209.

Nature & attributes of corporations generally, *see* Part I., *ante*.

1608. Proof of existence—Company consisting of several trades—Entries of admission.]—To prove existence of an aggregate corp. consisting of different trades, entries of admission into the separate trades are evidence to be left to a jury.—CARPENTERS', ETC., CO. v. HAYWARD (1780), 1 Doug. K. B. 374; 99 E. R. 241.

Annotations:—*Mentd.* Falmouth v. George (1828), 5 Bing 286; Lancum v. Lovell (1833), 9 Bing. 465.

1609. Judicial notice of liverymen—& nature of their office.]—Upon a *habeas corpus* directed to the keeper of N. to bring up the body of O., it was returned, that in London there are cos., some free-men of which are liverymen, & that there is a ct. of aldermen, & that any one duly chosen, & not taking upon him the office of a liveryman, might by custom be committed by the ct. of aldermen to any officer of the city; & that O. being before the ct. of aldermen & refusing, the ct. had committed him by warrant in writing to the keeper of N. until he should declare he would consent to take upon him the office of liveryman :—*Held*: the Ct. of K. B. takes notice of a liveryman, & the nature of his office, & he, who comes into a co., agrees to incident charges & duties, & it was admitted, a corp. might have a power to commit

PART XVII.

d. Nature of—Distinguished from corporations—Capable of rights as a

body.]—GRAY v. ARBROATH GUILDRY (1823), 2 Sh. (Ct. of Sess.) 122.—SCOT. e. Admission to guildry—Accord-

ng to custom.]—MORRIS v. DUNFERM LINE GUILDRY (1866), 4 Macph. (Ct. o Sess.) 457; 38 Sc. Jur. 208.—SCOT.

by custom, though not by a charter or bye-law.—*KING v. CLERK* (1697), 1 Salk. 349; 91 E. R. 305; *sub nom.* *R. v. CLARK*, Comb. 411; 12 Mod. Rep. 113; 1 Com. 24; *sub nom.* *VINTNERS' Co. v. CLERKE*, 5 Mod. Rep. 156; *sub nom.* *CLARK'S CASE*, Holt, K. B. 430; 5 Mod. Rep. 319; *sub nom.* *CLERKE'S CASE*, 3 Salk. 92.

Annotations :—*Reid. Piper v. Chappell* (1845), 14 M. & W. 624. *Mentd. Watson's Case* (1839), 9 Ad. & El. 731.

1610. — **Certificate by recorder of London.**—*PIPER v. CHAPPELL*, No. 766, *ante*.

1611. Jurisdiction of court.—A bill in equity at the relation of freemen of the Weavers' Co. against the governing body, complaining of abuses by that body, was dismissed because as to part of the bill it was to subject debts. to prosecution at law & to a *quo warranto* & as to the other parts pl'tfs. had remedy by *mandamus*, information or otherwise; & to allow the bill would be to usurp too much on the K. B.—*A.-G. v. REYNOLDS* (1705), 1 Eq. Cas. Abr. 131, pl. 10; 21 E. R. 936.

1612. — **As to corporate rights—Not ousted by clause in charter making corporation subject to court of city.**—*R. v. FISHER*, No. 444, *ante*.

1613. Right of company—To livery—Must be founded on charter or custom.—(1) A power vested in the master, & wardens, of a co. by a bye-law, to elect such, & so many, freemen, as they shall see meet, to be of the livery, to levy a penalty for refusal, etc., is legal, & cannot be used oppressively: any undue exercise of it being properly to be submitted on a plea of *nil debet*; & notice of a ct. is not requisite to a member of the co.

(2) A co.'s right to have a livery must be founded on charter or custom, & cannot be presumed.—*VINTNERS' Co. v. PASSEY* (1757), 1 Keny. 500; 1 Burr. 235; 96 E. R. 1070.

Annotations :—*As to* (1) *Reid. Feltmakers' Co. v. Davis* (1797), 1 Bos. & P. 98. *As to* (2) *Reid. Piper v. Chappell* (1845), 14 M. & W. 624.

1614. — **To have more than one corporate name—By prescription.**—*SHREWSBURY (WARDEN & COMBRETHREN OF THE CRAFTS OF MERCERS, IRONMONGERS & GOLDSMITHS) v. HART*, No. 104, *ante*.

1615. — **To compel traders to become members—By custom.**—*SHREWSBURY (WARDEN & COMBRETHREN OF THE CRAFTS OF MERCERS, IRONMONGERS & GOLDSMITHS) v. HART*, No. 104, *ante*.

1616. Licence for armorial bearings—Necessity for—Revenue Act, 1889, sect. 19.—*WORSHIPFUL CO. OF PLUMBERS v. LONDON COUNTY COUNCIL*, No. 1606, *ante*.

1617. Powers of officers—To elect freemen, levy penalty, etc.—Must not be used oppressively.—*VINTNERS' Co. v. PASSEY*, No. 1613, *ante*.

1618. — **Granted to master & four wardens—Not exercisable by master & one warden.**—The Crown by letters patent granted to the master & wardens of the corp'n. of bakers, there being four

wardens, by themselves & their deputy or deputies, full power to overlook & correct the trade of baking :—*Held* : the master & one warden could not justify entering the house of a baker to overlook bread; for if they acted as principals, they did not amount to a majority of the persons to whom the power was given; & if they acted as deputies, it should have appeared that they were appointed by the majority.—*COOK v. LOVELAND* (1799), 2 Bos. & P. 31; 126 E. R. 1138.

Annotation :—*Consd. Blacket v. Blizzard* (1829), 9 B. & C. 851.

As to officers of corporations generally, see Part IV., *ante*.

1619. Admission to company—Effect of—Liability to incidental charges & duties.—*KING v. CLERK*, No. 1609, *ante*.

1620. — **Mandamus to admit—To avoid penalty.**—*R. v. LUDLAM (LONDON CHAMBERLAIN)* (1725), 8 Mod. Rep. 267; 88 E. R. 190; *sub nom.* *WANNEL v. LONDON (CITY CHAMBERLAIN)*, 1 Stra. 675; cited 1 Burr. 14.

Annotations :—*Consd. Harrison v. Godman* (1756), 1 Burr. 12. *Apprvd. & Apld. R. v. Harrison* (1762), 3 Burr. 1322. *Reid. Maxim Nordenfelt Guns & Ammunition Co. v. Nordenfelt*, [1893] 1 Ch. 630.

1621. Privileges of members—Of Barbers' Company—Not exempted from serving office of constable.—A member of the Barbers' Co. in the City of London, is not exempted, from serving the office of constable.—*R. v. CHAPPLE* (1811), 3 Camp. 91, N. P.

1622. — **Exemption from jury service—Extent of.**—The exemption from serving as jury-men, claimed by the members of the Barbers' Co. under the charters of 1 Edw. 4 & 5 Car. 1, & 18 Geo. 2, c. 15, does not extend to the Central Criminal Ct., but is confined to the local cts. of the city, viz., those holden before the mayor, the sheriffs, or the coroner.—*Re WHITE* (1841), Car. & M. 189, N. P.

As to members generally, see Part III., *ante*.

1623. Action by livery company—Sufficiency of—Declaration—Omission to state that company had livery—Or that defendant was a freeman.—*PIPER v. CHAPPELL*, No. 766, *ante*.

Actions to recover penalty on breach of bye-laws, see Part VI., Sect. 6, sub-sect. 2, C. (b).

Legal proceedings by & against corporations generally, see Part XV., *ante*.

1624. Order of court of company—Not judicial order removable by certiorari—Thames Watermen & Lightermen.—A writ of *certiorari* will not be granted for the removal of an order of the ct. of the Co. of Thames Watermen & Lightermen granting a licence to act as a waterman or lighterman, because the order is not a judicial order.—*R. v. WATERMEN & LIGHTERMEN OF RIVER THAMES (COURT OF CO. OF)* (1897), 61 J. P. 388.

Books of corporations, see Part VIII.

CORPOREAL HEREDITAMENT.

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CORPSE.

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COUNTY COURTS.

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Admiralty Jurisdiction. See ADMIRALTY.

Bailiffs . . . „ SHERIFFS AND BAILIFFS; EXECUTION; PUBLIC AUTHORITIES AND PUBLIC OFFICERS.

Companies . . . „ COMPANIES.

Courts, generally . . . „ COURTS.

Ejectment . . . See LANDLORD AND TENANT; REAL PROPERTY AND CHATTELS REAL.

Interpleader . . . „ INTERPLEADER.

Mayor's Court, London
(now called *Mayor's and City of London Court*) . . . „ MAYOR'S COURT, LONDON.

Practice and Procedure in High Court . . . „ PRACTICE AND PROCEDURE.

NOTE.—The Act now in force in England is *County Courts Act, 1888* (c. 43), as amended by *County Courts Acts, 1903* (c. 42) & *1919* (c. 73), herein referred to as *1888 Act, 1903 Act & 1919 Act* respectively, & in considering the cases set out in this Title regard must be had to their date & the effect of *1888 Act*. In this Title references to Orders & rules are to the *County Court Rules*, unless otherwise indicated.

Part I.—Courts, Judges and Officers Generally.

SECT. 1.—COURTS.

1. Status—Of county courts—Inferior courts of record.]—LEVY v. MOYLAN, No. 1125, *post*.

2. ———.]—A county ct. established under 1846 Act is not a ct. of record to which a writ of trial can be directed under Civil Procedure Act, 1833 (c. 42), s. 17.—OWENS v. BREESE (1851), 6 Exch. 916; 2 L. M. & P. 486; Cox, M. & H. 500; 20 L. J. Ex. 359; 17 L. T. O. S. 285; 16 J. P. 19; 15 Jur. 582; 155 E. R. 818, Ex. Ch.; *revsq.* S. C. *sub nom.* BREESE v. OWENS, 6 Exch. 413.

Annotation:—*Reid*. Stewart v. Jones (1852), 22 L. J. Q. B. 1.

3. ——— Of Sheriffs' Court in City of London.]—The Sheriffs' Ct. in the city of London is not a county ct. within 1865 Act, s. 18.—HARPER v. POLE (1867), L. R. 3 Eq. 752; 36 L. J. Ch. 375; 16 L. T. 50; 31 J. P. 328; 15 W. R. 502.

Annotations:—*Reid*. Gardiner v. Cachar Co. (1867), 36 L. J. Ch. 432; The Ganges (1880), 43 L. T. 12.

4. ——— Of City of London Court.]—BLADES v. LAWRENCE, No. 369, *post*.

Jurisdiction.]—See Part III., *post*.

5. Expenses of — Liability of Treasury.]—A mandamus will not lie to the Lords Comrs. of the Treasury to compel them to pay a debt incurred by a county ct., even though Parliament has, upon an estimate made by the Comrs. of the Treasury, voted a sum for the salaries & expenses of the county cts. for the year.

The expression in 1856 Act, s. 85, that these expenses are to be paid by the Comrs. of Her Majesty's Treasury surely means that they are to be paid by them through the treasurers of the county cts. It cannot mean that the Lords of the Treasury are to account with every creditor of every county ct. (COCKBURN, C. J.).—*Re* TREASURY LORDS COMRS., *Ex p.* WALMSLEY (1861), 1 B. & S. 81; 121 E. R. 644; *sub nom.* *Ex p.* WALMSLEY, 4 L. T. 242; 26 J. P. 22; 7 Jur. N. S. 1010; *sub nom.* *Ex p.* WARLEMSBY, 9 W. R. 599.

Liability of court buildings—To rates.]—See RATES & RATING.

SECT. 2.—JUDGES.

SUB-SECT. 1.—APPOINTMENT AND REMOVAL.

6. May be appointed to several districts.]—The Lord Chancellor by one appointment, under

1846 Act, appointed the same person to be judge of the county ct. in several districts situate in the county of W., & in several districts situate in the county of H.:—*Held*: the appointment was valid.—R. v. PARHAM (1849), 13 Q. B. 858; 18 L. J. Q. B. 281; 13 L. T. O. S. 384; 13 J. P. 584; 13 Jur. 981; 116 E. R. 1491.

7. Removal for misconduct—Appeal to Lord Chancellor—No action taken by Lord Chancellor—Subsequent inquiry by court refused.]—A rule was obtained for a criminal information against a county ct. judge, for alleged misconduct in his office. The affidavit in support of the rule stated that appct. had addressed a memorial to the Lord Chancellor setting forth the substance of the facts. It appeared from affidavit in answer, that the memorial to the Lord Chancellor contained general charges of misconduct, & specified the particular misconduct now complained of, & prayed for an inquiry into the behaviour of the judge; & that the Lord Chancellor had declined to interfere. The ct. discharged the rule, on the ground that appct. had elected his remedy.—R. v. MARSHALL (1855), 4 E. & B. 475; 24 L. J. Q. B. 242; 24 L. T. O. S. 210; 19 J. P. 451; 1 Jur. N. S. 676; 3 W. R. 170; 3 C. L. R. 676; 119 E. R. 174.

8. ——— By Chancellor of the Duchy of Lancaster—After inquiry—Quo warranto against successor refused.]—Application was made for a *quo warranto* against a county ct. judge, on the relation of a person who had held the office immediately before him, & who had been removed for inability & misbehaviour by the Chancellor of the Duchy of L., under 1846 Act., s. 18. It appeared that, on a memorial addressed to the Chancellor, charging the relator with general misbehaviour, & particularising one instance more strongly, & praying for his dismissal, the Chancellor had held an inquiry, which was attended by the relator & his counsel, & had heard evidence on the charges, not on oath or affirmation, & within a few days after the close of the inquiry, had dismissed the relator by an instrument finding inability & misbehaviour, but not specifying any particular instance. Affidavits denying the inability & misbehaviour in the cases adduced on the inquiry, & generally, were put in:—*Held*: the rule would be refused, as it did not appear that the relator had

not been fully heard, or that the charges, if true, had not shown inability & misbehaviour; & the decision of the Chancellor was therefore final.—*Ex p. RAMSHAY* (1852), 18 Q. B. 173; *Cox, M. & H.* 589; 21 L. J. Q. B. 238; 18 L. T. O. S. 273; 16 J. P. 135; 16 Jur. 684; 118 E. R. 65.

Annotations:—*Mentd. R. v. Cross* (1852), 16 J. P. 214; *Ex p. Wildes* (1866), 30 J. P. Jo. 774; *Osgood v. Nelson* (1869), 20 L. T. 139; *Abergavenny v. Llandaff* (1888), 20 Q. B. D. 460.

SUB-SECT. 2.—DEPUTIES.

9. Power of judge to appoint—For different districts—Within his jurisdiction—1888 Act, s. 18.—The ct. of each district in the circuit for which a county ct. judge is appointed is a separate ct. with separate jurisdiction, & the county ct. judge has power under above Act, s. 18, to appoint a deputy for the performance of the duties of the judge at one of such district cts. exclusively of the other cts. in the circuit.—*R. v. LLOYD*, [1906] 1 K. B. 552; 75 L. J. K. B. 406; 94 L. T. 498; 54 W. R. 464; 22 T. L. R. 390; 50 Sol. Jo. 359, C. A.

10. Who may be appointed—When claims exceed £2—Barrister of seven years' standing—Not registrar of county court.—In an action brought in the county ct. where the claim exceeds £2 the county ct. judge has no power even with the consent of the parties to appoint as his deputy for the purpose of hearing the action in that capacity a person who is not a barrister of seven years' standing as required by 1888 Act, s. 18.—*McINALLY v. BLACKLEDGE*, [1911] 2 K. B. 432; 80 L. J. K. B. 882; 104 L. T. 642, D. C.

11. Evidence of appointment.—Where perjury is charged before a deputy county ct. judge it is sufficient *prima facie* evidence of his due appointment that a minute of the ct., under the seal of the ct., is produced reciting that the minute was made at a ct. held before A., deputy judge of the said ct.—*R. v. ROBERTS* (1878), 38 L. T. 690; 42 J. P. 630; 14 Cox, C. C. 101, C. C. R.

12. Judgment of deputy—Effect of death of judge—Rehearing by new judge.—The county ct. has, by 18 & 19 Vict. c. 63, ss. 40, 41, 42, jurisdiction to determine a dispute between the committee of management of a friendly society & any of its members, as to the propriety of the mode of convening & the manner & place of holding special general meetings for the purpose of altering or amending the rules of the society.

A plaintiff was heard before a deputy judge of a county ct. & he, after the death of the judge whose deputy he was, sent a written statement of his decision to the late judge's successor, who received & entered it as his judgment:—*Held*: without expressly deciding that the judgment so entered was void, a rule *nisi* would be granted for a prohibition against proceeding upon it, in order to give the parties an opportunity of applying to the new judge for a rehearing.—*HOEY v. M'FARLANE* (1858), 4 C. B. N. S. 718; 4 Jur. N. S. 785; 140 E. R. 1274.

Annotations:—*Mentd. Ex p. Wooldridge* (1862), 1 B. & S. 844; *R. v. Tidd Pratt* (1865), 6 B. & S. 672.

13. — Is judgment of the court—Power of judge to postpone delivery of judgment.—1867 Act, s. 13, allows an appeal from the decision of a county ct., with the leave of the judge, in actions in which an appeal was not previously allowed.

A case was heard in the sheriffs' ct. of the City of L. on July 26, 1867, before a deputy sitting for J.—VOL. XIII.

the judge of that ct., & judgment was reserved. The judge on Aug. 30, 1867, read the judgment of his deputy, but in order to give defts. an opportunity of appealing under the above Act, s. 13, which was to come into operation on Jan. 1, 1868, postponed the formal delivery of the judgment until that day. The judgment was delivered on Jan. 1, 1868, & leave to appeal given by the judge:—*Held*: the judgment of the deputy was the judgment of the ct.; the judge had power to postpone the formal delivery of it; & the judgment in the above case was not actually delivered until Jan. 1, 1868.—*RATHBONE v. MUNN* (1868), 9 B. & S. 708; 18 L. T. 856.

14. — — ——On an appeal from an award in an arbn. under Workmen's Compensation Act, 1906 (c. 58), made in favour of the employer by a deputy county ct. judge, the award was set aside, & a new trial directed between the parties. On the matter coming before the judge of the county ct. he declined jurisdiction on the ground (*inter alia*) that the Ct. of Appeal could not properly direct him to conduct a new trial or to rehear an arbn. which had been heard by another arbitrator, whose award had been wholly set aside:—*Held*: that the ct. had power to direct a rehearing by the judge notwithstanding that the arbn. had been originally dealt with by his deputy.

A hearing by the deputy county ct. judge is the same thing as a hearing by the judge himself (*LORD STERNDALÉ, M.R.*).—*HUNTER v. SIMNER*, [1922] 2 K. B. 170; 91 L. J. K. B. 581; 127 L. T. 342; 66 Sol. Jo. 487, C.A.

SUB-SECT. 3.—SALARIES AND PENSIONS.

Sequestration of pensions.—See *CHOSSES IN ACTION*, Vol. VIII., p. 438, No. 153.

SECT. 3.—REGISTRARS.

SUB-SECT. 1.—DUTIES AND POWERS.

Jurisdiction of Divisional Court over.—See *BANKRUPTCY & INSOLVENCY*, Vol. IV., p. 15, No. 58.

Issue of processes.—See No. 424, *post*.

At trial.—See Part VI., Sect. 1, sub-sect. 3, *post*.

Under Workmen's Compensation Act, 1906 (c. 58).—See *MASTER & SERVANT*.

Liability & protection of.—See Part II., Sect. 3, *post*.

Appeals from.—See Nos. 611, 848, *post*.

No power to set aside order—After order executed.—See No. 573, *post*.

SUB-SECT. 2.—REMOVAL.

See, now, 1888 Act, s. 27.

15. Validity of removal tested—By quo warranto against successor.—(1) A party, removed from the office of clerk of a county ct. by the judge of the ct., with the approval of the Lord Chancellor, under 1846 Act, s. 24, for alleged inability, is entitled to try the validity of such removal by a proceeding in the Ct. of Q. B.

(2) Where, in a *quo warranto* information for that purpose, the jury found that the alleged inability upon which the party had been so removed consisted solely of great pecuniary embarrassment & want of money to pay his debts, existing before & at the time of his removal:—*Held*: such

Sect. 3.—Registrars: Sub-sects. 2 & 3. Sects. 4 & 5. Part II. Sects. 1 & 2.]

embarrassment did not amount to "inability" within the meaning of the above Act, & therefore the party had been improperly removed.—*R. v. OWEN* (1850), 15 Q. B. 476; Rob. L. & W. 380; Cox, M. & H. 368; 19 L. J. Q. B. 490; 15 L. T. O. S. 226; 14 Jur. 953; 117 E. R. 539.

Annotations:—Generally, Consd. Ex p. Ramshay (1852), 18 Q. B. 173. *Mentd. Wildes v. Russell* (1866), Har. & Ruth. 689.

16. Grounds for removal—Not pecuniary embarrassment.]—*R. v. OWEN*, No. 15, *ante*.

17. — Refusal to give security.]—A registrar who has been appointed to his office by virtue of having been clerk to a ct. of requests under a local Act abolished by 1846 Act, sched. A, is liable to be removed for not giving security under s. 36 of the latter Act, although under the local Act he was not required to give security.—*Re FUSSELL, Ex p. WILKINS* (1859), 1 L. T. 61.

18. City of London Court—Power of removal in common council.]—1850 Act gave to the Lord Chancellor the power to remove from office the registrars of county cts. 15 & 16 Vict. c. lxxvii, declared the mayor, aldermen, & commons, in common council assembled, entitled to appoint the chief clerk of the London (City) Small Debts Ct., & for inability or misbehaviour, or for any other cause which might appear reasonable to the mayor & council, to remove the clerk. 1856 Act directed previous county ct. statutes to be read as part of that statute, & that the chief clerk of a county ct. should thenceforward be called the registrar. 1865 Act, regulating county cts. in general, directed that the chief clerk & the chief bailiff of the City Ct. should thenceforward be styled the registrar & the high bailiff, & that the City Ct. should have the same powers, etc., as a metropolitan county ct.; & it also incorporated with itself all the preceding public statutes relating to county cts.:—*Held*: the specific enactment in the above Act as to the power of amotion from the office of registrar to be exercised by the mayor, etc., in common council assembled, was not taken away by the effect of the general statutes, but still existed in that body.—*OSGOOD v. NELSON* (1872), L. R. 5 H. L. 636; 41 L. J. Q. B. 329, H. L.

See, generally, PUBLIC AUTHORITIES & PUBLIC OFFICERS.

SUB-SECT. 3.—JOINT REGISTRARS AND DEPUTIES.

19. Death of one joint registrar—Survivor to continue in office—No power to act till successor appointed.]—Where one of two, appointed, under 1846 Act, s. 25, to execute jointly the office of clerk to a county ct., dies, the survivor continues to hold the office; though he cannot act till a successor to deceased person be appointed.—*R. v. WAKE* (1857), 8 E. & B. 384; 27 L. J. Q. B. 11; 30 L. T. O. S. 116; 22 J. P. 258; 4 Jur. N. S. 68; 6 W. R. 36; 120 E. R. 143.

See, now, 1888 Act, s. 30.

20. Appointment of deputy by judge—In absence of registrar from court—Whether registrar liable for remuneration of deputy.]—By r. 8 it was provided that, whenever the registrar or his lawful deputy is absent from the sitting of a ct., the judge shall appoint a deputy to act on behalf of the registrar. The registrar of the City of London Ct. not being present at the sitting of a Court, the Judge assuming to act under the above rule appointed a deputy, although there was an "assistant-clerk" duly appointed & competent

& ready to perform the duties of the registrar. The registrar half an hour afterwards came to the building where the ct. was held & remained there performing duties connected with his office, but he did not come into ct. The deputy sued the registrar for remuneration for his services in acting on his behalf:—*Held*: the registrar was not "absent from the sitting of a ct.," so as to warrant the judge in appointing a deputy. *Qu.*: whether the authority conferred under 1856 Act, s. 32, "to make rules & orders for regulating the practice of the cts. & forms of proceeding therein," enabled them to make the rule in question.—*WETHERFIELD v. NELSON* (1869), L. R. 4 C. P. 571; 38 L. J. C. P. 220; 20 L. T. 366; *sub nom. NELSON v. WEATHERFIELD*, 17 W. R. 651.

See 1888 Act, s. 31.

Adjudication in bankruptcy by deputy registrar.]—*See BANKRUPTCY & INSOLVENCY, Vol. IV., p. 15, No. 57.*

SECT. 4.—BAILIFFS.

Compare Nos. 642, 643, post.

21. High bailiff—Stands in place of sheriff—Statute of Frauds, s. 16.]—The Ct. of Ch. will make a decree against equitable interests in aid of a judgment recovered in the county ct.

The high bailiff in the county ct. stands in the place of the sheriff within the meaning of Stat. Frauds, s. 16.—*BENNETT v. POWELL* (1855), 3 Drew. 326; 3 Eq. Rep. 1023; 24 L. J. Ch. 736; 25 L. T. O. S. 281; 19 J. P. 691; 1 Jur. N. S. 719; 3 W. R. 640; 61 E. R. 927.

See, now, Sale of Goods Act, 1893 (c. 71), s. 26 (2).

22. — Not in analogous position to sheriff.]—(1) Where a claim is made to goods taken in execution by the high bailiff of a county ct. & the execution creditor sends notice, under Ord. 27, r. 1, of his admission of the claim to the high bailiff, who withdraws from possession, the judge of the county ct. has power to award possession money up to the time of the receipt of such notice to the high bailiff, & the high bailiff can recover such possession money from the execution creditor by action in the county ct., if the judge in the exercise of his discretion is of opinion that the circumstances of the case are such that possession money ought to be awarded.

(2) In my judgment Ord. 27, r. 1, not being the grant of a new fee, but a limitation put upon what might theretofore have been allowed by a judge against an execution creditor in favour of a high bailiff, is well within the powers given by stat. to make rules & regulations relating to procedure & practice (*A. L. SMITH, J.*).

(3) In my judgment it is fallacious to liken a high bailiff in all respects to a sheriff, for a high bailiff is a creature of statute, & it is by what the statute enacts, no more & no less, he & his office is regulated (*A. L. SMITH, J.*).—*THOMAS v. PEEK* (1888), 20 Q. B. D. 727; 57 L. J. Q. B. 497; 36 W. R. 606, D. C.

23. Power of registrar to appoint special bailiff—For execution of process against high bailiff.]—Where the judgment debtor under county ct. process is himself the high bailiff of the ct., a special bailiff may be appointed to levy execution, & the warrant may be directed to him & others, although 1846 Act, & 1867 Act contain no express provision upon the subject.

Pltf. was high bailiff of a county ct., deft. being one of the registrars of the ct. An inquiry having

been held under 1846 Act, s. 116, which enables the judge to inquire in a summary way into any charge of extortion against a bailiff, & to make an order for the payment of such damages & costs as he shall think just, orders were made by the judge for the repayment by pltf. of fees overcharged by him, with costs to be taxed by the registrar. The costs were taxed by deft. without reference to the judge, & in the absence of pltf. Pltf. was served with orders to pay the overcharge, penalties, & taxed costs, but he objected to pay the costs. Application was then made to deft. as registrar for warrants of execution against pltf. & he issued warrants directed to "R. & others," & delivered to R. a written authority to act as assistant bailiff in the execution of the process, describing it as issued under 1867 Act, s. 22, which directs that "every bailiff duly appointed by a high bailiff or a registrar may serve or execute any process which by any Act passed or to be passed is directed to be served or executed by a high bailiff, unless otherwise specially provided against therein." R. having seized pltf.'s goods under the warrants, pltf. sued deft. in trespass:—*Held*: (1) the warrants were not made illegal by what took place with reference to the costs, for s. 116 did not require the judge to settle the amount of the costs, & at any rate the warrants themselves were based upon orders good on the face of them; (2) though 1867 Act, s. 22, was inapplicable, yet as 1846 Act, after providing for rules & forms, concluded that in any case not expressly provided for, the general principles of practice in the superior cts. of common law might be applied to proceedings in the county cts., it must be taken that the appointment of R. as special bailiff was like the appointment of an elisor to execute process in the superior cts., & it was also justified by the inherent power of all cts., & the necessity of the case, & deft. was entitled to judgment.—*BELLAMY v. HOYLE* (1875), L. R. 10 Exch. 220; 44 L. J. Ex. 169; 33 L. T. 21; 39 J. P. 678; 23 W. R. 754.
Annotation:—*Mentd. R. v. Brindley* (1885), 54 L. T. 435.

24. Under-bailiff appointed by high bailiff—Whether servant of the court—Or of the high bailiff.—A bailiff appointed by the high bailiff of a county ct., by allowance of the judge, & under the provisions of 1846 Act, s. 31, to be one of the bailiffs to assist the high bailiff, & by r. 31 of the statutory rules of practice of the county ct. required to pay over to the registrar money levied by virtue of process, is a servant of the ct. & not of the high bailiff, & where such bailiff misappropriates money received by him under process of the ct. & is

indicted for embezzlement as servant of the high bailiff the conviction will be quashed.—*R. v. GLOVER* (1864), Le. & Ca. 466; 4 New Rep. 300; 33 L. J. M. O. 169; 10 L. T. 582; 28 J. P. 435; 10 Jur. N. S. 710; 12 W. R. 885; 9 Cox, C. O. 500, C. O. R.

Annotation:—*Distd. R. v. Parsons* (1888), 16 Cox, C. O. 498.

25. — — — — —.]—The high bailiff of a county ct. appointed P., under the powers contained in 1846 Act & 1867 Act, a bailiff to assist him in his duties. P. acted under the orders of the high bailiff, & his duties thus prescribed were to execute writs of *fi. fa.* & to return the proceeds to the registrar of the county ct. within 24 hours:—*Held*: P. was not a person employed in the public service of Her Majesty within the meaning of Larceny Act, 1861 (c. 96), s. 70, but was the servant of the bailiff.—*R. v. PARSONS* (1888), 16 Cox, C. O. 498.

Power to arrest.—*See* Nos. 43, 48, *post*.

Liability & protection.—*See* Part II., Sect. 4, *post*.

Service of warrant of arrest of vessel by clerk.—*See* ADMIRALTY, Vol. I., p. 248, No. 1761.

See, generally, PUBLIC AUTHORITIES & PUBLIC OFFICERS; SHERIFFS & BAILIFFS.

SECT. 5.—TREASURERS AND AUDITORS.

26. Access to books—After notice of audit—Right to break open registrar's office—After office hours.—A registrar of a county ct. rented offices in which he carried on his business as a solr. & also the county ct. business, he being allowed by the Treasury an annual sum for the part of the offices used for county ct. purposes. The treasurer of the county ct. gave the registrar notice of his intention to audit the accounts on a Saturday, when, by a county ct. rule, the office closed at one o'clock. The treasurer went to the office after one o'clock, & finding it closed, broke the locks of an inner door & a cupboard in which the books were kept, & having taken away the books & audited them, returned them to the office. The registrar having brought an action of trespass against him:—*Held*: he was justified in so doing under county ct. Acts.—*BURRIDGE v. NICHOLETT* (1861), 6 H. & N. 383; 30 L. J. Ex. 145; 3 L. T. 703; 9 W. R. 345; 158 E. R. 158.

Annotations:—*Mentd. Hyde v. Graham* (1862), 32 L. J. Ex. 27; *Kilshaw v. Jukes* (1863), 11 W. R. 690.

Part II.—Liability and Protection of Judges and Officers of Court.

SECT. 1.—IN GENERAL.

See, now, 1888 Act, s. 50.

27. "Misconduct" of officers — Reckless & erroneous conduct not included—Act 1888, s. 50.]—Reckless & erroneous conduct on the part of a high bailiff of the county ct. is not "misconduct" within 1888 Act, s. 50. The sect. deals only with intentional abuse of power.—*MOORE v. BROMPTON COUNTY COURT HIGH BAILIFF* (1893), 62 L. J. Q. B. 498; 69 L. T. 140; 57 J. P. 742; 41 W. R. 557; 37 Sol. Jo. 497; 5 R. 427; *sub nom. Re BROMPTON*

COUNTY COURT OF MIDDLESEX HIGH BAILIFF, 9 T. L. R. 460, D. C.

See, generally, EXECUTION; PUBLIC AUTHORITIES & PUBLIC OFFICERS; SHERIFFS & BAILIFFS.

SECT. 2.—JUDGES.

See LIBEL & SLANDER; PUBLIC AUTHORITIES & PUBLIC OFFICERS.

SECT. 3.—REGISTRARS.

SUB-SECT. 1.—ACTING ON WARRANT OF COURT.

See, now, 1888 Act, ss. 52, 54, 55.

28. Issue of warrant—Without authority—Not protected.]—A Ct. of Requests Act enacted that, when the comrs. should have made an order on a debt. for payment of money, the comrs., present in ct., might award execution against the body or goods of such debt., & thereupon the clerk of the ct., at the prayer of pltf., might issue a precept under his hand & seal, by way of *ca. sa.* or *fi. fa.*, to the serjeants of the ct., who should execute the same; & that it should be lawful for the comrs., if they should think fit, to order any debt due to pltf. to be paid by instalments on such terms as might appear to them reasonable; & it should also be lawful for the comrs. present in ct., on default of paying any such instalment, at the instance of pltf., & on due proof of such default, to award execution against debt., or his sureties, for the whole debt, or such part as should remain unpaid, with such further costs as should seem to them reasonable, to be recovered in the same manner as the original debt:—

Held: (1) after a simple award of execution, the clerk might issue a precept for carrying it into effect without further intervention of the ct.; (2) where the comrs. had ordered the debt to be paid by certain instalments, "or execution to issue," the clerk could not, on default of payment, & application to him by pltf., issue a precept for execution without further intervention of the ct.; for that the comrs. were required, when acting upon such default, to exercise judicial functions, which could not be delegated; & therefore, the clerk, having made such precept, which had been executed, was liable in trespass; though the proceeding was conformable to the practice of the ct.: for the ct. could not institute such a practice; (3) the serjeant executing such precept was protected by it.—**ANDREWS v. MARRIS** (1841), 1 Q. B. 3; 1 Gal. & Dav. 268; 10 L. J. Q. B. 225; 6 Jur. 58; 113 E. R. 1030.

Annotations:—*As to* (1) **Distd. Dows v. Riley** (1851), 11 C. B. 434. *As to* (2) **Consd. Dows v. Riley** (1851), 11 C. B. 434; **Mill v. Hawker** (1874), L. R. 9 Exch. 309. *Refd.* **Aspey v. Jones** (1884), 48 J. P. 613; **Speers v. Daggors** (1885), Cab. & El. 503. *As to* (3) **Distd. Carratt v. Morley** (1841), 1 Q. B. 18. **Consd. Mill v. Hawker** (1874), L. R. 9 Exch. 309. *Refd.* **London Corp. v. Cox** (1867), L. R. 2 H. L. 239; **Mill v. Hawker** (1875), L. R. 10 Exch. 92; **Hill v. Metropolitan Asylum District Managers** (1879), 4 Q. B. D. 433; **Speers v. Daggors** (1885), Cab. & El. 503.

29. — On order of judge—Order bad—Protected.]—The clerk of the county ct. is a mere ministerial officer, to carry into effect the order of the judge, & is not liable in trespass for the imprisonment of a party under a warrant of the ct. signed & issued by him in the mere performance of the duty cast upon him by the statute; although the order of the judge upon which the warrant is founded is bad—*e.g.* that the debtor pay the debt at a future given day, or be imprisoned for thirty days.

The record of the proceedings in the county ct. is the entry directed to be made by the clerk under 1846 Act, s. 111.—**DEWS v. RILEY** (1851), 11 C. B. 434; 2 L. M. & P. 544; 20 L. J. C. P. 264; 18 L. T. O. S. 155; 16 J. P. 39; 15 Jur. 1159; 138 E. R. 542; *sub nom.* **DEWES v. RILEY**, Cox, M. & H. 523.

Annotations:—**Distd. Mill v. Hawker** (1875), L. R. 10 Exch. 92. *Expld.* **Aspey v. Jones** (1884), 54 L. J. Q. B. 98. **Consd. Saunders v. Swansea Finance Co. & Home** (1905), 21 T. L. R. 317. *Refd.* **Demer v. Cook** (1903), 88 L. T. 629.

30. — Judge without jurisdiction—Protected—1850 Act, s. 19, & 1852 Act, s. 6.]—

1850 Act, s. 19 & 1852 Act, s. 6, protect the registrar of a county ct. & the bailiff & his assistants from liability to be sued in an action for seizing the goods of a party under a warrant of the ct. signed by the registrar & under the seal of the ct., even assuming that the judge had no jurisdiction to make the order upon which the warrant is founded. 1852 Act, s. 6, also affords a like protection to any person who acts under a warrant so issued.—**ASPEY v. JONES** (1884), 54 L. J. Q. B. 98; 33 W. R. 217; 1 T. L. R. 140, O. A.

31. Execution of warrant—After debt paid to party—Notice by party to registrar of payment—Protected.]—S. sued D. in the county ct., & recovered. D. did not pay the amount adjudged against him. A judgment summons issued against D., who did not appear as required by it, & the judge ordered him to be committed for seven days. A warrant issued to arrest him. Afterwards D. was arrested under the warrant, & detained for a few minutes till F., the clerk of the county ct., who had forgotten the receipt of a notice from S., found that notice & ordered his discharge. D. brought an action for the imprisonment against F. & the bailiff:—*Held:* payment to the party, after the warrant issued, did not operate as a *supersedeas*, & the arrest & detention were both justified. *Semble:* the discharge of the prisoner, after the letter from the party was found, was irregular.—**DAVIES v. FLETCHER** (1853), 2 E. & B. 271; Saund. & M. 137; 22 L. J. Q. B. 429; 21 L. T. O. S. 127; 17 J. P. 679; 17 Jur. 894; 1 W. R. 367; 1 C. L. R. 1025; 118 E. R. 769.

Annotations:—*Expld.* *Re Swann v. Dakins, Ex p. Dakins* (1855), 24 L. J. C. P. 131. *Refd.* **Kimpton v. L. & N. W. Ry.**, *Ex p. Kimpton* (1854), 18 J. P. 617.

See, generally, EXECUTION; PUBLIC AUTHORITIES & PUBLIC OFFICERS; SHERIFFS & BAILIFFS.

SUB-SECT. 2.—OTHER CASES.

32. Contract to fit up court house—Whether personally liable.]—Deft., the clerk of a county ct. established under 1846 Act, employed pltf. to fit up a court house & offices. It having been left to the jury to say whether or not debt. contracted on the footing of personal liability, & they having found for pltf., the ct. declined to enter a nonsuit, debt.'s personal liability not being excluded by his position as clerk of the ct., or negatived by the nature or by the terms of the particular contract.—**AUTY v. HUTCHINSON** (1848), 6 C. B. 266; 136 E. R. 1253; *sub nom.* **AUTEY v. HUTCHINSON**, 17 L. J. C. P. 304; 12 Jur. 962.

33. Preparation of notice of order—Not liable for omission.]—1846 Act imposes no duty upon the clerk of the ct. to prepare or cause to be prepared notices of judgments or orders of the ct. for the payment of money, whether by instalments or otherwise, for service upon debt.; nor is any such duty to be inferred from r. 114 prepared by the judges in pursuance of 1849 Act, s. 12, such rules not being a judicial exposition of the statute, but mere practical directions for the guidance of the officers of the ct. in the performance of the duties which are imposed by the statute.

No action, therefore, lies against the clerk for omitting to prepare such a notice, or for negligently preparing it, whereby debt. was misled as to the times of payment of certain instalments ordered by the judge, & had his goods taken in execution.—**ROBINSON v. GELL** (1852), 12 C. B. 191; Saund. & M. 42; 21 L. J. C. P. 155; 19 L. T. O. S. 142; 16 J. P. 377; 16 Jur. 615; 138 E. R. 875.

34. — Not liable for negligence.]—ROBINSON v. GELL, No. 33, *ante*.

See, generally, PUBLIC AUTHORITIES & PUBLIC OFFICERS.

SECT. 4.—BAILIFFS.

SUB-SECT. 1.—IN GENERAL.

What constitutes "misconduct."—See No. 27, *ante*.

35. Failure to serve judgment summons—Judgment debtor with no notice thereof before committal order made—Whether action maintainable against bailiff—While committal order standing.]—TURLEY v. DAW, No. 61, *post*.

Judgment summonses generally, see BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1032–1043.

See, generally, EXECUTION; PUBLIC AUTHORITIES & PUBLIC OFFICERS; SHERIFFS & BAILIFFS.

SUB-SECT. 2.—ACTING ON WARRANT OF COURT.

See, now, 1888 Act, ss. 52, 54, 55.

36. Execution of warrant—Issued without authority—Whether executing officer protected.]—ANDREWS v. MARRIS, No. 28, *ante*.

37. — — — — —.]—By a private Act certain comrs. were constituted a ct. of justice for certain portions of the county of L., & were authorised to hear causes of certain kinds where debt. was residing within certain places mentioned, except the wapentake of W., or keeping houses, etc., or using any market, or seeking a livelihood, or in any way trading, etc., within them, & thereupon to give judgments & award execution against body or goods. The clerks & their deputies were required to issue all precepts required by the Act, & the serjeants to execute them, & the serjeants, in case of neglect, were liable to make compensation, & to be fined. M. summoned C. in the ct., & five comrs., on the hearing, ordered execution against the body of C. The deputy clerk issued a precept thereon, & delivered it to a serjeant, who arrested C. C. sued M., the comrs., & the serjeant, for false imprisonment. On the trial it appeared that C. resided in the excepted wapentake of W., & it was not shown that any evidence was given before the ct. tending to bring C. within their jurisdiction. The precept described the ct. as "The Ct. of Requests for the sokes of B. & H. & other places in the county of L." None of the proceedings stated any fact showing C. to have been within the jurisdiction of the ct. :—

Held: (1) the comrs. were liable in trespass for proceeding without jurisdiction; (2) the comrs. were not liable for the fault in the precept; (3) the serjeant was not liable for the want of jurisdiction; (4) he was liable for executing the precept which misdescribed the ct.—CARRATT v. MORLEY (1841), 1 Q. B. 18; 10 L. J. Q. B. 259; 6 Jur. 259; 113 E. R. 1036; *sub nom.* GARRATT v. MORLEY, 1 Gal. & Dav. 275.

Annotations:—As to (2) *Refd.* Saunders v. Swansea Finance Co. & Home (1905), 21 T. L. R. 317. As to (3) *Refd.* Aspey v. Jones (1884), 48 J. P. 613. As to (4) *Consd.* Green v. Elgie (1843), 5 Q. B. 99. *Refd.* Dews v. Riley (1851), 11 C. B. 434; London Corpn. v. Cox (1867), L. R. 2 H. L. 239. *Generally, Refd.* Coomer v. Latham (1847), 16 M. & W. 713; R. v. Davies (1861), 8 Cox, C. C. 486; Pease v. Chaytor (1863), 3 B. & S. 620.

38. — After debt paid to party—Bailiff not liable.]—DAVIES v. FLETCHER, No. 31, *ante*.

39. — On order of judge without jurisdiction—Bailiff protected—1850 Act, s. 19 & 1852 Act, s. 6.]—ASPEY v. JONES, No. 30, *ante*.

40. — Indemnity from execution creditor—Bailiff entitled to notice of complaint.]—Where goods are assigned as security for an advance of money, upon trust to permit the assignor to remain in possession of them until default in payment at the time stipulated, & upon further trust to sell them upon such default being made, the assignee has a sufficient possession to enable him to maintain trespass against a wrongdoer. Such an assignment, though void as against creditors, is good as between the parties, & as between either party & a stranger. A bailiff of a county ct. claiming to seize goods on behalf of a judgment creditor is a stranger within that rule, unless he proved the legal authority under which he seized on behalf of such creditor, viz. the judgment. In trespass against an execution creditor & a bailiff of a county ct., for seizing goods under such circumstances, pltf. put in the warrant of execution, with the indorsement thereon by the officer that he had taken the goods under it:—*Held*: (1) the bailiff, as well as the execution creditor, was bound to prove the judgment; (2) the warrant, reciting the judgment, though put in by pltf., was no evidence of such judgment; (3) the circumstances of the bailiff's having, in taking the goods, acted under an indemnity from the execution creditor, did not deprive him of the protection of 1846 Act, s. 138, which entitled him to a notice of an action for anything done by him in pursuance of the Act.—WHITE v. MORRIS (1852), 11 C. B. 1015; 21 L. J. C. P. 185; 18 L. T. O. S. 77, 256; 16 Jur. 500; 138 E. R. 778.

Annotations:—*Consd.* Burling v. Harley (1858), 3 H. & N. 271; Barker v. Furlong, [1891] 2 Ch. 172. *Mentd.* Haylock v. Sparke (1853), 1 E. & B. 471; Bowes v. Foster (1858), 2 H. & N. 779; McMahon v. Lennard (1858), 6 H. L. Cas. 970.

41. — Wrongful seizure of chattel—Bailiff not liable in trespass.]—The owner of a chattel, taken on his own premises, under a county ct. execution against a third party, cannot sue the bailiff in trespass for taking the chattel, though he may for the wrongful entry.

Pltf. had taken the premises of the execution debtor, & his name was put up upon the livery stables; but the change was not known. When the horse was taken pltf. claimed it, & there had been an interpleader summons; but, as pltf. refused to pay the appraised value into ct. under 1856 Act, s. 72, in order to liberate the horse, the bailiff sold it under the execution, & paid the proceeds, £12, into ct., to abide the event of the interpleader summons, which was in favour of pltf., & the money remained in ct.; but had not been taken out. The value of the horse, however, was £29, & the bailiff had been in possession six days; & pltf. claimed to recover the value, & also compensation for the injury caused by the entry of the bailiff:—*Held*: pltf. could not recover in respect of the horse, since, under 1856 Act, he could have liberated the horse by paying the value into ct. to abide the event of the interpleader summons, & could now take the amount of the proceeds out of ct.—LEWIS v. COLE (1862), 3 F. & F. 17.

42. "Action" against bailiff—Does not include motion in bankruptcy.]—The word "action" in 1888 Act, s. 54, being the sect. which requires notice & other formalities to be gone through before proceedings can be taken against a person for anything done in pursuance of that Act, will not be enlarged so as to include a motion by a trustee in bkpcy. against a high bailiff, under Bankruptcy Act, 1885, s. 46, for a declaration that he was entitled as against the high bailiff, to certain goods taken in execution, on the ground

Sect. 4.—Bailiffs: Sub-sects. 2, 3, 4, 5 & 6. Sects. 5 & 6.]

that the execution had not been completed by seizure & sale.—*Re LOCKE, Ex p. POPPLETON* (1890), 62 L. T. 942; 39 W. R. 15; 6 T. L. R. 384; 7 Morr. 184, D. C.

—Necessity for notice of defence—1888 Act, s. 54.]—See No. 62, post.

See, generally, EXECUTION; PUBLIC AUTHORITIES & PUBLIC OFFICERS; SHERIFFS & BAILIFFS.

SUB-SECT. 3.—EXECUTION WITHIN ANOTHER JURISDICTION.

43. Irregularity by bailiff of another jurisdiction—High bailiff of court issuing warrant not liable.]—Where a warrant issues upon a judgment of a county ct. against a party resident within another jurisdiction, & is sealed by the clerk of the ct. there, under 1846 Act, s. 104, the high bailiff of the ct. out of which the warrant originally issued, is not responsible for any irregularities in its execution by the under-bailiff of the foreign jurisdiction, even though his own under-bailiff assists therein.

Where under a warrant so issued by one ct., & sealed by the clerk of another ct., the officers broke & entered the premises of a third person, under a mistaken impression that the party against whom the warrant was directed, was there; & upon the owner of the premises resisting their entry, the bailiffs, under colour of sect. 114 of above Act, took him into custody, & carried him before a magistrate:—*Held*: the high bailiff of the ct. from which the warrant was reissued, was liable with the under-bailiffs for the breaking & entering, which was an act done by the latter under the supposed authority of the writ; but not for the assault, which was committed in the assertion of a power given by the statute to the individual officer obstructed.—*SMITH v. PRITCHARD* (1849), 8 C. B. 565; Cox, M. & H. 272; Rob. L. & W. 154; 19 L. J. C. P. 53; 14 L. T. O. S. 179; 13 J. P. 764; 14 Jur. 224; 137 E. R. 629.

Annotation:—*Reid*. *Moore v. Brompton County Court High Bailiff* (1893), 69 L. T. 140.

44. — Not responsible to judge of home court.]—R. v. SHROPSHIRE COUNTY COURT JUDGE, No. 246, post.

See, generally, EXECUTION; PUBLIC AUTHORITIES & PUBLIC OFFICERS; SHERIFFS & BAILIFFS.

SUB-SECT. 4.—ACTS OF UNDER-BAILIFF.

45. Liability for acts of servant employed by under-bailiff—Wrongful sale of chattel—High bailiff liable.]—The high bailiff of a county ct. is liable, to the same extent as the sheriff, for the wrongful act of a person employed by one of his sub-bailiffs, to whom a warrant is delivered for execution. Where, therefore, a warrant to the high bailiff, to levy on the goods of B., was delivered for execution to one of the sub-bailiffs, & he seized goods of B., on Dec. 3, & left C. in possession, & C. the next day wrongfully sold the goods, contrary to 1846 Act, the high bailiff was held liable.—*BURTON v. LE GROS* (1864), 34 L. J. Q. B. 91.

46. Premises wrongfully entered by under-bailiff—High bailiff liable for wrongful entry.]—SMITH v. PRITCHARD, No. 43, ante.

47. Right to arrest—Under warrant of court—High bailiff not liable.]—SMITH v. PRITCHARD, No. 43, ante.

48. — — —.]—Upon an indictment for an assault upon a county ct. bailiff in the execution of his duty, the production of a warrant of the county ct. judge for the apprehension of the prisoner, is a sufficient justification of the act of the bailiff in apprehending the prisoner, without proof of the previous proceedings authorising the warrant, even though the judgment be obtained in one county & the warrant sent for execution into a different county.—*R. v. DAVIES* (1861), Le. & Ca. 64; 30 L. J. M. C. 159; 4 L. T. 559; 25 J. P. 420; 7 Jur. N. S. 1040; 9 W. R. 711; 8 Cox, C. C. 486, C. C. R.

Annotation:—*Mentd. Laing v. Reed* (1869), 39 L. J. Ch. 3, n.

See, now, 1888 Act, s. 48.

See, generally, EXECUTION; PUBLIC AUTHORITIES & PUBLIC OFFICERS; SHERIFFS & BAILIFFS.

SUB-SECT. 5.—NEGLECT TO LEVY EXECUTION.

49. Whether action will lie—Against high bailiff of another court—Notwithstanding remedy under 1888 Act, s. 49.]—An action will lie to recover damages against the high bailiff of a county ct. at the suit of a party aggrieved by his neglect in the performance of his duties as high bailiff, notwithstanding the provisions of 1888 Act, s. 49, enabling the county ct. judge, in such cases, to order the high bailiff to pay damages to the party aggrieved.—*WATSON v. WHITE*, [1896] 2 Q. B. 9; 65 L. J. Q. B. 492; 74 L. T. 702; 44 W. R. 525; 12 T. L. R. 387; 40 Sol. Jo. 516, D. C.

In what court action may be brought.]—See No. 59, post.

See, generally, EXECUTION; PUBLIC AUTHORITIES & PUBLIC OFFICERS; SHERIFFS & BAILIFFS.

SUB-SECT. 6.—REMEDY FOR ASSAULT.

See, now, 1888 Act, s. 48.

50. Right to arrest offender.]—R. v. DAVIES, No. 48, ante.

51. “While in the execution of his duty”—No right to force door.]—B., a county ct. bailiff, went to levy a judgment debt on W. & calling at W.’s door, upon W. opening it, B. put his foot inside & tried to get in against the wish of W., who assaulted B. W. being summoned for assaulting B.:—*Held*: as B. was not “in the execution of his duty” in forcing a debtor’s door, the justices properly dismissed the summons.—*BROUGHTON v. WILKERSON* (1880), 44 J. P. 781, D. C.

Annotation:—*Mentd. Rossiter v. Conway* (1893), 58 J. P. 350.

52. — Assault on return to premises—Where levying execution.]—C., being under-bailiff of county cts., was left on premises in execution of a warrant to levy on goods of D., & having no refreshment provided for him, went out to a public house a mile distant, taking the warrant with him. On return he was assaulted by D., to prevent his re-entry:—*Held*: C. was in the execution of his duty in returning, & D. was liable to be convicted under 1846 Act, s. 114.—*COFFIN v. DYKE* (1884), 48 J. P. 757, D. C.

53. Jurisdiction of magistrates—To try offence.]—A county ct. bailiff, while acting in the course of his duty, was assaulted by F., who was summoned for the assault under 1846 Act, s. 114:—

Held: (1) that sect. was not impliedly repealed by Offences Against the Person Act, 1861 (c. 100), s. 42; (2) the justices could not decline jurisdiction

on the ground that a question might arise as to the execution under the process of a ct. of justice.—*R. v. BRIGGS* (1888), 47 J. P. 615, D. C.

54. Fine imposed by judge—No appeal from order.]—There is no right of appeal from an order of a county ct. judge, made under 1888 Act, s. 48, imposing a fine for an assault upon a bailiff of the ct. while engaged in the execution of his duty.—*LEWIS v. OWEN*, [1894] 1 Q. B. 102; 63 L. J. Q. B. 233; 69 L. T. 861; 58 J. P. 263; 42 W. R. 254; 10 T. L. R. 39; 38 Sol. Jo. 27; 10 R. 59, C. A.

Appeals generally, *see* Part VIII., *post*.

See, generally, EXECUTION; PUBLIC AUTHORITIES & PUBLIC OFFICERS; SHERIFFS & BAILIFFS.

SECT. 5.—OFFICERS ACTING AS SOLICITORS OR AGENTS IN OWN COURT.

See, now, 1888 Act, s. 41.

55. Assistant registrar—“Officer” prohibited from acting.]—An assistant clerk of a county ct., appointed under 1846 Act, s. 24, is an officer of such ct., & if he acts for any party in any proceeding in such ct., is liable to the penalty imposed by s. 30.—*ACKROYD v. GILL* (1856), 5 E. & B. 808; 25 L. J. Q. B. 111; 26 L. T. O. S. 197; 20 J. P. 501; 2 Jur. N. S. 184; 4 W. R. 204; 119 E. R. 682.

56. Application by high bailiff—Issue of warrant—Not a “proceeding” in the court.]—An application by the high bailiff of a county ct. to a deputy judge of such ct., for a warrant, under Absconding Debtors Arrest Act, 1851 (c. 52), s. 1, & the obtaining & issuing of such warrant by the high bailiff, is not a proceeding in the county ct., within the 1846 Act, ss. 29 & 30, by which it is made penal for the officers of the county ct. to be directly or indirectly engaged as attorney or agent for any party in any proceeding in that ct.—*WARDEN v. STONE* (1857), 7 E. & B. 603; 26 L. J. Q. B. 200; 29 L. T. O. S. 90; 3 Jur. N. S. 491; 5 W. R. 501; 119 E. R. 1369.

57. Registrar—Member of firm of solicitors—Letter written before action—Not a step in proceedings.]—*LONGSTAFFE v. WOODROW* (1894), 38 Sol. Jo. 275, D. C.

58. — Acting as solicitor—Can defend action against himself.]—1888 Act, s. 41, which provides that the registrar of a county ct. shall not be engaged as solr. for any party in any proceeding in the registrar's ct., does not prevent a registrar, who is a solr., from defending himself in person in an action brought against him in his own ct., or from recovering from pltfs. in the action such costs as a solr. deft. is entitled to on taxation, under Ord. 53, r. 25; & by reason of s. 118 of the Act, which provides that all costs shall be taxed by the registrar of the ct. in which they were incurred, the registrar's bill of costs must, of necessity, be taxed by the registrar himself.

Deft. was the registrar of a county ct. & was also a practising solr. Pltfs. brought an action against him in that ct., alleging negligence by him in his official capacity. Deft. acted as his own solr. in the action, & was represented by counsel at the trial. The county ct. judge gave judgment for deft. with costs. Deft. brought in his bill of costs for taxation, & gave notice of a taxation before himself. Pltfs.' solr. attended the taxation under protest, & on the taxation, deft. disallowed several items. Pltfs. applied to the

county ct. judge to review the taxation, & on the review the judge taxed off two further items:—*Held*: the taxation had to take place of necessity before deft. himself; the deft. appeared in person & did not lose his costs because he was also registrar & a solr.; the county ct. judge had not taxed on any wrong principle; & further, by their application to the county ct. judge pltfs. had waived their objection to the jurisdiction.—*TOLPUIT (H.) & Co., LTD. v. MOLE*, [1911] 1 K. B. 836; 80 L. J. K. B. 686; 104 L. T. 148; 55 Sol. Jo. 293, C. A.

SECT. 6.—PROCEDURE IN RELATION TO ACTIONS AGAINST JUDGES AND OFFICERS OF COURT.

59. In what court action must be brought—Against high bailiff—Any adjoining district—Of which judge is not judge of bailiff's court—Adjoining district in different county.]—Under 1856 Act, s. 21, where an action is brought against the high bailiff of a county ct., for not executing a warrant, a summons may issue in any adjoining district, the judge of which is not the judge of a ct. of which deft. is an officer, whether or not such adjoining district is in the same county in which deft. neglected to execute the warrant.—*PARTRIDGE v. ELKINGTON* (1870), L. R. 6 Q. B. 82; 40 L. J. Q. B. 49; 19 W. R. 385, D. C.

60. — Suit in equity against registrar—Jurisdiction of court to transfer—To adjoining county court district.]—1856 Act, s. 21, which provides that if an action be brought against an officer of a county ct. the summons may be taken out in an adjoining district, is applicable to a suit in equity as well as to an action at law.

A bill was filed in the Ct. of Ch. to redeem mortgaged property situated in the district of the S. county ct. Deft. was the registrar of that ct.:—*Held*: the suit might have been brought against deft. in the adjoining district of H.; & therefore the ct. had jurisdiction under the 1867 Act, s. 8, to transfer the cause out of the Ct. of Ch. to the county ct. of H.—*LINFORD v. GUDGEON* (1871), 6 Ch. App. 359; 40 L. J. Ch. 514; 19 W. R. 577, L. JJ.

61. Within what time action must be brought—Public Authorities Protection Act, 1893 (c. 61)—Application of.]—So long as a committal order stands, an action will not lie at the suit of a judgment debtor against the high bailiff of the county ct. for not having served him, debtor, with the judgment summons upon which the order is made.

Any such action against the high bailiff, by virtue of Public Authorities Protection Act, 1893 (c. 61), s. 1 (a), must be brought within six months of the act, neglect or default complained of, & therefore it must be brought within six months of the time when the bailiff made the return of the service of the judgment summons & the county ct. judge acted upon it.—*TURLEY v. DAW* (1906), 94 L. T. 216; 22 T. L. R. 231.

62. Necessity for notice of defence under 1888 Act, s. 54—Action against bailiff.]—The defence afforded to county ct. bailiffs by 1888 Act, s. 54, being a statutory defence, notice must be given as provided by Ord. 10, r. 18 a, if a county ct. bailiff intends to rely on the sect. as a defence to an action against him.—*DENNY v. BENNETT* (1896), 44 W. R. 333; 40 Sol. Jo. 298, D. C.

Notice of statutory defences generally, *see* Part V., Sect. 5, sub-sect. 1, *post*.

Part III.—Jurisdiction. -

SECT. 1.—IN GENERAL.

63. *Plaint against corporation.*—(1) In order to obtain a prohibition on the ground that the title to a corporeal or incorporeal hereditament comes in question in the action a party may apply at any time to the superior cts. & show the facts upon affidavit, & is not bound to wait until the trial in the county ct. & raise the objection there in the first instance.

(2) The county ct. has jurisdiction to entertain a *plaint against a corp.*—*BOURNE v. SOUTH EASTERN RY. CO.* (1856), 26 L. T. O. S. 196; 20 J. P. Jo. 51.

Annotations:—*As to* (2) *Consd.* *Shiels v. G. N. Ry.* (1861), 30 L. J. Q. B. 331. *Refd.* *Rogers v. L. C. & D. Ry.* (1877), 26 W. R. 192.

64. *Action for malicious prosecution.*—A *plaint in a county ct. alleged that deft.'s wife assaulted the wife of pltf., & maliciously caused her to be wrongfully charged with stealing a shawl & to be conveyed through the streets & to be locked up & detained in custody in a police cell, & further caused pltf. to be bound with a surety in a recognisance for his wife's due appearance to await any indictment; whereby pltf. was put to £10 expenses in clearing his wife from the charge. On the case coming on to be heard before the judge of the county ct., deft. objected that this was a *plaint for a malicious prosecution*, & consequently not within the jurisdiction of the ct. The judge said that he had jurisdiction, heard the case, & gave judgment for pltf. for £10. Deft. applied for a prohibition on affidavits which stated these facts, & also averred that there was no other assault found to have been proved, nor was judgment given for any other assault than that comprised in the alleged giving pltf.'s wife into custody:—*Held*: prohibition would lie.—*JONES v. CURREY* (1851), Cox, M. & H. 559; 20 L. J. Q. B. 438; 15 Jur. 610.*

Annotation:—*Distd.* *Chivers v. Savage* (1855), 25 L. J. Q. B. 85.

65. —.—Pltf. sought to recover in a county ct. £17 12s. 6d., being for money paid for loss of time & attendance before the magistrates upon a complaint & information of W. on behalf of defts. It appeared that pltf. having been summoned before the magistrates for riding in a railway carriage without having paid his fare, & the summons having been dismissed with costs, the action was brought to recover the expenses occasioned by such summons. On motion to set aside an order for a prohibition made by a judge at chambers:—*Held*: the *plaint was in substance a *plaint for a malicious prosecution* & therefore the order for the prohibition was properly made.*—*HUNT v. NORTH STAFFORDSHIRE RY. CO.* (1857), 2 H. & N. 451; Saund. & M. 203; 29 L. T. O. S. 214; 5 W. R. 731; 157 E. R. 186.

Annotation:—*Distd.* *Austin v. Dowling* (1870), L. R. 5 C. P. 534.

66. —.—Where a *plaint*, as shown by the particulars, is for a cause of action over which the county ct. has no jurisdiction, the ct. cannot, by amending the particulars under 1856 Act, s. 57, alter the cause of action so as to give itself jurisdiction.

The particulars attached to a county ct. summons were as follows: "To damages sustained by me by reason of your making a false charge of stealing a tobacco pouch, & silk pocket-handkerchief, at the Clerkenwell police court, & loss of character, £50":—*Held*: these particulars

did not disclose a cause of action for false imprisonment, but rather for malicious prosecution or slander, & that the judge had no power to amend them by substituting the words "false imprisonment."

The words [of the particulars] certainly point to malicious prosecution or slander, which causes of action the Legislature has excluded from the jurisdiction of the county cts. (MELLOR, J.).—*HOPPER v. WARBURTON* (1863), 1 New Rep. 371; 32 L. J. Q. B. 104; 7 L. T. 722; 11 W. R. 384.

See, now, 1888 Act, s. 56.

67. *Action for trespass & false imprisonment.*—On a *plaint in a county ct. for false imprisonment*, the evidence was that deft. directed the police to arrest pltf. on a charge of felony, which the police did. The charge was unfounded in fact. The judge of the county ct., in his judgment, used expressions indicating that he gave the damages in respect of the unfounded charge of felony. On a rule for a prohibition:—*Held*: the cause of action alleged in the *plaint* being one over which the judge had jurisdiction, & the evidence having proved it, prohibition would not lie, even on the assumption that the judge, in estimating the damages, erroneously took into consideration matters the subject of an action for malicious prosecution & therefore not within his jurisdiction.—*CHIVERS v. SAVAGE* (1855), 5 E. & B. 697; 2 Saund. & M. 115; 25 L. J. Q. B. 85; 26 L. T. O. S. 148; 20 J. P. 451; 2 Jur. N. S. 137; 4 W. R. 117; 119 E. R. 641.

Annotation:—*Mentd.* *Brandt v. Craddock* (1858), 27 L. J. Ex. 314.

68. —.—Deft.'s wife having given pltf. into the custody of a constable on an unfounded charge of felony, deft. attended at the police station, & after having been cautioned by the inspector on duty that he would not incur the responsibility of detaining pltf. unless deft. distinctly charged him with felony & signed the charge sheet, deft. signed the charge sheet, & pltf. was detained, & taken next morning before the magistrates, who upon the hearing discharged him. Pltf. took out a *plaint in a county ct. for false imprisonment*, accompanying it with a notice whereby he expressly disclaimed any cause of action in respect of the malicious prosecution. The judge, erroneously treating the signing of the charge sheet as the commencement of a malicious prosecution, ruled that the whole was one continuous transaction & that the false imprisonment could not be separated from the rest, & consequently that he had no jurisdiction, & nonsuited pltf.:—*Held*: a new trial would be directed.

The *plaint* was clearly for false imprisonment only, & the notice which accompanied it did not change its character; on the contrary it was a distinct disclaimer of any intention to go for damages for a malicious prosecution. There being, then, nothing on the face of the *plaint* to show an absence of jurisdiction, I think the judge was wrong in nonsuiting pltf. because some evidence got in which might have supported an action for malicious prosecution (MONTAGUE SMITH, J.).—*AUSTIN v. DOWLING* (1870), L. R. 5 C. P. 534; 39 L. J. C. P. 260; 22 L. T. 721; 18 W. R. 1003.

Annotations:—*Consd.* *Sewell v. National Telephone Co.*, [1907] 1 K. B. 557. *Mentd.* *Marks v. Frogley* (1898), 67 L. J. Q. B. 605.

69. Action for slander.]—HOPPER v. WARBURTON, No. 66, *ante*.

70. Action involving slander of title.]—BARBROOKE v. MOORE (1889), 88 L. T. Jo. 155.

As to actions taken out of the jurisdiction of county cts., *see, now*, 1888 Act, s. 56.

71. Application for suspension of increase of rent—Under Increase of Rent & Mortgage Interest (Restrictions) Act, 1920 (c. 17), s. 2 (2).]—The emergency legislation has allocated to the county ct. applications for suspension of increases of rent under above Act, & applications under above sub-sect. cannot be entertained by the High Ct.—X-RAYS, LTD. v. ARMITAGE (1922), 66 Sol. Jo. 351.

Whether consent of Charity Commissioners necessary.]—*See* CHARITIES, Vol. VIII., p. 395, No. 2180.

SECT. 2.—AS TO LOCALITY.

SUB-SECT. 1.—ORDINARY ACTIONS.

A. Meaning of "Dwell."

(a) *Person having more than one Residence.*

See, now, 1888 Act, s. 74.

72. Permanent & temporary residences—No "dwelling" at temporary residence.]—Where a man, having his permanent residence at one place, has a lodging, for a temporary purpose only, at another place, he does not "dwell" at the latter place, within the meaning of 1846 Act, s. 128, so as to oust the jurisdiction of the superior cts.—MACDOUGALL v. PATERSON (1851), 11 C. B. 755; 6 Exch. 337, n.; 2 L. M. & P. 681; Cox, M. & H. 544; 21 L. J. C. P. 27; 18 L. T. O. S. 139; 15 J. P. 803; 15 Jur. 1108; 138 E. R. 672.

Annotations:—Distd. Bailey & Pegg v. Bryant (1858), 28 L. J. Q. B. 86; Dunston v. Paterson (1859), 28 L. J. C. P. 97. *Consd.* Butler v. Ablewhite (1859), 6 C. B. N. S. 740. *Distd.* Alexander v. Jones (1866), 18 R. 1 Exch. 133. *Refd.* Pigrim v. Knatchbull (1865), 18 C. B. N. S. 798. *Mentd.* Crake v. Powell (1852), 2 E. & B. 210; Meredith v. Gittins (1852), 18 Q. B. 257; Meredith v. — (1852), 18 L. T. O. S. 248; York & North Mid. Ry. v. R. (1853), 22 L. J. Q. B. 225; Collins v. Johnson (1855), 16 C. B. 588; Morisse v. Royal British Bank (1856), 1 C. B. N. S. 67; *Re* Newport Bridge (1859), 2 E. & E. 377; Corbett v. General Steam Navigation Co. (1859), 28 L. J. Ex. 214; R. v. Wollez & Bliss, *Re* Hart (1860), 8 Cox, C. C. 337; R. v. Oxford (1879), 4 Q. B. D. 525; Julius v. Oxford (1880), 5 App. Cas. 214; Emden v. Carte (1881), 19 Ch. D. 311; R. v. Mitchell, *Ex p.* Livesey, [1913] 1 K. B. 561; Taylor v. Faïres (1920), 65 Sol. Jo. 116.

73. ———.]—Pltf. is entitled to costs under 1852 Act, s. 4, though he obtains a verdict for 40s. only, if his permanent place of residence is more than twenty miles from the place where pltf. dwells or carries on his business, although at the time of the commencement of the action he was for a temporary purpose residing within that distance.—MARSH v. CONQUEST (1864), 17 C. B. N. S. 418; 4 New Rep. 282; 33 L. J. C. P. 319; 10 L. T. 717; 10 Jur. N. S. 989; 12 W. R. 1006; 144 E. R. 169.

Annotations:—Mentd. Lyon v. Knowles (1864), 12 W. R. 1083; Chatterton v. Cave (1875), 44 L. J. C. P. 386; Monaghan v. Taylor (1886), 2 T. L. R. 685; Karno v. Pathé Frères (1909), 100 L. T. 260.

See No. 80, *post*.

74. More than one permanent residence—Where residing when action commenced.]—Pltf., a member of Parliament, had a house in London, within twenty miles of deft., in which he resided only for about three months in the year in order to attend in Parliament, & he resided chiefly the rest of the year at his iron works in the country, more than twenty miles from deft., & was residing there at the time when he brought an action in this ct. for a cause within the jurisdiction of the City Small Debts Ct., in which he recovered not

more than £50 :—*Held* : pltf. "dwelt" in London, & therefore did not dwell more than twenty miles from deft., & deft. was entitled, under London (City) Small Debts Extension Act, 1852 (c. lxxvii), s. 119, to enter a suggestion to deprive pltf. of costs.—BAILEY v. BRYANT (1858), 1 E. & E. 340; 28 L. J. Q. B. 86; 5 Jur. N. S. 468; 120 E. R. 936.

Annotations:—Expld. & Distd. Butler v. Ablewhite (1859), 6 C. B. N. S. 740. *Consd.* Kerr v. Haynes (1860), 29 L. J. Q. B. 70. *Refd.* Pigrim v. Knatchbull (1865), 18 C. B. N. S. 798.

75. ———.]—Pltf. had two permanent places of residence, one in London, where deft. dwelt, & where the cause of action accrued, & the other more than twenty miles from London. At the time of bringing the action pltf. was living with his family at his country residence :—*Held* : a case of concurrent jurisdiction, & pltf. was entitled to costs under 1852 Act, s. 4.—BUTLER v. ABLEWHITE (1859), 6 C. B. N. S. 740; 28 L. J. C. P. 292; 5 Jur. N. S. 1268; 7 W. R. 583; 141 E. R. 642.

Annotations:—Consd. Kerr v. Haynes (1860), 29 L. J. Q. B. 70; Marsh v. Conquest (1864), 17 C. B. N. S. 418. *Apprvd. & Apld.* Pigrim v. Knatchbull (1865), 18 C. B. N. S. 798.

76. ——— One residence at business premises.]—Three years before action brought, pltf. hired a house at M., & from that time had his wife, family, & servants permanently established there, he & his family occupying that house as their dwelling & home. He at the same time carried on business as a law stationer in London, & occupied three houses there. He was in the habit of passing three or four days of each week in London, occupying two rooms in one of the houses, which rooms had been fitted up for his residence while staying in town. He always absented himself from London, & resided with his family at M. whenever his business would allow. In the winter & early spring he was usually in London four days in each week; during the rest of the year, he was usually in M. three & occasionally four days in the week. On the day upon which the action was brought he was in London; but when the writ was issued he was on his way to M. :—*Held* : pltf. dwelt at M. & not in London.—KERR v. HAYNES (1860), 29 L. J. Q. B. 70; 2 L. T. 11; 24 J. P. 182; 6 Jur. N. S. 169; 8 W. R. 277.

Annotations:—Refd. Adams v. G. W. Ry. (1861), 6 H. & N. 404; Pigrim v. Knatchbull (1865), 18 C. B. N. S. 798. *Mentd.* Flower v. Allan (1863), 12 W. R. 160.

77. ———.]—A writ of summons issued against deft. on Jan. 5, 1865. Deft. had two residences, one in London, the other in Kent, more than twenty miles distant from the pltf.'s residence, which was in London. On Jan. 4, pltf.'s attorney received a letter from deft., dated from his residence in Kent, referring him to his attorneys in London to accept service of process for him. Deft.'s attorneys on the day of the issuing of the writ gave an undertaking to appear, & on that day one of them had an interview with deft. at his London residence :—*Held* : the result of the facts thus appearing was that deft. was residing in Kent at the time of the commencement of the action & consequently that there was concurrent jurisdiction & pltf. was entitled to his costs under 1852 Act, s. 4.—PIGRIM v. KNATCHBULL (1865), 18 C. B. N. S. 798; 6 New Rep. 67; 34 L. J. C. P. 257; 11 Jur. N. S. 389; 13 W. R. 657; 144 E. R. 659; *sub nom.* PILGRIM v. KNATCHBULL, 12 L. T. 383.

"Dwelling" of corporations.]—*See* Sect. 2, sub-sect. 1, C., *post*.

As regards jurisdiction of Mayor's Court, London.]—*See* MAYOR'S COURT, LONDON.

Sect. 2.—As to locality: Sub-sect. 1, A. (b), B. (a) (b) i., ii. & iii., C.]

(b) Other Cases.

See, now, 1888 Act, s. 74.

78. Bonâ fide residence—Acquired for purpose of jurisdiction—Day before issue of summons.]—It is no objection to the jurisdiction of a county ct. under 1856 Act, s. 18, that pltf. has become resident within the district of the ct. for the very purpose of giving it jurisdiction, provided that the residence was actually & bonâ fide, & not colourably & collusively, acquired before the issuing of the summons, although occupation commenced only the day before it is issued.—**MASSEY v. BURTON, Re BLOOMSBURY COUNTY COURT**, (1857) 2 H. & N. 597; Saund. & M. 213; 27 L. J. Ex. 101; 30 L. T. O. S. 156; 22 J. P. 87; 3 Jur. N. S. 1130; 6 W. R. 108.

Annotation:—Refd. Webber v. Shaw (1862), 10 W. R. 526.

79. Not detention in gaol.]—A gaol in which a person is confined is not a dwelling within 1846 Act, s. 128.

Pltf., being on a visit to her sister, personated her, & was taken upon a *ca. sa.* in her stead. She was taken to M. gaol, which was more than twenty miles from deft.'s & remained there up to the commencement of the action. Upon her discharge from custody she returned to her sister's. There was nothing to show how long she had been at her sister's:—**Held:** her residence in the gaol, being temporary & compulsory, she did not dwell there within the meaning of 1846 Act, s. 128.—**DUNSTON v. PATERSON** (1858), 5 C. B. N. S. 267; 28 L. J. C. P. 97; 32 L. T. O. S. 61; 22 J. P. 690; 4 Jur. N. S. 1024; 6 W. R. 768; 141 E. R. 106.

Annotations:—Expld. Butler v. Ablewhite (1859), 6 C. B. N. S. 740. **Mentd.** Hatch v. Lewis (1861), 7 H. & N. 367; Parr v. Lilliecrap (1862), 1 H. & C. 615.

80. Temporary residence—No permanent residence.]—A person who has no permanent place of abode "dwells" within the meaning of 1846 Act, s. 128, at the place at which he may be temporarily residing.—**ALEXANDER v. JONES** (1866), L. R. 1 Exch. 133; 4 H. & C. 204; 35 L. J. Ex. 78; 13 L. T. 719; 30 J. P. 103; 12 Jur. N. S. 125; 14 W. R. 400.

81. Residence of substantial defendant—Not co-defendant with same interest as plaintiff.]—(1) In order to bring a plaint within the jurisdiction of a county ct. under 1867 Act, s. 1, on the ground of a deft. residing in the district of that ct. such deft. must be a substantial deft., & the fact that one of defts., who was in the same interest as pltf., had a place of residence within the district is not sufficient to give the county ct. jurisdiction.

(2) The fact that a bill to secure the subject of the suit was dated & made payable within the district does not give jurisdiction.—**BAKER v. WAIT** (1869), L. R. 9 Eq. 103; 39 L. J. Ch. 204; 21 L. T. 632; 34 J. P. 196; 18 W. R. 185.

Under Bankruptcy Rules, 1870, r. 17.]—See BANKRUPTCY & INSOLVENCY, Vol. IV., p. 38, No. 322.

"Dwelling" of corporations.]—See Sect. 2, sub-sect. 1, C., *post*.

As regards jurisdiction of Mayor's Court, London.]—See MAYOR'S COURT, LONDON.

B. Meaning of "Carry on his Business."

(a) What Occupation constitutes carrying on Business.

See, now, 1888 Act, s. 74.

82. Not clerk—In government department.]—A clerk in the Excise Office, attending the office

in the City of London from ten till four every day, Sundays & holidays excepted, & having no other means of obtaining his livelihood, but residing with his wife & family out of London, is not a person "seeking a livelihood" within the City of London or its liberties, within the meaning of those words in 39 & 40, Geo. 3, c. civ., & therefore he is liable to be sued in the superior cts. for a debt under £5.—**SMITH v. HURRELL** (1830), 10 B. & C. 542; 8 L. J. O. S. K. B. 198; 109 E. R. 552.

83. ———.]—A clerk to the Privy Council is not a person who "carries on his business" at the office of the Privy Council, within the meaning of 1846 Act, s. 60.—**SANGSTER v. KAY** (1850), 5 Exch. 386; Cox, M. & H. 328; Rob. L. & W. 488; 15 L. T. O. S. 186; 14 J. P. 355.

Annotation:—Mentd. Graham v. Lewis (1888), 22 Q. B. D. 1.

84. ———.]—A clerk in the Admlty., who, as such, attends daily at an office within the city of London, is not a person who "carries on his business" there within 10 & 11 Vict. c. lxxi.

A bill of exchange was drawn & accepted, & the indorser put his name upon it, within the city of London, but it was delivered to the indorsee in the county of Middlesex:—**Held:** the cause of action did not arise within the city of London.—**BUCKLEY v. HANN** (1850), 5 Exch. 43; Cox, M. & H. 269; Rob. L. & W. 307; 19 L. J. Ex. 151; 14 L. T. O. S. 444; 14 J. P. 467; 14 Jur. 226.

Annotations:—Refd. R. v. Birch (1852), Ball Ct. Cas. 56; Wilde v. Sheridan (1852), 19 L. T. O. S. 126; Mitchell v. Hender (1854), 23 L. T. O. S. 83; Graham v. Lewis (1888), 22 Q. B. D. 1; Read v. Brown (1888), 22 Q. B. D. 128. **Mentd.** R. v. Norfolk County Court Judge (1852), 16 J. P. Jo. 180; Borthwick v. Walton (1855), 15 C. B. 501.

85. Deputy sealer in Court of Chancery.]—The deputy sealer in the Ct. of Ch. performed his duty of affixing the Great Seal to certain instruments, in a room called the sealer's room, adjoining the ct. at Westminster or Lincoln's Inn where the Lord Chancellor sat for the time being; or in a room called the sealer's room at the House of Lords when the Lord Chancellor attended the House judicially & at other times in the Great Seal Patent Office, Quality Court, Chancery Lane:—**Held:** the sealer's room or office, not being a fixed place, but shifting with the avocations of the Lord Chancellor, could not be deemed a place of business for the purpose of giving jurisdiction to a county ct. within 1846 Act, s. 128. *Qu.* whether the duty performed by the deputy sealer was a business at all, within that sect.—**ROLFE v. LEARMONTH** (1849), 14 Q. B. 196; Cox, M. & H. 267; Rob. L. & W. 143; 19 L. J. Q. B. 10; 14 L. T. O. S. 128; 13 Jur. 986; 117 E. R. 79.

Annotations:—Appld. Buckley v. Hann (1850), 5 Exch. 43. **Refd.** Mitchell v. Hender (1854), 23 L. T. O. S. 83. **Mentd.** Alexander v. Jones (1865), 35 L. J. Ex. 78.

86. Director of joint stock company.]—By 1888 Act, s. 74, "Every action or matter may be commenced in the ct. within the district of which deft. . . shall dwell or carry on his business":—**Held:** for that purpose the business of a joint stock co. is not the business of its directors; & the mere fact that such a co. carries on business within the district of a particular county ct. does not render a director of the co. liable to be sued in that county ct. in respect of a cause of action arising outside the district.—**CAIN v. BUTLER**, [1916] 1 K. B. 759; 85 L. J. K. B. 804; 114 L. T. 698; 32 T. L. R. 310.

Surgeon & accoucheur.]—See No. 90, *post*.

Under Bankruptcy Rules, 1870, r. 17.]—See BANKRUPTCY & INSOLVENCY, Vol. IV., p. 38, No. 322.

As regards jurisdiction of Mayor's Court, London.]
—See MAYOR'S COURT, LONDON.

(b) *Place of Business.*

i. *In General.*

See, now, 1888 Act, s. 74.

87. More places than one.]—To give jurisdiction to a county ct. on the ground that the cause of action arose within the district it is necessary that pltf. should obtain the leave of the ct. to issue the summons in pursuance of 1846 Act, s. 60. 1846 Act, s. 60, confers jurisdiction on county cts. to issue a summons, "in any district in which deft. or one of defts. shall dwell or carry on his business at the time of the action brought":—*Held*: (1) a corpn. or railway co. "dwells" at the place where it carries on its business; (2) the place where such a body carry on business is where they carry on their general business, not where they carry on a part, or even a material part of their business. *Semble*: within 1846 Act, s. 60, a person may carry on business in more places than one.

We cannot issue a mandamus or rule the judge to do an act or take a step in a cause in which the county ct. has no jurisdiction (WIGHTMAN, J.).—*Re BROWN v. LONDON & NORTH WESTERN RY. CO.* (1863), 4 B. & S. 326; 2 New Rep. 447; 32 L. J. Q. B. 318; 8 L. T. 695; 27 J. P. 711; 10 Jur. N. S. 234; 11 W. R. 884; 122 E. R. 481.

Annotations:—*As to* (2) *Apld.* *Le Tailleur v. S. E. Ry.* (1877), 3 C. P. D. 18; *Rogers v. L. C. & D. Ry.* (1877), 26 W. R. 192. *Reid.* *Graham v. Lewis* (1888), 57 L. J. Q. B. 376. *Generally, Mentd.* *Shea v. United Sick & Burial Soc. of St. Patrick* (1867), 37 L. J. C. P. 50; *Cesena Sulphur Co. v. Nicholson, Calcutta Jute Mills Co. v. Same* (1876), 1 Ex. D. 428; *Re Bowie, Ex p. Breull* (1880), 50 L. J. Ch. 384; *Erichsen v. Last* (1881), 45 L. T. 703; *East End Benefit Bldg. Soc. v. Slack* (1891), 60 L. J. Q. B. 359; *Golding v. Order of Sainte Union des Sacrés Cœurs* (1892), 8 T. L. R. 567.

Of corporations.]—See Sect. 2, sub-sect. 1, C, *post*.

As regards jurisdiction of Mayor's Court, London.]
—See MAYOR'S COURT, LONDON.

ii. *Business carried on personally.*

See, now, 1888 Act, s. 74.

88. Changing place of business.]—ROLFE v. LEARMONTH, No. 85, *ante*.

89. — Permanent place of business elsewhere—Higgler's business.]—NUSSEY v. GLENDINNING (1854), 23 L. T. O. S. 93, D. C.

90. Business in one district—Residence in another district—Surgeon's practice.]—H. was a surgeon, apothecary & accoucheur, residing at C., in the district of county ct. A. He daily attended to patients requiring his advice residing in the district of county ct. B.:—*Held*: he carried on his business within the jurisdiction of county ct. B., within the meaning of 1846 Act, s. 128.

He was also a partner in a mine on the cost-book principle in the district of county ct. B. He never attended to the mine personally, but the business was conducted by an agent. *Semble*: H. did not carry on the business of a miner within the jurisdiction of county ct. B. within the meaning of the statute, which contemplates personal attendance.—MITCHELL v. HENDER (1854), 1 Saund. & M. 22; 23 L. J. Q. B. 273; 23 L. T. O. S. 83; 18 J. P. 728; 18 Jur. 430; 2 W. R. 411; 2 O. L. R. 460.

91. — Builder's particular job.]—Upon an application to deprive pltf. of costs, it appeared that deft. was a builder, who had been employed to fit up certain houses in the county ct. district, where a material part of the cause of action arose, & that for the purpose of performing that contract he had set up workshops & counting-houses there:

—*Held*: as the works there were only set up for the purpose of the particular job, & his permanent residence was elsewhere, he did not carry on his business there within the meaning of the Act.—GORSLETT v. HARRIS (1857), 1 Saund. & M. 189; 29 L. T. O. S. 75.

Annotation:—*Reid.* *Shiels v. G. N. Ry.* (1861), 30 L. J. Q. B. 331.

As regards jurisdiction of Mayor's Court, London.]
—See MAYOR'S COURT, LONDON.

iii. *Business not carried on personally.*

See, now, 1888 Act, s. 74.

92. Business carried on by agent—Principal dwelling elsewhere.]—Pltf. who dwells more than twenty miles from deft. may sue in the superior cts. for a debt under £20 although he carries on business at a place within that distance by an agent, who sold the goods there to deft., which are the subject of the debt.—SHIELS v. RAIT (1849), Cox, M. & H. 192; 12 L. T. O. S. 402.

93. — — —.]—WHILEY v. STIFF (1854), 22 L. T. O. S. 245; *sub nom.* WILEY v. STIFF, 18 J. P. 266.

94. — No personal attendance of principal—Partnership in mine.]—MITCHELL v. HENDER, No. 90, *ante*.

95. Business carried on by partner—For dormant partner.]—WHILEY v. STIFF (1854), 22 L. T. O. S. 245; *sub nom.* WILEY v. STIFF, 18 J. P. 266.

96. Branch office—Principal office elsewhere—Partnership.]—Where a Scottish firm carrying on business in Scotland with a branch office situate within the jurisdiction of a county ct. were sued in the firm's name, & the summons was served at the branch office:—*Held*: the firm "carried on business" within the jurisdiction, the service was good, & the county ct. judge was wrong in declining to exercise jurisdiction.—WEATHERLEY v. CALDER & CO. (1889), 61 L. T. 508, D. C.

97. Registered office of company—Business of company—Not of director.]—CAIN v. BUTLER, No. 86, *ante*.

As regards jurisdiction of Mayor's Court, London.]
—See MAYOR'S COURT, LONDON.

C. *Dwelling and Place of Business of Company or Corporation.*

See 1888 Act, s. 74.

See, generally, COMPANIES.

98. General rule.]—A body corporate may "dwell" within the meaning of 1846 Act, s. 128, which gives concurrent jurisdiction to the superior cts., when pltf. dwells more than twenty miles from deft.

A railway co. is deemed to dwell at the principal office, & not at every station on the line.—ADAMS v. GREAT WESTERN RY. CO. (1861), 6 H. & N. 404; 30 L. J. Ex. 124; 3 L. T. 631; 9 W. R. 254; 158 E. R. 166.

Annotations:—*Apld.* *Shiels v. G. N. Ry.* (1861), 30 L. J. Q. B. 331. *Reid.* *Re Brown v. L. & N. W. Ry.* (1863), 4 B. & S. 326; *Keynsham Blue Lias Cement Co. v. Baker* (1863), 9 Jur. N. S. 1346. *Mentd.* *Cesena Sulphur Co. v. Nicholson, Calcutta Jute Mills Co. v. Same* (1876), 1 Ex. D. 428.

99. "Dwells" at place of business.]—A corpn. "dwells" within the meaning of 1846 Act, s. 128, at the place where its business is carried on.

Therefore, where a joint stock co. completely registered carried on its business within twenty miles of the place, & within the jurisdiction of the county ct., where pltf. resided, but several of the shareholders dwelt beyond that distance & out of such jurisdiction:—*Held*: the superior ct. had not concurrent jurisdiction with the county ct.

Sect. 2.—As to locality: Sub-sect. 1, C. & D. (a), i. & ii., (b) i.]

Semble: 7 & 8 Vict. c. 110, s. 68, which enables the ct. or a judge to allow execution to issue against the shareholders of a joint stock co. does not apply to pltf. in a county ct.—*TAYLOR v. CROWLAND GAS & COKE CO.* (1855), 11 Exch. 1; 24 L. J. Ex. 233; 25 L. T. O. S. 55; 19 J. P. 295; 1 Jur. N. S. 358; 3 W. R. 368; 3 C. L. R. 865; 156 E. R. 720.

Annotations:—*Consd.* *Adams v. G. W. Ry.* (1860), 3 L. T. 631; *Shiels v. G. N. Ry.* (1861), 30 L. J. Q. B. 331; *Re Brown v. L. & N. W. Ry.* (1863), 32 L. J. Q. B. 318. *Refd.* *Keynsham Blue Lias Lime Co. v. Baker* (1863), 2 H. & C. 729; *Strachey v. Osborne* (1874), L. R. 10 C. P. 92. *Mentd.* *Day v. Hemings* (1862), 26 J. P. 55; *Cesena Sulphur Co. v. Nicholson, Calcutta Jute Mills Co. v. Same* (1876), 1 Ex. D. 428.

100. At principal office—Of railway company—Not at local station.—If a ry. co. injure a chattel of pltf. in county ct. district A., the co. cannot be sued for it in county ct. district B., merely because they have a local station in district B., at which passengers are booked & goods received for carriage; for a ry. co. does not carry on its business within the meaning of 1846 Act, s. 60, at every place where it has a station, but only at the principal office, where the directors meet & the general business of the co. is transacted.—*SHIELS v. GREAT NORTHERN RY. CO.* (1861), 30 L. J. Q. B. 331; 4 L. T. 479; 7 Jur. N. S. 631; 9 W. R. 739.

Annotations:—*Consd.* *Re Brown v. L. & N. W. Ry.* (1863), 4 B. & S. 326. *Refd.* *Keynsham Blue Lias Lime Co. v. Baker* (1863), 2 H. & C. 729. *Mentd.* *Cesena Sulphur Co. v. Nicholson, Calcutta Jute Mills Co. v. Same* (1876), 1 Ex. D. 428; *Re Bowie, Ex p. Breull* (1880), 50 L. J. Ch. 384; *Graham v. Lewis* (1888), 57 L. J. Q. B. 376.

101. — — — — —.]—ADAMS v. GREAT WESTERN RY. CO., No. 98, ante.

102. — — — — —.]—Re BROWN v. LONDON & NORTH WESTERN RY. CO., No. 87, ante.

103. Not at agent's office—Railway company.—P. & Co. kept a receiving-house in U. St., within the jurisdiction of the county ct. of S., & received goods there, as agents for defts. & other ry. cos., to be transmitted by their respective railways, & gave receipts in the names of the cos.:—*Held*: defts. did not carry on business within the jurisdiction of the county ct. of S. under 1846 Act, s. 125.—*MINOR v. LONDON & NORTH WESTERN RY. CO.* (1856), 1 C. B. N. S. 325; 26 L. J. C. P. 39; 28 L. T. O. S. 144; 21 J. P. 343; 2 Jur. N. S. 1168; 5 W. R. 122; 140 E. R. 134.

Annotations:—*Refd.* *Shea v. United Sick & Burial Soc. of St. Patrick* (1867), 37 L. J. C. P. 50. *Mentd.* *La Bourgogne* (1898), 68 L. J. P. 9.

104. — — — — —.]—Trading company.—A co., carrying on business in London, which employs in a country town a general commission agent, who transacts the co.'s business in such town, in an office for which the co. pay him rent, does not "carry on business" in that town within the meaning of 1846 Act, s. 128.—*CORBETT v. GENERAL STEAM NAVIGATION CO.* (1859), 4 H. & N. 482; 28 L. J. Ex. 214; 33 L. T. O. S. 137; 23 J. P. 344; 7 W. R. 498; 157 E. R. 928.

Annotations:—*Refd.* *Adams v. G. W. Ry.* (1861), 6 H. & N. 404. *Mentd.* *Baillie v. Goodwin* (1886), 33 Ch. D. 604; *La Bourgogne*, [1899] P. 1.

105. — — — — —.]—Where a registered joint stock co. sells goods through an agent who sells them in his own name at his place of business within twenty miles of the deft.'s residence, the co. are nevertheless entitled to costs under the county cts. Acts if their place of business is more than twenty miles from deft.—*OLDHAM BUILDING & MANUFACTURING CO., LTD. v. HEALD* (1864),

3 H. & C. 132; 4 New Rep. 252; 23 L. J. Ex. 236; 10 L. T. 534; 159 E. R. 478.

106. At place of manufacture & sale—Not at registered office—Manufacturing company.—A registered joint stock co. for the manufacture & sale of goods, dwells & carries on business, within 1846 Act, s. 128, at the place of manufacture & sale, & not at the registered office of the co.—*KEYNSHAM BLUE LIAS LIME CO. v. BAKER* (1863), 2 H. & C. 729; 33 L. J. Ex. 41; 9 L. T. 418; 9 Jur. N. S. 1346; 12 W. R. 156; 159 E. R. 302.

Annotations:—*Refd.* *Aberystwith Promenade Pier Co. v. Cooper* (1865), 35 L. J. Q. B. 44. *Mentd.* *Cesena Sulphur Co. v. Nicholson, Calcutta Jute Mills Co. v. Same* (1876), 1 Ex. D. 428; *Baillie v. Goodwin* (1886), 33 Ch. D. 604; *Jones v. Scottish Accident Insee.* (1886), 17 Q. B. D. 421.

107. At registered office—Where main business transacted—Pier company—Not place where pier maintained.—A pier co. had for its object to erect & maintain a pier in Wales, where tolls were received, but the registered office was in London, where the main business was carried on:—*Held*: London was the place where the company dwelt, & not Wales, & the jurisdiction accordingly was not in the county ct. of the part of Wales where the pier was situated.—*ABERYSTWITH PROMENADE PIER CO., LTD. v. COOPER* (1865), 35 L. J. Q. B. 44; 13 L. T. 273; 30 J. P. 791; 12 Jur. N. S. 995; 14 W. R. 28.

Annotation:—*Mentd.* *Cesena Sulphur Co. v. Nicholson, Calcutta Jute Mills Co. v. Same* (1876), 1 Ex. D. 428.

See, also, No. 86, *ante*.

108. At usual place of business—Friendly society—Principal office elsewhere—Friendly Societies Act, 1855 (c. 63), s. 41.—By the above Act the county ct. of the district within which "the usual or principal place of business of the society" is situate, is to have jurisdiction over the disputes with members, in certain cases:—*Held*: it was not sufficient for a prohibition against a county ct. hearing & determining such matter to show that the usual & principal place of business of the society is not situate within the district of such ct., without showing also that the society has no usual place of business within such district.

The ct. has a discretion in granting a prohibition although an arbitrator has been appointed & the forty days within which under sect. 41 he is to give his decision may not have elapsed.—*SHEA v. UNITED SICK & BURIAL SOCIETY OF ST. PATRICK* (1867), 37 L. J. C. P. 50; 17 L. T. 176; 16 W. R. 84.

Friendly societies generally, *see* FRIENDLY SOCIETIES.

As regards jurisdiction of Mayor's Court, London.]—See MAYOR'S COURT, LONDON.

D. Meaning of "District in which Cause of Action or Claim wholly or in part arose."

(a) Contracts.

i. In General.

See, now, 1888 Act, s. 74.

NOTE.—Under 1888 Act (as has been the case since 1867) a county court may, by leave, entertain any action if the cause of action arose within its district either "wholly or in part." Under 1846 Act, s. 60, a county court had no jurisdiction if a "part of the cause of action" arose outside its jurisdiction. Consequently the decisions under 1846 Act, s. 60, have been included as being in point for the purpose of ascertaining the district within which a cause of action "in part arose." The decisions under 1846 Act, s. 128, which provided for the concurrent jurisdiction of the county courts & the superior courts "where the cause of action did not arise wholly or in some material point within the

jurisdiction of the court within which defendant dwells or carries on his business at the time of the action brought have also been included as being in point.

109. General rule.]—Where the question is, whether “the cause of action” has arisen within the jurisdiction of a county ct., that means, in the case of a contract, the contract sued upon; & as a contract is an entire thing, the cause of action arises thereupon, so far as regards the contract itself, at the time & place when such contract is finally entered into.

Deft. resided at B., & pltf. bargained with him there by parol for the purchase of a horse from him for a price above £10, but the bargain was not completed. The next day deft., within the jurisdiction of the county ct. of T., completed the bargain, & agreed to warrant the horse, & then delivered the horse to pltf. :—*Held*: he was rightly sued in that ct. for a breach of the warranty, & the “whole” cause of action arose there, within the meaning of 1846 Act, s. 60.

Semble: where a contract for sale of goods within Stat. Frauds is made by parol at one place & time, & ratified at another place & time by part payment or delivery, the “cause of action” within the meaning of 1846 Act arises at the latter time & place; & it is clearly so if the terms are then finally settled.—*ARIS v. ORCHARD* (1860), 6 H. & N. 160; 30 L. J. Ex. 21; 3 L. T. 443; 158 E. R. 66; *sub nom.* *AVIS v. ORCHARD*, 9 W. R. 106.

See, generally, CONTRACT.

As regards jurisdiction of Mayor’s Court, London.]
—*See MAYOR’S COURT, LONDON.*

ii. Contracts by Letter.

See, now, 1888 Act, s. 74.

110. Not district where letter posted—Contract carried out outside jurisdiction—For sale of goods—1846 Act, s. 128.]—Deft., residing at N. within the jurisdiction of the W. county ct., wrote, at N., an order to pltf. for goods to be delivered at the S. railway station, out of the jurisdiction of the W. county ct. He agreed to pay for the carriage, & transmitted the letter to pltf., who received it at his place of business out of the jurisdiction, & sent the goods from his manufactory to the railway station at S., & they were received by deft. at N. :—*Held*: no part of the cause of action arose within the jurisdiction of the W. county ct. within 1846 Act, s. 128. Deft. might have objected to the quality of the goods had they not been according to order, but he did not make any objection, & it must be taken that he could make no objection, & that they were according to order, & therefore as soon as the goods were delivered at S. the cause of action was complete, & he was liable to the action for goods sold & delivered (*LORD CAMPBELL, C.J.*).—*DE PORQUET v. BURY* (1851), Rob. L. & W. 477; Cox, M. & H. 431; 16 L. T. O. S. 435.

111. ——— To do work—1846 Act, s. 60.]—Deft., residing & carrying on business in London, wrote to pltf., residing & carrying on business in S., ordering them to do certain work for him. The letter was received by pltf., & the work was done, in S. A summons having issued, upon pltf.’s application, against deft. in the county ct. of S., by leave of the registrar, to recover the amount due for such work :—*Held*: the whole cause of action arose within the district of that ct. & the registrar therefore had jurisdiction to issue the summons under 1846 Act, s. 60, & 1856 Act, s. 15.—*NEWCOMB v. DE ROOS* (1859), 2

E. & E. 271; 29 L. J. Q. B. 4; 1 L. T. 6; 6 Jur. N. S. 68; 8 W. R. 5; 121 E. R. 103.

Annotation:—*Mentd.* *Cherry v. Thompson* (1872), 41 L. J. Q. B. 243.

112. ——— To collect debt—No formal acceptance.]—Pltf. brought an action in the county ct., within the district of which he carried on business, to recover a trade debt collected by deft. at his place of business out of the district. The employment of deft. by pltf. was by letter, written & posted within the district, but not answered by the deft., who had never before the action been himself within the district. Upon a rule for a writ of prohibition to the county ct. judge obtained by the defendant :—*Held*: the cause of action or suit did not, in the words of 1867 Act, s. 1, wholly or in part arise within pltf.’s county ct. district, & the action could not be proceeded with.—*RENNIE v. RATCLIFF* (1877), 35 L. T. 833; 25 W. R. 319.

113. ——— Confirming terms previously agreed upon—No contract until letter received—1846 Act, s. 128.]—*MIRTH v. NUGENT* (1852), 1 W. R. 7.

114. ——— Containing offer—Contract by offer & acceptance.]—*Held*: (1) where a contract was made by offer & acceptance sent through the post between parties residing in different county ct. districts the posting of the offer was not part of the cause of action within the meaning of 1888 Act, s. 74; (2) the demand by deft. for particulars of the claim, in order to enable him to ascertain whether any part of the cause of action arose within the district in which the action was brought & the giving by him of an address for service were not such steps in the action as to disentitle him to object to the jurisdiction of the ct.—*CLARKE BROTHERS v. KNOWLES*, [1918] 1 K. B. 128; 87 L. J. K. B. 189; 118 L. T. 253, D. C.
Annotation:—*Generally, Mentd.* *Smythe v. Wiles*, [1921] 2 K. B. 66.

See, generally, CONTRACT.

As regards jurisdiction of Mayor’s Court, London.]
—*See MAYOR’S COURT, LONDON.*

(b) Sale of Goods.

i. Place where Order given.

See, now, 1888 Act, s. 74.

115. To vendor’s traveller—1846 Act, s. 60.]—A., carrying on business in M., by his traveller sold goods to B. at O. The goods were accordingly packed & sent by A. to the railway station at M., addressed to B. at O. :—

Held: as the order for the goods was received at O., the whole cause of action did not arise in M., so as to give the county ct. there jurisdiction to try it, under 1846 Act, s. 60.—*BORTHWICK v. WALTON* (1855), 15 C. B. 501; 24 L. J. C. P. 83; 24 L. T. O. S. 271; 1 Jur. N. S. 142; 3 W. R. 203; 3 C. L. R. 364; 139 E. R. 519; *sub nom.* *ELLIOTT & BORTHWICK v. WALTON*, 19 J. P. 103.

Annotations:—*Consd.* *Jackson v. Beaumont* (1855), 11 Exch. 300; *Hernaman v. Smith* (1855), 24 L. J. Ex. 175. *Refd.* *Staples v. Accidental Death Insce.* (1861), 10 W. R. 59; *Green v. Boach* (1873), L. R. 8 Exch. 208.

See, also, No. 117, post.

116. Offer at one place—Acceptance in another place—1867 Act, s. 1.]—Pltf. & deft. dwelt & carried on business in the districts of the B. & L. county cts. respectively. Pltf. offered verbally at B. to buy of the deft. certain cotton. Deft. accepted that offer at L., signing a sold note, which he forwarded to the pltf. at B. The cotton was to be & was delivered at L. Pltf. alleged that there had been short delivery, & entered a plaint for damages, by leave of the registrar, in the B. county ct. Upon motion for a writ of prohibition :—*Held*: the offer at B. was a part of the cause of

Sect. 2.—As to locality: Sub-sect. 1, D. (b), i., ii., iii. & iv., (c).]

action, & therefore, the judge had jurisdiction under above Act.—*GREEN v. BEACH* (1873), L. R. 8 Exch. 208; 42 L. J. Ex. 151; 21 W. R. 856.

Order given by letter.]—See Nos. 110, 111, ante.

See, generally, CONTRACT; SALE OF GOODS.

As regards jurisdiction of Mayor's Court, London.]—See MAYOR'S COURT, LONDON.

ii. Place of Delivery.

See, now, 1888 Act, s. 74.

117. To carrier—For carriage to purchaser—No arrangement between parties as to carriage.]—Vendee at A. gives an order for goods to the traveller of pltf., who is a dealer in L.; nothing is said about the mode of carriage, it is to be presumed that the goods are to be sent in the most usual & convenient way, & therefore upon the delivery of the goods to a carrier in L., a cause of action arises in L.—*COPELAND v. LEWIS* (1817), 2 Stark. 33, N. P.

118. ——— At request of purchaser—1846 Act, s. 60.]—Pltf. at G., within the jurisdiction of the G. county ct., received from deft. at L. an order for plants, the description of which was taken from a price list of pltf., in which also pltf. undertook to pay the carriage of goods ordered from him. Deft. ordered the plants by letter, & requested they should be sent by a particular carrier. Deft. resided more than 20 miles from pltf., & within the jurisdiction of another county ct. Pltf. having sent the goods to deft. by carrier, brought an action in the county ct. of G. to recover a balance alleged to be due in respect of them:—*Held*: the cause of action did not arise wholly in the jurisdiction of the county ct. of G., as the delivery to the carrier there was not a delivery to deft., & the ct. therefore had not jurisdiction.—*WHEELER v. PEARSON* (1857), 2 Saund. & M. 170; 28 L. T. O. S. 255; 5 W. R. 227.

119. ——— 1846 Act, s. 128.]—*DE PORQUET v. BURY*, No. 110, *ante*.

120. To purchaser—1846 Act, s. 60.]—Where goods were ordered at L. deliverable at M.:—*Held*: (1) the judge of the county ct. at L. had no jurisdiction to try the case, as the whole cause of action did not arise within his jurisdiction within the meaning of 1846 Act, s. 60; (2) the fact of the unsuccessful party applying for & obtaining a case for appeal did not amount to an acquiescence in the jurisdiction of the county ct., so as to disentitle him to a writ of prohibition.—*JACKSON v. BEAUMONT* (1855), 11 Exch. 300; 24 L. J. Ex. 301; 25 L. T. O. S. 185; 19 J. P. 532; 3 W. R. 521; 156 E. R. 844.

121. — By vendor's carrier.]—On an application by pltf. in an action for goods sold & delivered, for costs, under 1856 Act, on the ground that the cause of action did not wholly, or in a material part, arise within the jurisdiction of the county ct. in the district of which deft. resided, it appeared, by the affidavit of deft., as to the principal parcel of goods, that they were delivered there by a carrier, who was to be paid by pltf., & there being on the part of pltf. no positive affidavit as to the disputed facts, but only an affidavit of "information & belief":—*Held*: the delivery must be deemed to have been in that district in which deft. resided, & therefore, pltf. was not entitled to costs.—*ARNDT v. PORTER* (1860), 30 L. J. Ex. 19.

122. — Action for freight.]—In an action of

assumpsit the declaration stated that deft. was indebted to pltf. within the jurisdiction of the court, for freight due & payable from deft. to pltf., for carriage of goods from M. to K., & there delivered to deft., within the jurisdiction, at deft.'s request:—*Held*: the delivery was the consideration for the promise, & both the consideration & the cause of action were within the jurisdiction of the ct.—*KEMP v. CLARK* (1848), 12 Q. B. 647; Cox, M. & H. 190; 17 L. J. Q. B. 305; 12 L. T. O. S. 122; 12 Jur. 676; 116 E. R. 1012.

Annotation:—Mentd. Furness, Withy v. White, [1894] 1 Q. B. 483.

123. Of bought note—Not "material point"—1846 Act, s. 128.]—The delivery at deft.'s house of a bought note of goods sold by auction is not a material point of the cause of action within 1846 Act, s. 128, the auctioneer having entered the names of pltf. & deft. in his book at the time of the sale, which took place in another district, & the contract having been thereby complete within Stat. Frauds.—*CHAPMAN v. OPPENHEIM* (1849), Rob. L. & W. 63.

See, also, No. 128, post.

See, generally, CONTRACT; SALE OF GOODS.

As regards jurisdiction of Mayor's Court, London.]—See MAYOR'S COURT, LONDON.

iii. Debt of several Items.

See, now, 1888 Act, s. 74.

124. District where any one item of claim arises—Items so connected as to form one cause of action—1846 Act, s. 128.]—Where the items in a pltf.'s bill under £20, although ordered from different addresses, are so connected together as to form one cause of action, & any one item arises within the jurisdiction of a county ct. within which deft. dwells or carries on his business at the time of the action brought, & the parties do not dwell more than 20 miles apart, the cause of action, "in some material point" arises within such jurisdiction, & the superior ct. has no concurrent jurisdiction under 1846 Act, s. 128, & the case falls within s. 129 of that Act.—*WOOD v. PERRY* (1849), 3 Exch. 442; 6 Dow. & L. 194; Rob. L. & W. 39; Cox, M. & H. 208; 18 L. J. Ex. 161; 12 L. T. O. S. 475; 13 J. P. 155; 13 Jur. 129; 154 E. R. 918.

Annotations:—Apld. Bonsey v. Wordsworth (1856), 18 C. B. 325; *Copeman v. Hart* (1863), 14 C. B. N. S. 731. *Refd. Norman v. Marchant* (1852), 21 L. J. Ex. 256. *Mentd. Dodd v. Wigley* (1849), 13 Jur. 410.

125. ———.]—Pltf. was a butcher carrying on his business within the jurisdiction of the county ct. of A. Deft. resided within the jurisdiction of the county ct. of B. Pltf. sued deft. in the superior ct. for a bill, some of the items of which consisted of goods which had been ordered in the A. district, but delivered in the B. district:—*Held*: the whole formed one "cause of action," & as a part of it arose in the jurisdiction within which deft. resided & within 20 miles there was no concurrent jurisdiction within 1846 Act, s. 128, & consequently pltf. was not entitled to costs.—*BONSEY v. WORDSWORTH* (1856), 18 C. B. 325; 25 L. J. C. P. 205; 20 J. P. 406; 2 Jur. N. S. 494; 4 W. R. 566; 139 E. R. 1395.

Annotation:—Consd. Copeman v. Hart (1863), 14 C. B. N. S. 731.

126. ———.]—Pltf. had supplied grocery continuously to deft. in the usual course of business, for which one account was sent in. To this account was added the balance of an old account for salt which had always been kept separate, & upon which payments had been separately made from time to time. The cause

of action as to the salt arose within the jurisdiction of the county ct. within which deft. dwelt; but as to the grocery, it did not arise wholly or in any material point within that jurisdiction:—*Held*: the whole claim, including the balance of the old account, formed one cause of action; & inasmuch as one item arose within the jurisdiction of deft.'s county ct., it was not a case in which the cause of action "did not arise in some material point within the jurisdiction of the ct."—*COPEMAN v. HART* (1863), 14 C. B. N. S. 731; 23 L. J. C. P. 107; 143 E. R. 632.

See, also, Sect. 3, sub-sect. 3, A., *post*.

See, generally, CONTRACT; SALE OF GOODS.

As regards jurisdiction of Mayor's Court, London.

—*See* MAYOR'S COURT, LONDON.

iv. Other Cases.

See, now, 1888 Act, s. 74.

127. Place where agreement executed—1846 Act, s. 128.]—Pltf. & deft., who dwelt less than twenty miles apart, entered into a written agreement by which the former engaged to supply the latter with goods of a certain quality & at a specified price. After the delivery of a portion of the goods deft. refused to take the remainder on the ground that they were not of the quality agreed upon. Pltf. thereupon sued deft. in one of the superior cts. to recover the amount of the goods so delivered, & at the trial, he gave in evidence the written agreement, & recovered a verdict for the amount of the goods supplied, at the price stated in the agreement. This agreement was executed by both parties at a place within the jurisdiction of a ct. within which deft. dwelt at the time of action brought, & the amount recovered was below £20:—*Held*: this was not a case in which the superior ct. had concurrent jurisdiction within 1846 Act, s. 128, & therefore pltf. was not entitled to costs.—*NORMAN v. MARCHANT* (1852), 7 Exch. 723; 21 L. J. Ex. 256; 155 E. R. 1140.

128. Goods delivered out of jurisdiction—Contract for cash in exchange for shipping documents—Non-delivery of shipping documents within jurisdiction.]—Plaint in the county ct. of L., by leave of the judge, under 1846 Act, s. 60, against deft. not resident in the jurisdiction. On a rule for prohibition it appeared by the affidavits that pltf., at L. within the jurisdiction, made a contract with a broker who professed to act for deft. in these terms: "Sold the cargo of corn, *per* T., now at Q., at 27s. *per* quarter, including cost, freight & insurance, to a safe port in the United Kingdom. Payment, cash in exchange for shipping documents & policy of insurance." Q. was out of the jurisdiction, & so was the ship. Pltf. requested that the ship should be sent to D., a port also out of the jurisdiction. Deft. sold the cargo to another person, delivered him the shipping documents, & caused the cargo to be delivered to him:—*Held*: (1) the non-delivery of the cargo was a breach of the contract, & a cause of action, but out of the jurisdiction of the county ct., & the rule must be absolute to prohibit proceeding in the plaint for that; (2) the non-delivery of the shipping documents was also a breach of the contract, & a cause of action within the jurisdiction, & the rule must be modified so as to allow pltf. to proceed for that if the judge in his discretion thought fit to amend the particulars.—*WALSH v. IONIDES* (1853), 1 E. & B. 383; 1 Saund. & M. 84; 22 L. J. Q. B. 137; 20 L. T. O. S. 218; 17 J. P. Jo. 52; 17 Jur. 596; 118 E. R. 479.

Annotations:—*As to* (1) *Reid*, *Borthwick v. Walton* (1855), 15 C. B. 501. *As to* (2) *Distd.* *Covas v. Bingham*

2 E. & B. 836. *Expid.* *Taylor v. Addyman* (1853), 13 C. B. 309.

129. Contract within Statute of Frauds—Parol agreement in one place—Ratification in another place—1846 Act, s. 60.]—*ARIS v. ORCHARD*, No. 109, *ante*.

130. Action on warranty—Place of agreement to warrant—1846 Act, s. 60.]—*ARIS v. ORCHARD*, No. 109, *ante*.

131. Place of default in payment.]—In an action to recover the price of goods sold & delivered the default in payment is part of the cause of action.

A., who carried on business at B., sold & delivered goods to G., the contract being made & the goods delivered out of the jurisdiction of the ct. at B., but payment was to be made at B.:—*Held*: the ct. at B. had jurisdiction.—*NORTHEY STONE CO. v. GIDNEY*, [1894] 1 Q. B. 99; 70 L. T. 82; 42 W. R. 99; 38 Sol. Jo. 39; 10 R. 16, C. A.

See, generally, CONTRACT; SALE OF GOODS.

As regards jurisdiction of Mayor's Court, London.

—*See* MAYOR'S COURT, LONDON.

(c) Services rendered.

See, now, 1888 Act, s. 74.

Carriage of goods.]—*See* CARRIERS, Vol. VIII., p. 218, Nos. 1383, 1384.

132. Action to recover reward—For apprehension & prosecution of offenders—Place of conviction—1846 Act, s. 60.]—The term "cause of action" in above Act which gives jurisdiction to the county ct. of the district "in which the cause of action arose," means the whole cause of action.

An assocn. of which deft. was a member offered a reward for the apprehension & prosecution of persons committing certain offences, such reward to be paid on conviction. Pltf., within a district of the county ct. of G., apprehended an offender, who was tried & convicted within a district of the county ct. of H.:—*Held*: the county ct. of G. had no jurisdiction to entertain a plaint for the recovery of the reward.—*HERNAMAN v. SMITH* (1855), 10 Exch. 659; Saund. & M. 59; 24 L. J. Ex. 175; 24 L. T. O. S. 261; 19 J. P. 88; 1 Jur. N. S. 190; 3 W. R. 208; 3 C. L. R. 435; 156 E. R. 603.

Annotations:—*Reid*, *Bonsey v. Wordsworth* (1856), 18 C. B. 325; *Aris v. Orchard* (1860), 30 L. J. Ex. 21.

133. Action for costs of preparing mortgage deed—Place of agreement to give mortgage—1846 Act, s. 128.]—A., who resided at X., within the jurisdiction of the S. county ct., being the holder of a promissory note of B.'s testator for £100, sent his collector to B., who resided at T., within the jurisdiction of the W. county ct., to demand payment or security. B., at T., consented to give A. a further charge upon some property there on which he already held a mtge. for £200, & the collector, either at the request or with the assent of B., went to C., a solr. at X., by whom the original mtge. had been prepared, & there gave him instructions to prepare the necessary security, which B. afterwards executed at X. C. afterwards sued B. in a superior ct. for his charges, & obtained a verdict for £6 15s. 4d.:—*Held*: the cause of action arose "in some material point" within the jurisdiction of the T. county ct., & consequently there was not concurrent jurisdiction within 1846 Act, s. 128, so as to entitle C. to his costs.—*JACKSON v. GRIMLEY* (1864), 16 C. B. N. S. 380; 4 New Rep. 20; 33 L. J. C. P. 238; 10 L. T. 340; 12 W. R. 686; 143 E. R. 1175.

See, generally, CONTRACT.

As regards jurisdiction of Mayor's Court, London.

—*See* MAYOR'S COURT, LONDON.

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(d) Negotiable Instruments.

See, now, 1888 Act, s. 74.

134. Where bill drawn & indorsed—1846 Act, s. 129.]—Deft. in an action by an indorsee against the drawer of a bill for a sum under £20 traversed the notice of dishonour, & it appeared at the trial that the bill had been drawn & indorsed within the jurisdiction of the county ct. where deft. resided but that the notice of dishonour was given elsewhere:—*Held*: pltf. was deprived of his costs under 1846 Act, s. 129.—*BETTELEY v. BUCK* (1849), 13 L. T. O. S. 142; 13 Jur. 368.

Where drawn.]—*See* *BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS*, Vol. VI., p. 461, No. 2947.

135. Where bill dated & made payable—1867 Act, s. 1.]—*BAKER v. WAIT*, No. 81, *ante*.

Where bill accepted.]—*See* *BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS*, Vol. VI., p. 461, Nos. 2944, 2946.

Where notice of dishonour given.]—*See* *BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS*, Vol. VI., p. 461, No. 2945.

136. Action on I.O.U.—District where I.O.U. given—1846 Act, s. 128.]—In debt for money lent & on an account stated, pltf. recovered a verdict for £10 on the count for the account stated on proof of the deft.'s I.O.U. for that amount. Deft. moved to enter a suggestion to deprive pltf. of costs under 1846 Act, on his own affidavit, which, among other things, alleged that the cause of action arose wholly within the jurisdiction of the L. county ct. Pltf. showed cause on affidavits of himself & his wife, which stated that the cause of action was for £10 lent to deft. out of the jurisdiction of the L. county ct., & that the I.O.U. was given for that loan:—*Held*: the rule must be absolute, at all events, as pltf.'s affidavits did not negative that the I.O.U. was made within the jurisdiction of the L. county ct.

Qu.: whether on a motion to enter a suggestion to deprive pltf. of costs, where the only affidavits are those of the parties themselves, & the statements in them are contradictory as to where the cause of action arose, the ct. will grant the rule—*MILLS v. BEST* (1850), 1 L. M. & P. 43; 19 L. J. Q. B. 328; 15 L. T. O. S. 143.

As regards jurisdiction of Mayor's Court, London.]—*See* *MAYOR'S COURT, LONDON*.

(e) Other Cases.

See, now, 1888 Act, s. 74.

137. Action for advertisements in newspaper—Whether district of office where order given—Newspaper printed elsewhere—1846 Act, s. 128.]—Orders for advertisements in a newspaper were given at an office situate within the jurisdiction of the W. county ct., & deft.'s place of residence was also there, but the newspaper was printed in the City of London. In an action for the recovery of the price of inserting the advertisements, a verdict having been found for pltf. for £6 5s. on motion to this ct., a rule was made absolute for entering a suggestion on the roll in order to deprive pltf. of his costs, under 1846 Act, s. 119.

Qu.: if, under such circumstances, the cause of action can be said to have arisen wholly or in some material point within the jurisdiction of the county ct., within which deft. dwelt or carried on his business, within the meaning of s. 128.—*GHISLIN v. DEEN* (1848), 13 Jur. 82.

138. Action against administrator—District

where letters of administration granted—1846 Act, s. 60.]—A. by will bequeathed to his servant F., "should my executors think proper," £20, "conditional on his continuing to conduct himself faithfully in all respects," & appointed exors. The will was made in the district of the county ct. of K. & testator died there. The exors. renounced probate; & M. took out letters of administration with the will annexed, in the Prerogative Ct. of the Archbishop of C. M. resided in London. F. by leave of the judge of the county ct. of K. sued M. in that ct. for the £20. On a rule to set aside a judge's order for a prohibition:—*Held*: the grant of letters of administration was part of the cause of action, & the judge of the county ct. of K. had not, under 1846 Act, s. 60, jurisdiction in respect of it over M. who was not within his district; & on that ground the rule to set aside the judge's order was discharged.—*Re FULLER* (1853), 2 E. & B. 573; 22 L. J. Q. B. 415; 17 J. P. 744; 17 Jur. 989; 1 W. R. 447; 1 C. L. R. 1021; 118 E. R. 882.

Annotation:—*Folld. Borthwick v. Walton* (1855), 15 C. B. 501.

E. Leave to commence.

See, now, 1888 Act, s. 74.

139. Cause of action arising within district—Leave condition precedent to jurisdiction.]—*Re BROWN v. LONDON & NORTH WESTERN RY. CO.*, No. 87, *ante*.

140. — Discretion of judge or registrar.]—On an application, under 1888 Act, s. 74, for leave to commence an action in the county ct. in the district of which the cause of action wholly or in part arose, the county ct. judge or registrar has a discretion as to the grant or refusal of leave, & is not bound to grant leave when it is shown that the cause of action wholly or in part arose within that district.

Ord. 5, r. 9a, by which on such applications the judge or registrar shall exercise his discretion in each case as to the grant or refusal of leave in accordance with the circumstances, is not *ultra vires*, or repugnant to the stat., but is valid.—*R. v. TURNER (JUDGE)*, [1897] 1 Q. B. 445; 66 L. J. Q. B. 417; 76 L. T. 556; 45 W. R. 316; 41 Sol. Jo. 275, D. C.

See, now, Ord. 5, r. 13.

141. — City of London Court—Leave not required—London (City) Small Debts Extension Act, 1852 (c. lxxvii.), s. 39, not repealed by 1888 Act, s. 74.]—Process in an action in the City of London Ct. may be issued without leave of the judge or registrar where deft. does not dwell or carry on business in the City of London, but the cause of action arose wholly or in part therein. In this respect 1888 Act, s. 74, does not repeal 1852 Act, s. 39.—*FELTON v. BOWER & Co.*, [1900] 1 Q. B. 598; 69 L. J. Q. B. 351; 82 L. T. 419; 48 W. R. 349; 44 Sol. Jo. 212, D. C.

SUB-SECT. 2.—ACTIONS FOR RECOVERY OF POSSESSION.

See, now, 1888 Act, ss. 138, 139.

142. District where property situated—Not district where plaintiff & defendant reside—1846 Act, s. 22.]—Where the property itself is situated out of the jurisdiction of the county ct., proceedings cannot be taken there for the recovery of possession under 1846 Act, s. 122, although both pltf. & deft. are residing within the jurisdiction.—*ELLIS v. PEACHEY* (1849), Rob. L. & W. 1; Cox, M. & H. 241; 18 L. J. Q. B. 137; 13 L. T. O. S. 102; 13 Jur. 564; 13 J. P. Jo. 86, 136.

See, generally, LANDLORD & TENANT.

SUB-SECT. 3.—EQUITABLE ACTIONS.

143. Administration action—Plaintiff & defendant dwelling or carrying on business in metropolitan district—Application of 1881 Act, s. 75.]—Where pltf. dwells or carries on business in any of such districts, & deftd. dwells or carries on business in any other of such districts, the proceedings may be taken in the ct. within the district of which either pltf. or deftd. dwells or carries on business.—*R. v. BLOOMSBURY COUNTY COURT JUDGE* (1890), 24 Q. B. D. 309; 62 L. T. 286; 38 W. R. 320; 6 T. L. R. 170.

See, also, No. 138, ante.

SUB-SECT. 4.—ACTIONS AGAINST OFFICERS OF COURT.

See Nos. 59, 60, ante.

SUB-SECT. 5.—ACTIONS IN CITY OF LONDON COURT.

144. Defendant “having employment” within city—Not dwelling or carrying on business in city—Jurisdiction not removed by 1888 Act, s. 74.]—London (City) Small Debts Extension Act, 1852 (c. lxxvii.), has not been repealed by the subsequent county ct. Acts, but is still in force, so that the City of London Ct. has jurisdiction to try an action when deftd. has “employment” within the City of London, although he does not dwell or carry on business therein, & although no part of the cause of action arose therein.—*KUTNER v. PHILLIPS*, [1891] 2 Q. B. 267; 60 L. J. Q. B. 505; 64 L. T. 628; 56 J. P. 54; 39 W. R. 526; 7 T. L. R. 441, D. C.

Annotations:—Distd. Felton v. Bower, [1900] 1 Q. B. 598. *Mentd. R. v. Hunton, Ex p. Glamorganshire County Council* (1904), 2 L. G. R. 917; *Flannagan v. Shaw*, [1920] 3 K. B. 96; *The Danube II.*, [1921] P. 183; *Wallwork v. Fielding*, [1922] 2 K. B. 66.

See, also, No. 141, ante.

SUB-SECT. 6.—WINDING-UP OF COMPANIES.

145. Jurisdiction when registered office not within district—Companies (Consolidation) Act, 1908 (c. 69), s. 131 (7).]—At the date of the presentation of a petition in the S. county ct. for the winding-up of a co., & for the greater part of the six months preceding that date, the co.’s registered office was in London. All its assets were within the jurisdiction of the S. county ct., & the office of the co. had been there for a considerable time during the six months preceding the petition for winding-up:—*Held*: by virtue of above Act the judge of the S. county ct. had jurisdiction to hear the petition.—*Re SOUTHSEA GARAGE, LTD.* (1911), 27 T. L. R. 295; 55 Sol. Jo. 314, D. C.

Transfer of winding up proceedings, *see No. 455, post.*

See, generally, COMPANIES.

SECT. 3.—AS TO AMOUNT OF CLAIM OR VALUE OF SUBJECT-MATTER.

SUB-SECT. 1.—IN GENERAL.

See, now, 1888 Act, s. 56.

146. Sum claimed within jurisdiction—Exclusive of costs.]—A plaintiff was levied in the county ct. of C. On the hearing, deftd. objected to the judge entertaining the matter, on the ground of a suit pending for the same cause of action in one

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of the superior cts. The judge, however, refused to dismiss the plaintiff, but made an order for payment within one week after the cause in the superior ct. was decided. Pltf. discontinued the action in the superior ct., which, being afterwards proved to the satisfaction of a judge, a judgment summons, under s. 98, was taken out, & served upon deftd. Upon the face of this summons it appeared the amount claimed was £22 7s. 4d., & an order was made rescinding the previous order, directing payment of that sum, with £1 10s. 2d. costs. A rule nisi for a prohibition having been obtained:—*Held*: (1) it not appearing that the plaintiff was in substance for the same cause of action as in the superior ct., the jurisdiction of the judge was not ousted; (2) the judge had power, in the exercise of his discretion, to postpone the payment until after the decision in the superior ct., & rescind the previous order, the order as to payment being only a suspension of execution & not part of the judgment; (3) the amount claimed by the judgment summons did not exceed the sum of £20, exclusive of costs, & therefore within the jurisdiction of the county ct., & therefore a writ of prohibition would not lie.—*BYRNE v. KNIPE* (1848), 5 Dow. & L. 659; 18 L. J. Q. B. 33; 12 L. T. O. S. 180; 12 J. P. 806; 12 Jur. 1075.

Annotation:—Mentd. Robinson v. Gell (1852), 12 C. B. 191

147. — Sum proved beyond jurisdiction—No power to deal with case.]—The new county cts. retain the jurisdiction of the old county cts. to try actions of detinue, with this difference that the amount is extended to £50; but if, in the course of the trial, it should appear that the chattels are worth more than £50, the jurisdiction of the ct. is ousted, as in cases where title to realty is concerned.—*TAYLOR v. ADDYMAN* (1853), 13 C. B. 309; 22 L. J. C. P. 94; 21 L. T. O. S. 140; 17 Jur. 461; 138 E. R. 1218.

Annotation:—Refd. Leader v. Rhys (1861), 10 C. B. N. S. 369.

— Sum proved or recovered beyond jurisdiction—Power to cut down excess.]—*See Sub-sect. 3, B.*

148. — Of court without Admiralty jurisdiction—Action for freight—Power to try.]—The jurisdiction of every county ct. to entertain claims not exceeding £50 in value is not affected by County Cts. Admty. Jurisdiction Acts, 1868 (c. 71) & 1869 (c. 51). A claim for freight not exceeding £50 may be made in a county ct. not appointed by Order in Council to have Admty. jurisdiction.—*R. v. SOUTHEAD COUNTY COURT JUDGE* (1884), 13 Q. B. D. 142; *sub nom. R. v. ESSEX COUNTY COURT JUDGE, Re PERFECT v. POYNTER*, 53 L. J. Q. B. 423; *sub nom. R. v. ABDY*, 32 W. R. 754.

Annotation:—Folld. Scovell v. Bevan (1887), 19 Q. B. D. 428.

See, also, ADMIRALTY, Vol. I., p. 246, No. 1733.

SUB-SECT. 2.—BALANCE OF ACCOUNT.

A. After payment on Account.

149. Amount in excess of jurisdiction—Brought within jurisdiction—By payment on account—Balance agreed before action.]—*COLES v. STACEY* (1853), 20 L. T. O. S. 210.

See, also, No. 152, post.

150. — — — — —.]—*FREEMAN v. NUNNS* (1857), 29 L. T. O. S. 108.

151. — — — — — Overpayment on account.]—Pltf. in the county ct. sought to recover £47 18s. 4d. under the following circumstances. Deftd. had done work for pltf. under a contract to the value

Sect. 3.—As to amount of claim or value of subject-matter: Sub-sect. 2, A. & B.; sub-sect. 3, A.]

of £219 2s. 4d. During the progress of the work pltf. had from time to time made payments in respect of it, which, together with £14 paid to deft.'s workmen for wages, amounted to £267 0s. 8d. thus exceeding the value of the work done by £47 18s. 4d., the amount claimed in the action. The money overpaid by pltf. was to be repaid by the doing of work, but deft. stopped the works before they were completed:—*Held*: the value of the work done was not the subject of a set-off, & pltf. could recover the money in the county ct.—*RIGBY v. WHEELER* (1854), 18 J. P. 298.

See, also, No. 169, post.

B. After Set-off.

See, generally, SET-OFF & COUNTERCLAIM.

152. Amount in excess of jurisdiction—Not brought within jurisdiction—By set-off claimed by defendant—Unless balance agreed between parties.]—A claim exceeding £20 reduced by a set-off to a sum less than £20 is not within the jurisdiction of the county ct. under 1846 Act, s. 58, as a debt on balance of account, & therefore where an action for such a claim was brought in a superior ct. leave was refused to deft. to enter a suggestion under s. 129 to deprive pltf. of costs. *Semble*: if a balance leaving no more than £20 due had been agreed on by the parties pltf. ought to have sued in the county ct.—*WOODHAMS v. NEWMAN* (1849), 7 C. B. 654; 6 Dow. & L. 683; Rob. L. & W. 27; Cox, M. & H. 231; 18 L. J. C. P. 213; 13 L. T. O. S. 118; 13 J. P. 299; 13 Jur. 456; 137 E. R. 259.

Annotations:—*Appld.* *White v. Jolly* (1852), 19 L. T. O. S. 93. *Refd.* *Beswick v. Capper* (1849), 7 C. B. 669; *Turner v. Berry* (1850), 5 Exch. 858; *Avards v. Rhodes* (1853), 8 Exch. 312; *Rigby v. Wheeler* (1854), 18 J. P. 298; *Beard v. Perry* (1862), 2 B. & S. 493; *The Young James* (1869), L. R. 3 A. & E. 1; *Neale v. Clarke* (1879), 4 Ex. D. 286; *Lovejoy v. Cole*, [1894] 2 Q. B. 861.

See, also, No. 149, ante.

153. ——— By set-off allowed by plaintiff—Abandonment of remaining excess.]—Pltf. in the county ct. gave credit to deft. for £186 odd reducing his claim to £40 odd, & he gave up the excess above £20 for which he took a verdict. On a rule for a prohibition against him proceeding further in the county ct.:—*Held*: the rule would be made absolute.—*BESWICK v. CAPPER* (1849), 7 C. B. 669; Cox, M. & H. 243; 13 L. T. O. S. 258; 137 E. R. 265; *sub nom.* *BESTWICK v. CAPPER*, Rob. L. & W. 82.

Annotations:—*Refd.* *Kimpton v. Willey* (1850), 9 C. B. 719; *Avards v. Rhodes* (1853), 8 Exch. 312; *Neale v. Clarke* (1879), 4 Ex. D. 286; *Lovejoy v. Cole*, [1894] 2 Q. B. 861.

154. ——— ——— ———.]—Pltf., having an original claim against deft. for more than £20, gave credit for certain sums as payments on account, part of which was in fact money lent to him by deft., part money received by him to deft.'s use, & part the proceeds of sale by him of deft.'s goods. Pltf., by this & by abandoning the remainder, reduced his claim below £20, & brought a plaint in the county ct.:—*Held*: a prohibition would be granted.—*COLE v. KNIGHT* (1849), Rob. L. & W. 164.

Abandonment of excess generally, *see* Sect. 3, sub-sect. 3, B., *post*.

155. ——— Unless set-off agreed to—By parties.]—Pltf.'s account exceeded the limit of the county ct. jurisdiction, & he sought to bring it within by proving an agreement that cross accounts were to be set off between him & deft.'s testator, deft. being sued as exor. The judge of the county ct. proceeded on that view of the case, & found for pltf., but there was no evidence of any binding

agreement to that effect:—*Held*: a prohibition would be granted to restrain all further proceedings in the county ct. as there was no evidence of any binding agreement for a set-off.—*WILSON v. FRANKLIN* (1851), Cox, M. & H. 497; 17 L. T. O. S. 127; 15 J. P. 404.

156. ——— ——— ——— By defendant.]—The county ct. has no jurisdiction to try a cause where pltf., on the face of the summons, claims a sum exceeding £50, although he thereby also proposes to allow a set-off to reduce it below that sum, where such set-off has not been allowed by deft. before action, or admitted by him at the trial, & in such case the county ct. cannot obtain jurisdiction by pltf.'s offering at the trial to abandon the excess above £50.—*AVARDS v. RHODES* (1853), 8 Exch. 312; 1 Saund. & M. 90; 22 L. J. Ex. 106; 20 L. T. O. S. 251; 17 J. P. 88; 17 Jur. 71.

Annotations:—*Refd.* *Hill v. Swift* (1855), 10 Exch. 726; *Lovejoy v. Cole*, [1894] 2 Q. B. 861.

157. ——— ——— By abandonment of excess—By plaintiff.]—*AVARDS v. RHODES*, No. 156, *ante*.

158. Admitted set-off—What is—Admitted before action brought—Admission after reference insufficient.]—By 1856 Act, s. 24 where in any action the debt or demand consists of a balance not exceeding £50 after an admitted set-off of a debt or demand claimed or recoverable by deft. from pltf., the county ct. shall have jurisdiction to try such action. Pltf. sued in a superior ct. for a debt of £51, & deft. pleaded a set-off. The cause having been referred to a master pltf. admitted the set-off, & had an award for the balance, which was under £20:—*Held*: "admitted set-off" meant a set-off admitted before action brought, a county ct., therefore, had no jurisdiction over pltf.'s cause of action, & pltf. was consequently entitled to costs.—*WALESBY v. GOULSTON* (1866), L. R. 1 C. P. 567; Har. & Ruth. 525; 35 L. J. C. P. 302; 14 L. T. 662; 12 Jur. N. S. 873; 14 W. R. 899.

Annotations:—*Refd.* *Neale v. Clarke* (1879), 4 Ex. D. 286; *Hubbard v. Goodley* (1890), 25 Q. B. D. 156; *Hodgson v. Bell* (1890), 62 L. T. 481; *Lovejoy v. Cole*, [1894] 2 Q. B. 861.

159. ——— ——— Sufficient if admitted by plaintiff.]—A special indorsement on a writ stated the total claim as £148 18s., & gave credit by payments on account & *contra* £25, reducing the claim to £123 1s. Pltf. recovered £50 only:—*Held*: the set-off being admitted on the writ by the pltf. & adopted & acquiesced in throughout by deft., was sufficient evidence to justify the conclusion that it was an admitted set-off within the meaning of 1888 Act, s. 57, & the action could have been brought in the county ct., & therefore pltf. was only entitled to costs on the county ct. scale.—*LOVEJOY v. COLE*, [1894] 2 Q. B. 861; 64 L. J. Q. B. 120; 71 L. T. 374; 43 W. R. 48; 38 Sol. Jo. 725; 10 R. 482, D. C.

Annotation:—*Apprvd.* *Solomon v. Mulliner*, [1901] 1 K. B. 76.

160. ——— ——— Must be admitted by both parties.]—By 1888 Act, s. 57, where in any action the debt or demand claimed consists of a balance not exceeding £50 after an "admitted set-off of any debt or demand claimed or recoverable by deft. from pltf." the ct. shall have jurisdiction to try such action:—*Held*: the set-off referred to in the sect. was a set-off the existence of which was admitted by both parties, & not merely by pltf.—*HUBBARD v. GOODLEY* (1890), 25 Q. B. D. 156; 59 L. J. Q. B. 285; 62 L. T. 736; 38 W. R. 639; 6 T. L. R. 289, D. C.

Annotation:—*Refd.* *Lovejoy v. Cole*, [1894] 2 Q. B. 861.

161. ——— ——— Effect on costs.]—In an action on contract to recover £175, tried by a judge without a jury, a verdict was found for pltf. for

£76, subject to a set-off which was afterwards ascertained to be £63, & judgment was given for pltf. for the difference between these sums. Upon the question of costs, the judge having decided to deal with the costs as if the case had been tried before a jury, & the objection was taken by deft. that, as pltf. had recovered less than £20, he was deprived of his costs by 1888 Act, s. 116 :—*Held* : the sum recovered by pltf. was not the £76 for which the verdict was given, but the balance for which judgment was given, yet, as there was no admitted set-off within sect. 57 of the Act, which must have been a set-off admitted by both parties, & as consequently the action was one, being for a sum over £50, which could not have been commenced in a county ct., sect. 116 did not apply to deprive pltf. of his costs, as the words in that section, "action which could have been commenced in a county ct.," governed the whole sect.—*GOLDHILL v. CLARKE* (1892), 68 L. T. 414; 5 R. 75.

Annotations :—*Refd.* *Lovejoy v. Cole*, [1894] 2 Q. B. 861
Solomon v. Mulliner, [1901] 1 K. B. 76.

SUB-SECT. 3.—DIVIDING CAUSE OF ACTION AND ABANDONMENT OF EXCESS.

A. Dividing Cause of Action.

See, now, 1888 Act, s. 81.

162. "Cause of action"—Means "cause of one action"—County Courts Act, 1846 (c. 95), s. 63.]—The above Act enacts, "that it shall not be lawful for any pltf. to divide any cause of action for the purpose of bringing two or more suits in any of the cts.":—*Held* : the term "cause of action" meant "cause of one action," & was not limited to an action on one separate contract, but applied certainly to the cases of tradesmen's bills, in which one item was connected with another, in the sense that the dealing was not intended to terminate with one contract but to be continuous, so that one item, if not paid, should be united with another & form an entire demand.—*Re AYKROYD* (1848), 1 Exch. 479; 154 E. R. 204; *sub nom.* *GRIMBLY v. AYKROYD*, 5 Dow. & L. 701; Cox, M. & H. 79; 17 L. J. Ex. 157; 11 L. T. O. S. 105; 12 J. P. 411; 12 Jur. 357.

Annotations :—*Apld.* *Wood v. Perry* (1849), 3 Exch. 442.
Distd. *Kimpton v. Willey* (1850), 9 C. B. 719; *Re Brunskill v. Powell* (1850), 1 L. M. & P. 550. *Apld.* *Bonsey v. Wordsworth* (1856), 18 C. B. 325. *Refd.* *Acworth v. Dowsett* (1848), Cox, M. & H. 118; *Wickham v. Lee* (1848), 18 L. J. Q. B. 21; *Isaac v. Wyld* (1851), 7 Exch. 163; *Copeman v. Hart* (1863), 14 C. B. N. S. 731. *Mentd.* *Jones v. Pritchard* (1849), 18 L. J. Q. B. 104; *Boddington v. Castelli* (1853), 17 Jur. 781; *Jackson v. Grimley* (1864), 12 W. R. 686; *London Corp'n. v. Cox* (1867), L. R. 2 H. L. 239; *James v. Evans*, [1897] 2 Q. B. 180.

163. — Does not include all that could be inserted in one *indebitatus* count.]—Deft. being indebted to pltf. for a sum exceeding £20, they entered a plaint in the county ct. for £19 9s. 6d. Pltf. afterwards sued for the balance in the superior ct., the declaration containing counts for money lent, goods sold, & account stated. Deft. pleaded to the whole declaration the former county ct. judgment, & pltf. had cause of action for the £19 9s. 6d., & all the money in the declaration for which a plaint could, if the whole had been under £20, have been entered at the time of so entering it for the £19 9s. 6d.:—*Held* : it should have averred the causes of action in the county ct. to be the same as those for which the action was brought in the superior ct., & "cause of action" in 1846 Act, s. 63, does not include all that may be inserted in one *indebitatus* count.

Qu. : whether when pltf. relinquishes the excess

over £20, to enable him to sue in the county ct., it should not be so entered upon the judgment of the county ct. accordingly, that the excess is abandoned, & the judgment is in full discharge of all demands.—*GREGORY v. CHIDSEY* (1848), Cox, M. & H. 145; 11 L. T. O. S. 309.

164. Distinct causes of action—Separate contracts.]—Separate contracts between same pltf. & deft., give the right of bringing separate although concurrent actions in the same ct. The Ct. of K. B., therefore, will not interfere by prohibition with an inferior ct., in such cases, on the ground of its being a splitting of actions.—*DEALEY v. CLARK* (1831), 9 L. J. O. S. K. B. 102.

165. — Separate demands.]—3 & 4 Vict. c. x. enacts, that it shall not be lawful for any pltf. to divide any cause of action into two or more suits, for the purpose of bringing the same within the jurisdiction of the ct.:—*Held* : where a pltf. had three demands, one for a horse sold, another for rent due, & a third for goods sold & delivered, he was not precluded from suing in the superior ct. for the two last-named demands by the fact of his having sued for & recovered the price of the horse in the inferior ct., for that the three demands were separate & distinct, & were not all one "cause of action" within the meaning of the Act.—*NEALE v. ELLIS* (1843), 1 Dow. & L. 163; 12 L. J. Q. B. 329; 1 L. T. O. S. 261; *sub nom.* *MALE v. ELLIS*, 7 Jur. 929.

Annotation :—*Consd.* *Re Aykroyd* (1847), 1 Exch. 479.

166. — Rent—& double value for holding over.]—Rent in arrear, & a demand of double value for holding over after notice to quit, under 4 Geo. 2, c. 28, are separate causes of action within 1846 Act, s. 63, & therefore may be sued for by separate plaints in the county ct.

Separate plaints may be sued in the county ct. for two or more causes of action, which would require to be stated in distinct counts, though they might be included in the same declaration.

A demand for double value against a tenant holding over under 4 Geo. 2, c. 28, is a "plea of a personal action," & may be sued for in the county ct., under 1846 Act, s. 58.—*WICKHAM v. LEE* (1848), 12 Q. B. 521; Cox, M. & H. 119; 18 L. J. Q. B. 21; 11 L. T. O. S. 240; 12 Jur. 628; 12 J. P. Jo. 391; 116 E. R. 963.

Annotations :—*Refd.* *Richards v. Marten* (1874), 23 W. R. 93. *Mentd.* *Kerkin v. Kerkin* (1854), 18 Jur. 813.

167. — Tort & contract.]—Pltf. had brought two actions in the county ct. against same deft., one of tort for an assault, the other on contract for the amount of a surgeon's bill incurred by reason of the assault:—*Held* : these were distinct causes of action, & might be separately sued for in the county ct.—*HARTLEY v. AYURST* (1848), Cox, M. & H. 109; 11 L. T. O. S. 150; 12 J. P. Jo. 323.

168. — Goods sold—& money lent—Included in same account.]—Deft. was indebted to pltf. for liquors supplied & money lent at different times. Pltf. had been in the habit of marking down the separate items & afterwards entering them in his book as one account & sent deft. an account including the whole amounting to £36 10s. 4d. Pltf. levied a plaint in the county ct. for £20 for goods sold; the particulars of demand comprising no items for money lent. Having recovered judgment & obtained payment of this amount he levied another plaint for £5 1s. 6d. for money lent, being the amount of the loans included in the account of £36 10s. 4d. At the hearing of the first plaint there was no abandonment:—*Held* : these were distinct demands & there was no ground for prohibition.—*BRUNSKILL*

Sect. 3.—As to amount of claim or value of subject-matter: Sub-sect. 3, A. & B.; sub-sects. 4, 5, 6, 7 & 8. Sect. 4: Sub-sect. 1.]

v. POWELL (1850), 1 L. M. & P. 550; 19 L. J. Ex. 362.

Annotations:—Expld. Isaac v. Wyld (1851), 7 Exch. 163. Foll. Richards v. Marten (1874), 23 W. R. 93.

169. ——— Separate accounts.]—

A., having a cause of action against B. for £19 0s. 8d. for money lent between the years 1846 & 1849; & also a cause of action against him on a separate account, for goods sold & delivered, work & labour, & money paid, between the years 1845 & 1849, amounting to £19 19s., after deducting a payment on account of £8 5s. 3d., levied two complaints in respect of them in the county ct.:—*Held*: (1) this was not a splitting or dividing of "a cause of action," within the meaning of the 1846 Act, s. 63; (2) the judge of the county ct. had jurisdiction to inquire whether B. had consented to A.'s claim being so reduced, & that fact need not be stated in the particulars of demand.—*KIMPTON v. WILLEY* (1850), 9 C. B. 719; 1 L. M. & P. 280; Rob. L. & W. 319; Cox, M. & H. 350; 19 L. J. C. P. 269; 15 L. T. O. S. 160; 14 J. P. 386; 14 Jur. 762; 137 E. R. 1075.

Annotations:—As to (1) Consd. Adkin v. Friend (1878), 38 L. T. 393. Refd. Richards v. Marten (1874), 23 W. R. 93. As to (2) Consd. Ayards v. Rhodes (1853), 8 Exch. 312. Generally, Mentd. Heyworth v. London Corpn. & Rhodes (1884), Cab. & El. 312.

170. ——— Assault—& fine in respect of same assault.]—Pltf. entered two complaints in a county ct., of which he was bailiff. By the particulars in one complaint he claimed £5 for an assault, & by the particulars in the other he claimed £5 for a fine in respect of the same assault upon him as bailiff. A *certiorari* having issued to remove these complaints, on the ground that they consisted of a claim arising out of the same transaction, & exceeding £5 & which had been split into two:—*Held*: the latter complaint was only an informal mode of claiming the fine imposed by 1846 Act, s. 114, for assaulting an officer in the execution of his duty, & therefore the claim did not in fact exceed £5; & consequently, the *certiorari* was improperly issued.—*BOX v. GREEN* (1854), 9 Exch. 503; 1 Saund. & M. 37; 23 L. J. Ex. 219; 18 J. P. 266; 2 C. L. R. 528; 156 E. R. 215.

171. ——— Salary—& money paid at defendant's request.]—Pltf. was in the employment of deft., as manager of a mine of which deft. was the contractor. Pltf. issued two complaints in a county ct. against deft., one for £30 due to him for salary, the other for £30 money paid by him at the mine for & at the request of the deft.:—*Held*: these two claims were separate & distinct, there was no splitting of claims, & the two complaints could issue.—*RICHARDS v. MARTEN* (1874), 23 W. R. 93.

172. One cause of action—Running account—Tradesman's bill.]—*Re AYKROYD*, No. 162, *ante*.

173. ——— Orders given from different addresses.]—*WOOD v. PERRY*, No. 124, *ante*.

174. ——— Deliveries at different addresses.]—*BONSEY v. WORDSWORTH*, No. 125, *ante*.

175. Judgment by default—Execution issued—Second action stayed.]—*ACWORTH v. DOWSETT* (1848), Cox, M. & H. 118; *sub nom.* *ACKWORTH v. DOWSEY*, 12 J. P. Jo. 324.

176. When objection should be taken—Not after judgment for part & summons issued for remainder.]—Pltf. was employed by deft. to paint & repair houses belonging to deft., situate some in N. & some in D., under a general agreement at a fixed rate. The course of dealing was that pltf. called every Saturday at deft.'s office for guidance &

direction as to the work, & payments on account were from time to time made.

On July 9, 1877, pltf. issued a summons in the N. county ct. for £15 3s. 10d. for work done & materials supplied, & on Aug. 13 following recovered judgment for £10. On Sept. 24 pltf. issued a second summons for £37 15s. 1d. for work done & materials supplied. The hearing of this cause was adjourned, & deft. applied for a prohibition. Dft. swore that the greater part of the amount claimed was due when the first summons was issued, & that pltf. had been employed to work on all the houses indiscriminately. Pltf. alleged that the first claim had been confined to the N. houses, & the second to those in D.:—*Held*: without deciding how far the two claims were so connected as to form in reality a single cause of action, the objection to the jurisdiction could not be taken at that stage & in that mode, & that the rule for prohibition must consequently be discharged. *Semble*: the objection should have been made on the trial of the first complaint.—*ADKIN v. FRIEND* (1878), 38 L. T. 393.

See, also, No. 178, *post*, & *generally*, *ACTION*, Vol. I., pp. 14–18.

B. Abandonment of Excess.

See, now, 1888 Act, s. 81.

177. Whether abandonment should be entered on judgment.]—*GREGORY v. CHIDSEY*, No. 163, *ante*.

178. Must be express—Not by mere levying of complaint for part of demand.]—A. having a demand against B. for £17 & £21 10s., in respect of two several parcels of goods, levied a complaint against him in the county ct. for the £17. On the day appointed for the hearing, A. did not appear, whereupon, B. admitting the cause of action, the judge pronounced judgment for A. for £17. A. afterwards brought an action in this ct. for the £21 10s., to which B. pleaded the recovery against him in the county ct., averring that A. had at the hearing abandoned the excess of his demand beyond the £17, pursuant to 1846 Act, s. 63. On a traverse of that allegation:—*Held*: the above facts disproved the plea, for the mere levying a complaint for a part of the demand was not *per se* an abandonment of the excess.—*VINES v. ARNOLD* (1849), 8 C. B. 632; 7 Dow. & L. 277; Rob. L. & W. 180; Cox, M. & H. 320; 19 L. J. C. P. 98; 14 L. T. O. S. 222; 13 J. P. 795; 14 Jur. 350; 137 E. R. 655.

Annotation:—Refd. Isaac v. Wyld (1851), 7 Exch. 163.

179. Must be by act of plaintiff—Not of judge.]—The abandonment of the excess of a claim above £50 in order to give a county ct. jurisdiction must be the act of pltf. himself or of some person authorised by him & not the act of the judge.

A county ct. judge at the hearing of a complaint, of his own accord & against the consent of pltf., amended the particulars of demand by reducing the claim to £50, & gave judgment for pltf. for that amount:—*Held*: a prohibition would be granted.—*Re HILL* (1855), 10 Exch. 726; 156 E. R. 632; *sub nom.* *HILL v. SWIFT*, Saund. & M. 47; 24 L. J. Ex. 137; 24 L. T. O. S. 222; 19 J. P. 134; 1 Jur. N. S. 167; 3 W. R. 171; 3 C. L. R. 724.

180. Time for abandonment—At trial—Entry on complaint not required.]—Where pltf., having a cause of action to an amount exceeding £50, issues a complaint in a county ct. for that amount only, it is not necessary in order to give the ct. jurisdiction that entry of the abandonment of the excess should appear on the complaint or summons, but it is sufficient if such entry be made at the hearing of the cause.—*ISAAC v. WYLD* (1851),

7 Exch. 163; 2 L. M. & P. 676; 21 L. J. Ex. 46; 18 L. T. O. S. 158; 16 J. P. 186; 15 Jur. 1135; 155 E. R. 900.

Annotations:—*Distd. Avars v. Rhodes* (1853), 8 Exch. 312; *Re Hill* (1855), 10 Exch. 726. *Consd. Haddon v. Morton* (1893), 37 Sol. Jo. 634.

181. ——— **Amendment of particulars by judge.**—*BODGER v. NICHOLLS*, No. 533, *post*.

182. ——— **Reduction of verdict by judge.**—*CRESSWELL v. JONES*, No. 572, *post*.

183. ——— **Not at trial—When no jurisdiction at commencement of suit.**—*AVARDS v. RHODES*, No. 156, *ante*.

184. ——— **Between service of summons & return.**—*HADDON v. MORTON* (1893), 37 Sol. Jo. 634.

See, now, Ord. 6, r. 1.

Effect of—Defendant's right of appeal not lost.—*See No. 753, post*.

SUB-SECT. 4.—PENALTIES.

185. **Statutory penalties cumulative—Limited to amount claimed—Particulars extending plaint.**—By a plaint in a county ct. debt. was summoned for a debt of £20, for illegally practising as an apothecary. The particulars stated that the action was brought to recover £20 for that, after Apothecaries Act, 1815 (c. 194), debt. on divers days acted as an apothecary without a certificate at four places named by attending & supplying medicine to four persons, whereby debt. had forfeited the sum of £20. By Apothecaries Act, 1815 (c. 194), s. 20, any person who shall practise as an apothecary without a certificate, shall forfeit for every such offence £20. On motion for a prohibition:—*Held*: whether the facts stated in the particulars amounted to four offences or one only, the sum recoverable was limited by the summons & particulars to £20, & therefore the county ct. had jurisdiction.—*Re APOTHECARIES' Co. v. BURR* (1850), 5 Exch. 363; 1 L. M. & P. 405; *Rob. L. & W.* 406; *Cox, M. & H.* 281; 19 L. J. Ex. 334; 15 L. T. O. S. 257; 15 J. P. 149; 14 Jur. 487; 155 E. R. 159.

Annotation:—*Mentd. Apothecaries Co. v. Jones*, [1893] 1 Q. B. 89.

Excess railway fare—Where penalty on contract.—*See CARRIERS*, Vol. VIII., pp. 98, 111, Nos. 656, 749

SUB-SECT. 5.—ACTIONS OF DETINUE.

186. **Limitation of amount—Value of chattels.**—*TAYLOR v. ADDYMAN*, No. 147, *ante*.

187. ——— **—**—*In detinue for goods of a greater value than £50, where the goods had been returned after action brought, & the jury had awarded only nominal damages for their detention*:—*Held*: pltf. was entitled to costs, though the judge refused to certify, under 1852 Act, s. 4, on the ground that the plaint could not have been entered in the county ct.

The test of the jurisdiction of the county ct. is the actual value of the goods sought to be recovered.—*LEADER v. RHYS* (1861), 10 C. B. N. S. 369; 30 L. J. C. P. 345; 9 W. R. 704; 142 E. R. 495; *sub nom. LEIDER v. RHYS*, 4 L. T. 330; *sub nom. LEIDER v. RHYS*, 7 Jur. N. S. 1199.

Annotations:—*Distd. Dimsdale v. L. B. & S. C. Ry.* (1863), 8 L. T. 453. *Consd. R. v. Cheshire County Court Judge & United Soc. of Boilermakers, Ex p. Malone*, [1921] 2 K. B. 694. *Mentd. Serrao v. Noel* (1885), 15 Q. B. D. 549.

188. ——— **How ascertained—Deposit note for money.**—Pltf. brought an action in a county ct. for the delivery up to him of a deposit note

for £65, which was detained by defts. Upon an objection as to the jurisdiction:—*Held*: the value to pltf. of the deposit note, being merely the amount represented by the cost & trouble he would be put to in proving his title to the money in the event of the note being withheld, the county ct. had jurisdiction to try the case.—*CLEGG v. BARETTA* (1887), 56 L. T. 775, D. C.

Annotation:—*Mentd. Bavins, Junr. & Sims v. London & South Western Bank*, [1900] 1 Q. B. 270.

Whether action in contract or tort.—*See PRACTICE & PROCEDURE.*

Order to deliver up—Jurisdiction.—*See No. 667, post.*

Enforcement.—*See No. 669, post.*

SUB-SECT. 6.—PROCEEDINGS IN REPLEVIN.

189. **Unlimited.**—*WRIGHT v. RICE* (1848), 12 J. P. Jo. 261.

SUB-SECT. 7.—TITLE TO CORPOREAL OR INCORPOREAL HEREDITAMENTS IN QUESTION.

See Sect. 13, sub-sect. 1, B. (c), post.

SUB-SECT. 8.—ACTIONS AFFECTING LAND.

See 1888 Act, ss. 59, 138.

Ejectment.—*See Sect. 4, sub-sect. 1, post.*

Recovery of possession.—*See Sect. 4, sub-sect. 2, post.*

SECT. 4.—ACTIONS AFFECTING LAND.

SUB-SECT. 1.—EJECTMENT.

See 1888 Act, ss. 56, 59.

190. **Limit of value—"Rent payable"—Rent as between parties—Not rent payable by sub-lessee.**—By 1867 Act, s. 11, all actions of ejectment, where neither the value of the tenements nor the rent payable in respect thereof shall exceed £20 by the year, may be brought in the county ct. of the district in which the tenements are situate. A lessor having brought ejectment for a forfeiture:—*Held*: (1) "the rent payable" meant the rent payable as between the litigant parties, & not any rent that might be paid by a sub-lessee; & the latter rent, if above £20, though it would be strong evidence of value, was not conclusive against the jurisdiction of the county ct.; (2) the county ct. judge having decided on conflicting evidence that the value of the premises did not exceed £20, the ct. could not review his decision by prohibition, though on a point going to his jurisdiction only.—*BROWN v. COCKING* (1868), L. R. 3 Q. B. 672; 9 B. & S. 503; 37 L. J. Q. B. 250; 18 L. T. 560; 16 W. R. 933.

Annotations:—*As to (1) Expid. & Apprvd. Elston v. Rose* (1868), L. R. 4 Q. B. 4. *As to (2) Refd. Turner v. Kingsbury Collieries*, [1921] 3 K. B. 169.

191. ——— **"Value of tenements"—Marketable value—Not value of plaintiff's interest.**—A lessee for years, with a rent reserved, brought ejectment in a county ct.; the annual value of the premises to let to an occupying tenant was more than £20, but the value of pltf.'s interest, after deducting the rent he paid, was less than £20. The county ct. judge having decided that he had jurisdiction:—*Held*: (1) "the value of the tenements" means the actual marketable value, & of this the rent at which the tenements would let was a fair criterion; (2) the judge having assumed jurisdiction; not by

Sect. 4.—Actions affecting land: Sub-sects. 1 & 2, A. & B.; sub-sect. 3. Sect. 5: Sub-sects. 1 & 2.]

deciding on conflicting facts, but on a wrong assumption as to a point of law, the ct. could review his decision by prohibition.—**ELSTON v. ROSE** (1868), L. R. 4 Q. B. 4; 9 B. & S. 509; 38 L. J. Q. B. 6; 19 L. T. 280; 17 W. R. 52.

Annotations:—As to (1) **Reid**, *Re* L. C. C. & London Street Tram. Co. (1894), 63 L. J. Q. B. 433. As to (2) **Consd.**, *Liverpool Gas Light Co. v. Everton Overseers* (1871), L. R. 6 C. P. 414; *Sheffield Waterworks Co. v. Bennett* (1872), L. R. 7 Exch. 409. **Reid**, *R. v. Longe* (1897), 66 L. J. Q. B. 278; *Re Cundall & Vavasour* (1906), 95 L. T. 483; *R. v. Shoreditch Assessment Committee*, *Ex p. Morgan*, [1910] 2 K. B. 859.

192.—Decision of superior court as to value of premises—Binding on county court.]—Pltf. having sued in a county ct. to recover possession of certain hereditaments, deft. applied by summons to a judge of the High Ct. sitting at chambers for a prohibition, on the ground that the annual value thereof was greater than £20; the judge dismissed the summons, & deft. did not appeal from his decision. At the trial of the action the judge of the county ct. refused to receive evidence from deft. that the hereditaments were of greater value than £20 a year, & he gave judgment for pltf.:—**Held**: the decision of the judge of the county ct. was right; for by the dismissal of the summons the value of the hereditaments was conclusively ascertained for the purposes of the action, which therefore must be assumed to be within his jurisdiction.—**SYMONS v. REES** (1876), 1 Ex. D. 416; 25 W. R. 116.

Whether decision of county court judge subject to review.]—See Part VIII., Sect. 1, sub-sect. 1, B., *post*.

SUB-SECT. 2.—RECOVERY OF POSSESSION.

A. On Expiry or Determination of Term.

See, *now*, 1888 Act, s. 138.

193. Conditions precedent to jurisdiction—Relationship of landlord & tenant—Not mortgagor & mortgagee—Mortgage for term of years.]—1846 Act, s. 122, contemplates those cases only, in which the ordinary relation of landlord & tenant exists. Therefore, where the party suing under that section claimed as mtgee. of the premises, & there was no sufficient evidence that deft., who was tenant of the mtgor., had consented to hold under the mtgee., or was even aware of the existence of a mtge.; this ct. granted a prohibition to the county ct. after judgment given & possession delivered.

A total want of jurisdiction cannot be cured by the assent of the parties.

The judgment of the county ct. was delivered on May 27. On June 1, affidavits in support of a rule *nisi* for a prohibition were sworn, & the rule obtained June 6:—**Held**: deft. came within a reasonable time, although the rule was not served on the bailiff till June 7, & he had previously delivered possession to pltf. on June 6.—**JONES v. OWEN** (1848), 5 Dow. & L. 669; 1 Cox, M. & H. 176; 2 Saund. & C. 348; 18 L. J. Q. B. 8; 12 L. T. O. S. 153; 13 Jur. 261; 12 J. P. Jo. 757.

Annotations:—**Apld.** *Banks v. Rebbeck* (1851), 2 L. M. & P. 452. **Reid**, *Kerkin v. Kerkin* (1854), 3 E. & B. 399; *Marsden v. Wardle* (1854), 3 E. & B. 695; *Denton v. Marshall* (1863), 1 H. & C. 654; *Farquharson v. Morgan*, [1894] 1 Q. B. 552; *Alderton v. Palliser* (1901), 45 Sol. Jo. 722. **Mentd.** *R. v. Cambridgeshire JJ.* (1850), 14 J. P. Jo. 781.

194. ——— Verbal agreement to deduct interest from rent.]—In 1857 deft. was entitled to £500 with interest, charged on W., belonging to

A., & it was verbally arranged that deft. should rent B. from A. & deduct the interest of the £500 from the rent. In 1858 A. conveyed the reversion of B. to pltf.:—**Held**: deft. was a mere tenant of B., & pltf. could determine the tenancy by notice merely, & recover possession.—**JONES v. THOMAS** (1861), 4 L. T. 210.

195. ——— Not occupation under agreement to purchase—Though rent to be deducted from purchase-money.]—1846 Act, s. 122, applies only where the relation of landlord & tenant exists between the parties. Therefore where deft. was in possession under an agreement to purchase, the rent to be deducted from the purchase-money, & he had paid a sum which together with a set-off, equalled the amount of the purchase-money:—**Held**: on motion for a prohibition, the county ct. had no jurisdiction under s. 122.—**BANKS v. REBBECK** (1851), 2 L. M. & P. 452; Cox, M. & H. 486; 20 L. J. Q. B. 476; 17 L. T. O. S. 170; 16 J. P. 6; 15 Jur. 657.

196. Whether tenancy “duly determined by legal notice to quit”—Decision of county court conclusive as to.]—**FEARON v. NORVALL**, No. 198, *post*.

Lis alibi pendens.]—See No. 580, *post*.

197. “Legal notice to quit”—Notice required by law—Not by agreement between parties.]—By 1856 Act, s. 50, jurisdiction in ejectment is given to the county cts. in cases where neither the rent nor the value of the premises exceeds £50 a year, & the tenant's term & interest shall have expired, or shall have been determined either by the landlord or the tenant by a legal notice to quit.

Pltf. let to deft. a house for three years at a rent of £3 6s. 8d. a month, payable monthly; the agreement of tenancy contained a power of re-entry on non-payment of any part of the rent for 21 days after the day of payment or in case of the breach or non-performance of any of the conditions in the agreement. A month's rent having been in arrear for more than 21 days pltf. gave deft. notice to quit at the end of the next month of the term, alleging as breaches non-payment of rent & a breach of a condition in the agreement:—**Held**: a “legal notice to quit” must be taken to mean the notice to quit required by law & not one depending on the express stipulation of the parties, the tenancy had not, therefore, been determined within the meaning of the sect., & an action to recover possession of the premises could not be brought in the county ct.

Semble: the jurisdiction of the county ct. under 1856 Act, s. 150, is confined to tenancies from year to year.—**FRIEND v. SHAW** (1887), 20 Q. B. D. 374; 57 L. J. Q. B. 225; 58 L. T. 89; 52 J. P. 438; 36 W. R. 236, D. C.

See, *now*, 1888 Act, s. 138, & generally, LANDLORD & TENANT.

198. Jurisdiction to grant warrant of possession—On refusal of tenant to give up possession after notice to quit—Not ousted by tenant appearing & showing cause—Sufficiency of cause determined by judge.]—Where a tenant, after notice to quit, refuses to deliver up possession of the premises occupied by him, & a plaint has been entered in, & a summons thereupon issued out of, the county ct., under 1846 Act, s. 122, the fact of the tenant appearing to such summons & showing cause, is not sufficient to oust the county ct. of its jurisdiction to grant a warrant of possession; but it is for that ct. to determine whether the cause shown is sufficient or not. So also the question, whether such tenancy has been duly determined by a legal notice to quit, is one upon which the decision of the county ct. is conclusive upon the

parties.—*FEARON v. NORVALL* (1848), 5 Dow. & L. 439; Cox, M. & H. 127; 17 L. J. Q. B. 161.

199. Effect of order—Not conclusive evidence of title—In action for mesne profits.]—*CAMPBELL v. LOADER*, No. 552, *post*.

200. ———.]—An order for delivery of possession made by the county ct. under 1856 Act, s. 50, does not affect the rights of a person not a party to the proceedings, & *semble*: it does not affect the rights of the person against whom it is made:—*Held*: therefore deft., who had obtained such an order in a proceeding against one U., his tenant, was liable to an action of trespass brought by pltf., who was tenant to U.—*HODSON v. WALKER* (1872), L. R. 7 Exch. 55; *sub nom.* *HUDSON v. WALKER*, 41 L. J. Ex. 51; 25 L. T. 937; 20 W. R. 489.

201. ——— Rights of stranger to proceedings not affected.]—*HODSON v. WALKER*, No. 200, *ante*.

202. ——— Limit of value—Rent—Not annual value.]—If the rent of premises does not exceed £50 *per annum*, the county ct. has jurisdiction, under 1846 Act, s. 122, though the annual value is greater than that amount.

Upon the hearing of a plaint under the foregoing sect., the county ct. pronounced judgment in favour of the landlord, directing possession of the premises to be given up at a day several months after. The landlord, treating this judgment as a nullity, from its not being conformable to the Act & the rules made under it, declined to act upon it, but commenced another action, & again recovered judgment. Upon a motion for a prohibition; moved upon the ground that a prior judgment, unreversed, was pending:—*Held*: as the first judgment was a nullity, the landlord was justified in treating it as such, & in commencing a fresh action.—*FEARON v. NORVALL* (1848), 5 Dow. & L. 445; Cox, M. & H. 174; 2 Saund. & C. 333; 18 L. J. Q. B. 9; 12 L. T. O. S. 179; 13 J. P. 121; 13 Jur. 325.

Annotation:—*Refd. Re Harrington* (1853), 2 E. & B. 669.

203. ——— Written agreement for rent outside statutory limit—Verbal agreement reducing rent.]—By a written agreement, pltf. let to deft. certain premises at a rent of 20s. a week, payable as demanded; four weeks' notice to quit from any day to be sufficient. During the continuance of this tenancy, pltf. verbally agreed with deft. to accept 16s. a week, which was accordingly paid, & on two occasions, deft. submitted to a distress for that amount:—*Held*: no new demise was thereby created, & consequently the county ct. had no jurisdiction under 1846 Act, s. 122, the rent being above £50.—*CROWLEY v. VITTY* (1852), 7 Exch. 319; Cox, M. & H. 582; 21 L. J. Ex. 135; 18 L. T. O. S. 276; 16 J. P. 360.

Annotation:—*Consd. Re Harrington* (1853), 2 E. & B. 669.

204. ——— "Premium"—Tenant right valuation.]—A tenant right valuation is not a "premium" within 1888 Act, s. 138, & therefore does not oust the jurisdiction of the county ct.—*NORFOLK COUNTY COUNCIL v. CHILD*, [1918] 2 K. B. 805; 87 L. J. K. B. 1122; 119 L. T. 639; 34 T. L. R. 592; 16 L. G. R. 738, C. A.

B. For Non-payment of Rent.

See 1888 Act, s. 139.

205. "No sufficient distress"—Distress need not be actually levied—Finding of fact by judge.]—An agreement for a three years' tenancy of certain premises was entered into on Dec. 19, 1907, to run from Dec. 25, 1907, at a rental of £60 *per annum*. The agreement contained a proviso for re-entry if any part of the rent should be in arrear

for fourteen days. The rent due on Dec. 25, 1908, was not paid. On Jan. 18, 1909, the reversion of the premises was assigned to pltf., & on Feb. 16, there was an assignment to pltf. of the benefit of the agreement of Dec. 19, 1907, & of the rent which had accrued due on Dec. 25, 1908. The rent which accrued due on Mar. 25, 1909, not having been paid, pltf. commenced an action in the county ct. under 1888 Act, s. 139, to recover possession of the premises & also the six months' rent in arrear, without having previously distrained. Evidence was given by a person who went over the premises at deft.'s request that there was not sufficient distress on the premises to satisfy pltf.'s claim for rent. The county ct. judge found as facts that six months' rent was in arrear, & that there was no sufficient distress on the premises, & held that it was not a condition precedent to proceeding under the above Act, s. 139, that a distress should have been put in & proved to be insufficient; that the agreement, though void in law under Real Property Act, 1845 (c. 106), s. 3, not being under seal, must be construed as a valid lease to which Conveyancing & Law of Property Act, 1881 (c. 41), s. 10, applied, & that pltf., as assignee of the reversion under that section, had a right of re-entry notwithstanding that six months' rent in arrear accrued due partly before & partly after the date of the assignment:—*Held*: the decision of the county ct. judge was right.—*RICKETT v. GREEN*, [1910] 1 K. B. 253; 79 L. J. K. B. 193; 102 L. T. 16, D. C.

Pendency in High Court of action of ejectment.—*See* No. 580, *post*.

SUB-SECT. 3.—TITLE IN QUESTION.

See Sect. 13, sub-sect. 1, *post*.

SECT. 5.—UNDER JUDICATURE ACTS.

SUB-SECT. 1.—IN GENERAL.

206. Procedure—Rules of Supreme Court not applicable.]—The provisions of Jud. Act, 1873, s. 89, which enable inferior cts. to grant in all causes of action within their jurisdiction such relief, redress, or remedy or combination of remedies, in any proceeding as the High Ct. could grant, do not enable an inferior ct. to apply R. S. C. to proceedings in the inferior ct.—*PRYOR v. CITY OFFICES Co.* (1883), 10 Q. B. D. 504; 52 L. J. Q. B. 363; 48 L. T. 698; 31 W. R. 777, C. A.

Annotations:—*Consd. Speers v. Daggers* (1885), Cab. & El. 503. *Refd. Darlow v. Shuttleworth*, [1902] 1 K. B. 721; *R. v. Selfe*, [1908] 2 K. B. 121.

SUB-SECT. 2.—SPECIFIC PERFORMANCE.

207. Agreement for separation—Action for arrears.]—A husband & wife, having taken out summonses in a police ct., against each other, verbally agreed to withdraw the summonses on the terms that they should live apart, the husband making the wife a weekly allowance for herself & children, & the wife agreeing to indemnify the husband against all debts contracted by her. The husband having made default in payment of the weekly sum, the wife sued him in the county ct. for the arrears due:—*Held*: (1) Married Women's Property Act, 1882 (c. 75), did not in this case give the wife power to enter into such a contract with her husband, but independently of

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that Act the courts would enforce the performance of such a contract entered into under such circumstances, & therefore the wife could sue the husband for breach of it; (2) assuming the action to be one for specific performance of the agreement, the county ct. judge had jurisdiction to grant it in the action by virtue of Jud. Act, 1873 (c. 66), ss. 24, 25, 89, 90, & 91.—**MCGREGOR v. MCGREGOR** (1888), 21 Q. B. D. 424; 57 L. J. Q. B. 591; 52 J. P. 772; 37 W. R. 45; 4 T. L. R. 760, C. A.

Annotations:—As to (1) **Consd.** Lavalette v. Riches (1907), 24 T. L. R. 2; Hulse v. Hulse (1910), 103 L. T. 804; **Expld.** Hanau v. Ehrlich, [1911] 2 K. B. 1056. **Consd.** Cayme v. Allan, Jones (1919), 35 T. L. R. 453. **Refd.** Aldridge v. Aldridge (1888), 13 P. D. 210; A. v. M. (1888), 58 L. J. P. 8; Wilkinson v. Rushton (1889), 53 J. P. 440; Lavalette v. Riches (1908), 24 T. L. R. 336; Reeve v. Jennings, [1910] 2 K. B. 522.

See, further, Sect. 6, sub-sect. 1, C., post, & No. 233, post.

SUB-SECT. 3.—INJUNCTION.

208. Action within jurisdiction—Restraint of nuisance.—A county ct., under Jud. Act, 1873 (c. 66), s. 89, has, in actions within its jurisdiction, power to grant an injunction against a nuisance & to enforce obedience to it by committal.—**MARTIN v. BANNISTER** (1879), 4 Q. B. D. 491; 28 W. R. 143; *sub nom.* R. v. HARRINGTON, 48 L. J. Q. B. 677; 43 J. P. 829, C. A.; *affg.* S. C. *sub nom.* **Ex p. MARTIN**, 4 Q. B. D. 212.

Annotations:—**Consd.** Richards v. Cullerne (1881), 7 Q. B. D. 623. **Refd.** Winfield v. Boothroyd (1886), 54 L. T. 574; Stiles v. Ecclestone, [1903] 1 K. B. 544; Hymas v. Ogden (1904), 74 L. J. K. B. 101. **Mentd.** Vallentin v. Woodley (1889), 5 T. L. R. 462.

209. To restrain trade union.—A member of a trade union who has been illegally expelled by the committee under the rules of the assocn. can maintain an action against the trade union for a declaration that he was still a member & for an injunction, such action not being barred by Trade Union Act, 1871 (c. 31), s. 4, but he cannot recover damages for breach of the contract contained in the rules, since the committee who were responsible for breaking the contract were acting as agents for pltf. equally with his fellow members.—**KELLY v. NATIONAL SOCIETY OF OPERATIVE PRINTERS' ASSISTANTS** (1915), 84 L. J. K. B. 2236; 113 L. T. 1055; 31 T. L. R. 632; 59 Sol. Jo. 716, C. A.

Consd. R. v. Cheshire County Court Judge & United Soc. of Boilermakers, *Ex p. Malone*, [1921] 2 K. B. 694. **Mentd.** Braithwaite v. Amalgamated Soc. of Carpenters, etc., [1921] 2 Ch. 399.

210. Stay of proceedings in High Court—In respect of administration action in county court.—Since Jud. Act, 1873 (c. 66), a county ct. before which an administration suit is pending has no power to stay proceedings in the High Ct., in respect of claims provable in the administration suit.—**COBBOLD v. PRYKE** (1879), 4 Ex. D. 315; 49 L. J. Q. B. 8; 28 W. R. 259, D. C.

Annotation:—**Distd.** *Re Barnett*, *Ex p. Reynolds* (1885), 15 Q. B. D. 169.

211. Where damages not claimed—If damages claimable within limits of jurisdiction.—An action, in which an injunction only is claimed, is within the jurisdiction of a county ct., provided that the case is one in which, if there had been a claim for damages, the claim must have been for an amount within the jurisdiction of a county ct.—**STILES v. ECCLESTONE**, [1903] 1 K. B. 544; 72 L. J. K. B. 256; 88 L. T. 294; 51 W. R. 411; 47 Sol. Jo. 257; 67 J. P. Jo. 76, D. C.

Annotations:—**Expld.** & **Distd.** R. v. Cheshire County Court

Judge & United Soc. of Boilermakers, *Ex p. Malone*, [1921] 2 K. B. 694. **Refd.** Simpson & Latton v. Crowle (1921), 37 T. L. R. 658. **Mentd.** Bow v. Hart, [1905] 1 K. B. 592.

212. ——— Injunction not ancillary to cause of action.—A member of a trade union brought an action in the county ct. for a declaration that a resolution of the trade union purporting to expel him from the union was *ultra vires* & void, & an injunction to restrain the union from acting upon the resolution. The particulars of demand did not include any claim for damages, & having regard to the nature of the action, no damages could have been recovered:—**Held:** upon the true construction of 1888 Act, s. 56, the county ct. judge had no jurisdiction to entertain the action. It is essential to the jurisdiction of the county ct. in such a case that there should be a money claim not exceeding £100, & when no such claim is made & established, the ct. cannot grant ancillary relief by way of declaration or injunction. *Semble:* the plaint itself should state the amount of the money claim in order to show that the case comes within the jurisdiction of the county ct.—**R. v. CHESHIRE COUNTY COURT JUDGE & UNITED SOCIETY OF BOILERMAKERS, Ex p. MALONE**, [1921] 2 K. B. 694; 90 L. J. K. B. 772; 125 L. T. 588; 65 Sol. Jo. 552; *sub nom.* R. v. PARSONS, *Ex p. MALONE*, 37 T. L. R. 546, C. A.

Annotation:—**Expld.** Simpson v. Crowle, [1921] 3 K. B. 243.

213. ———.—Resp. to an appeal from a county ct. is not precluded from raising on the hearing of the appeal points not raised at the trial in the county ct.

1888 Act, s. 114, does not confer a general power to enlarge the jurisdiction of the county ct. by consent.

An action was brought in the county ct. by two members of a voluntary assocn. against the members of the committee of the assocn. for an injunction to restrain defts. from interfering with pltf's. enjoyment of the assocn. No damages were claimed in the action. The county ct. judge dismissed the action. No objection was raised at the trial to his jurisdiction. Pltf's. appealed, & the objection was then taken by defts. that the county ct. judge had no jurisdiction to try the case:—**Held:** as the claim was solely for an injunction & not for an injunction as ancillary to a cause of action within above Act, s. 56, the county ct. judge had no jurisdiction, & the mere fact that the parties proceeded with the trial without the point as to jurisdiction having been raised did not confer jurisdiction upon the county ct. judge.—**SIMPSON v. CROWLE**, [1921] 3 K. B. 243; 90 L. J. K. B. 878; 125 L. T. 607; 37 T. L. R. 658, D. C.

SUB-SECT. 4.—COMMITTAL.

214. For breach of injunction.—**MARTIN v. BANNISTER**, No. 208, *ante*.

215. To enforce interlocutory orders.—The power of a county ct. under Jud. Act, 1873 (c. 66), s. 89, in actions within the jurisdiction to enforce obedience to its orders by committal extends to interlocutory as well as to final orders.—**RICHARDS v. CULLERNE** (1881), 7 Q. B. D. 623, C. A.

Annotations:—**Consd.** Hymas v. Ogden (1904), 74 L. J. K. B. 101. **Refd.** Winfield v. Boothroyd (1886), 54 L. T. 574.

216. To enforce judgment—Payment of money.—A deft. in a county ct. having made default in payment of £20 due under a judgment, an order was made to commit him to prison. He was, however, never arrested nor imprisoned under the order, which, according to Ord. 25, r. 33, expired

when a year had elapsed from its date:—*Held*: upon motion for prohibition, as no arrest nor imprisonment had ever taken place upon this order before its expiration, & as deft. was still in default, the county ct. judge had power to make a second order of commitment.—*R. v. STONOR* (BROMPTON COUNTY COURT JUDGE) & *REEVES* (1888), 57 L. J. Q. B. 510; 59 L. T. 669; 4 T. L. R. 534.

217. — **Second order on expiry of first order.**—*R. v. STONOR* (BROMPTON COUNTY COURT JUDGE) & *REEVES*, No. 216, *ante*.

218. — **Return of chattel—Though procedure under warrant not exhausted.**—*HYMAS v. OGDEN*, No. 669, *post*.

219. **For contempt of court—Only on application for committal.**—*Re ELIOT, PEARCE & Co., Ex p. ALLDAY & BUSHILL* (1897), 13 T. L. R. 486; 41 Sol. Jo. 625, D. C.

220. — **Form of warrant—Necessity for specifying breaches of order.**—An order was made in an action in a county ct. on H., as acting manager of a certain partnership fund, to pay into ct. within fourteen days the sum of £65 odd, & to deliver up certain documents. H. did deliver up the documents, but failed to pay in the money, whereupon an order of committal was made out by the county ct. judge, on the ground that H., in his fiduciary position, had been guilty of contempt of ct. by neglecting to obey the previous order. The committal order merely recited the terms of the original order, & did not specify any particular breach:—*Held*: it was immaterial whether the process of committal was by an order of committal or a writ of attachment, since the distinction no longer existed in ch. practice, but the above order was bad for uncertainty, since it did not specify in what particular H. was guilty of contempt so as to enable him to purge such contempt.—*R. v. LAMBETH COUNTY COURT JUDGE & JONAS* (1887), 36 W. R. 475; 4 T. L. R. 158, D. C.

See, further, CONTEMPT OF COURT, ATTACHMENT & COMMITTAL.

For contempt in open court.—*See Part X., Sect. 1, post.*

In bankruptcy.—*See BANKRUPTCY & INSOLVENCY, Vol. IV., p. 39, No. 336.*

SUB-SECT. 5.—COUNTERCLAIMS.

See Judicature Act, 1884 (c. 61), s. 18.

221. **Court can try—Though arising outside its jurisdiction—Relief limited to amount of plaintiff's claim.**—Under Jud. Act, 1873 (c. 66), ss. 89, 90, an inferior ct. has jurisdiction to entertain a claim set up by way of counterclaim although it is in respect of matters which arose beyond its local jurisdiction, but the power to grant relief in respect of such counterclaim is limited to the same amount which pltf. has claimed in the action.—*DAVIS v. FLAGSTAFF MINING Co.* (1878), 3 C. P. D. 228; 47 L. J. Q. B. 503; 38 L. T. 769; 26 W. R. 431, C. A.

213. — *Consd. Webster v. Armstrong* (1885), 1 T. L. R.

222. — **Though amount in excess of jurisdiction—Subject to removal into High Court.**—A counterclaim exceeding £50 may be tried in any county ct., even when its jurisdiction for claims is limited to £50, subject to the provisions of Jud. Act, 1884 (c. 61), s. 18. 1903 Act does not apply to such cases.—*HARRISON v. CROSBY* (1912), 134 L. T. Jo. 85.

SECT. 6.—IN EQUITY.

SUB-SECT. 1.—EXTENT OF JURISDICTION.

A. Administration Actions.

223. **Amount or value of estate—Statement in plaint.**—An administration plaint need not contain a specific statement that the estate to be administered does not exceed in amount or value the sum of £500.—*CHEESEWRIGHT v. THORN* (1869), 38 L. J. Ch. 615; 20 L. T. 152.

224. — **Disputed by parties—Duty to determine if within jurisdiction—Transfer if in excess.**—*SUNDERLAND v. GLOVER*, No. 450, *post*.

225. **Persons who may institute proceedings—Assignees & representatives of next of kin.**—The county cts. have power, under 1865 Act, to entertain administration suits instituted by the assignees & representatives of next of kin, & of the other classes of persons specified in sect 1, sub-sect. 1, of that Act.—*TURNER v. RENNOLDSON* (1873), L. R. 16 Eq. 37; 42 L. J. Ch 510; 28 L. T. 330; 37 J. P. 580; 21 W. R. 558.

226. — **Person interested in estate of deceased—Not entitled as of right to administration order—Discretion of judge.**—A person interested in the estate of a deceased person is not entitled as of right to an administration order in a county ct., the combined effect of Ord. 6, r. 6, & Ord. 22, r. 11, being to place the granting of such order within the discretion of the county ct., judge.—*PEARSON v. PEARSON* (1887), 56 L. T. 445, D. C.

227. **Creditor's action commenced before administration suit—Cannot be restrained—Before decree made.**—Notwithstanding that, by Ord. 1, r. 8, a decree cannot be made till a month after the plaint has been filed, a county ct. judge has not jurisdiction under Ord. 12, r. 1, in a creditor's administration suit before decree, or on an *ex parte* application, to restrain a creditor's action commenced previously to the institution of the suit.—*NOKES v. GANDY* (1874), L. R. 17 Eq. 297; 43 L. J. Ch. 276; 29 L. T. 828; 38 J. P. 405; 22 W. R. 293.

228. **Proceedings in High Court—Concerning claims provable in administration suit—No power to stay.**—*COBBOLD v. PRYKE*, No. 210, *ante*.

Transfer of action to Chancery Division.—*See Part V., Sect. 4, sub-sect. 2, post.*

B. Foreclosure, Redemption or Enforcing Charge or Lien.

229. **Advance upon deposit of deeds—Bankruptcy of mortgagor—Charge enforceable in county court or Bankruptcy Court.**—B. advanced £100 to C. upon the security of a deposit of the title deeds of real estate. C. subsequently became bkpt., & thereupon B. filed a plaint in the county ct. to enforce the payment of his money:—*Held*: the county ct. had jurisdiction to grant the relief prayed, & B. having two jurisdictions, viz. the bkpcy. ct. & the county ct., to choose from, had a right to go to either.—*MEDHURST v. GOLDER* (1867), 16 L. T. 50.

230. **Suit for redemption—Right to redeem disputed—Within jurisdiction.**—A suit for redemption in which the right to redeem is resisted, & a sale of the mortgaged hereditaments is sought to be set aside, is within the jurisdiction in equity conferred upon the county cts. by 1865 Act, s. 1.—*POWELL v. ROBERTS* (1869), L. R. 9 Eq. 169; 39 L. J. Ch. 44; 21 L. T. 451; 34 J. P. 244; 18 W. R. 84.

231. **Foreclosure action—Mortgage debt in excess of jurisdiction—Brought within by payments before action—Re-transferred to county court.**—*SHIELDS, WHITLEY & DISTRICT AMALGAMATED*

Sect. 6.—In equity: Sub-sect. 1, B., C., D. & E.; sub-sect. 2. Sects. 7 & 8.]

MODEL BUILDING SOCIETY v. RICHARDS, No. 357, *post*.

C. Specific Performance and Cancellation.

232. Specific performance—Agreement for lease—Within jurisdiction.]—Agreements for leases are within 1865 Act, s. 1, clause 4, authorising decrees for specific performance.—**WILCOX v. MARSHALL** (1867), 1 L. R. 3 Eq. 270; 15 L. T. 527; 31 J. P. 437; 15 W. R. 333; *sub nom.* **WILCOX v. MARSHALL**, 36 L. J. Ch. 358.

233. — Executory agreement for lease—Value of property exceeding statutory limit—Not within jurisdiction.]—Deft. entered on premises under an executory agreement for a lease. He subsequently gave six months' notice to quit, as if on a yearly tenancy, & left the premises. An action was brought in the county ct. for a quarter's rent, accruing due after deft. had given up possession. The value of the premises exceeded £500 so that the judge had no jurisdiction to decree specific performance of the agreement; but he was of opinion that it was a case in which specific performance would be decreed, & that he was, therefore, bound to treat deft. as tenant under the terms of the agreement, & he gave judgment for pltf. On appeal:—*Held*: the equitable doctrine that a person who enters under an executory agreement for a lease is to be treated as in under the terms of the agreement, can only be applied where the ct. in which the action is brought has concurrent jurisdiction in law & equity, & pltf. could not recover in the action.—**FOSTER v. REEVES**, [1892] 2 Q. B. 255; 61 L. J. Q. B. 763; 67 L. T. 537; 57 J. P. 23; 40 W. R. 695, C. A.

Annotation:—Mentd. **Manchester Brewery Co. v. Coombs**,

*for exclusive use of footpath—Not within jurisdiction.]—*A plaintiff was entered in a county ct. claiming specific performance of an agreement that pltf. should have the free & exclusive use of a footpath, & that deft. would not grant permission to any other person to use it, & also claiming damages for an alleged breach of the agreement:—*Held*: on rule for prohibition, the agreement was not for the sale, purchase, or lease of any property within the meaning of 1867 Act, s. 9, & prohibition must therefore issue as to the claim for specific performance, but the action must proceed as to the claim for damages.—**R. v. WESTMORELAND COUNTY COURT JUDGE** (1887), 58 L. T. 417; 36 W. R. 477, D. C.

235. — Agreement to purchase for price within jurisdiction—Value of property in excess—Not within jurisdiction.]—1888 Act, s. 67, gives the county ct. jurisdiction in action for specific performance of any agreement for the purchase of any property where the purchase-money shall not exceed the sum of £500. In an action in the county ct. for specific performance of an agreement to purchase for £75 some leasehold property which was of the value of more than £500, but was subject to a heavy charge:—*Held*: the action was within the jurisdiction of the county ct., since the test was the actual purchase-money to be paid, & not the value of the property subject to the charge.—**R. v. WHITEHORNE (JUDGE)**, [1904] 1 K. B. 827; 52 W. R. 524; 20 T. L. R. 311; 48 Sol. Jo. 314; *sub nom.* **R. v. BIRMINGHAM COUNTY COURT JUDGE & HUMPHREYS**, 73 L. J. K. B. 344; 90 L. T. 514, D. C.

Annotation:—Consd. **Angel v. Jay**, [1911] 1 K. B. 666.

— Under Judicature Acts.]—See Sect. 5, sub-sect. 2, ante.

236. Cancellation of lease—Value of interest within jurisdiction—Fee simple value in excess—Not within jurisdiction.]—By 1888 Act, s. 67, it is enacted that the county ct. shall have all the powers of the High Ct. in actions for, among other things, the cancelling of any agreement for the lease of any property where the value of the property shall not exceed the sum of £500.

Pltf. agreed to take, & deft. agreed to grant, a lease of certain premises for a term of years. The value of the interest which deft. agreed to grant to pltf. did not exceed the sum of £500; neither did the value of deft.'s whole interest in the premises exceed the sum of £500; the value of the freehold interest in the premises exceeded the sum of £500:—*Held*: the county ct. had no jurisdiction to order cancellation of the agreement. *Semble*: the words the value of the property in the above enactment mean the value of the fee simple.—**ANGEL v. JAY**, [1911] 1 K. B. 666; 80 L. J. K. B. 458; 103 L. T. 809; 55 Sol. Jo. 140, D. C.

Annotations:—Mentd. **Armstrong v. Jackson**, [1917] 2 K. B. 822; **First National Reinsurance Co. v. Greenfield**, [1921] 2 K. B. 260.

D. Legacies.

237. What is a "legacy"—Share of residue—After payment of specific legacies.]—Where real & personal property is left by will to exors., upon trust to sell, & after paying certain legacies, to divide the residue among certain persons, the share in such residue is a "legacy" within 1846 Act, s. 65, & the county ct. had jurisdiction to adjudicate on a claim made by one of such persons for his share in the residue, in a plaint against the exors.—**PEARS v. WILSON** (1851), 6 Exch. 833; 2 L. M. & P. 515; 20 L. J. Ex. 381; 18 L. T. O. S.

699. *Reid. R.* **Fuller** (1853), 2 E. & B. 573.

238. — Not bequest of money in trust for infant entitled absolutely on attaining majority—Power to apply towards education & advancement.]—A bequest of money in trust to invest the same during the minority of an infant, & pay it to him when of age, with power to apply it towards his education or advancement, is not a "legacy" within 1846 Act, s. 65.—**HEWSTON v. PHILLIPS** (1856), 11 Exch. 699; 26 L. T. O. S. 247; 20 J. P. 103; 156 E. R. 1012; *sub nom.* **PHILLIPS v. HEWSTON**, 25 L. J. Ex. 133; 4 W. R. 293.

Annotation:—Reid. **Beard v. Hine** (1861), 10 W. R. 45.

239. Suit for—Jurisdiction to hear claim for devastavit.]—When a plaint is brought in a county ct. for a legacy, & the exor., deft., shows that he has paid for the testator debts exceeding the amount of the assets, & pltf. contends that the exor. has been guilty of a *devastavit*, & on that account seeks to charge him with assets, the county ct. judge has jurisdiction to try the question of the *devastavit*.—**WINCH v. WINCH** (1853), 13 C. B. 128; 22 L. J. C. P. 104; 20 L. T. O. S. 223; 17 J. P. 72; 17 Jur. 88; 1 W. R. 131; 138 E. R. 1145.

240. — Will be restrained—After decree in administration of assets.]—A legatee will be restrained from proceedings in the county ct. against an exor., after a decree has been made in an administration of the assets of testator.—**RATCLIFFE v. WINCH** (1858), 16 Beav. 576; 22 L. J. Ch. 915; 21 L. T. O. S. 30; 17 Jur. 586; 51 E. R. 902; *subsequent proceedings*, 17 Beav. 217.

E. Other Cases.

241. Trust.]—Where property was left in trust to invest in govt. securities, to pay the dividends to the widow during her life, & after her death to dispose of the whole estate in a certain way, paying certain legacies, & then with a bequest (*inter alia*) of a certain sum to be divided equally among the four children of a certain party:—*Held*: this was so far a matter of trust, that it was not a fit subject for county ct. jurisdiction, the widow not being shown to be dead. *Semble*: the case would have been the same, even if she were dead; & prohibition granted.—*BEARD v. HINE* (1861), 10 W. R. 45.

242. Constructive trusts.]—Constructive trusts are within the jurisdiction of county cts. under 1865 Act, s. 1.—*CLAYTON v. RENTON* (1867), L. R. 4 Eq. 158; 36 L. J. Ch. 428; 16 L. T. 48.

243. Deed obtained by misrepresentation—Releasing judgment debt & costs—Jurisdiction to decide upon validity.]—*STEPHENSON v. GARNETT*, No. 563, *post*.

244. Claim by solicitor for costs incurred in bankruptcy proceedings—Cognisable in county court sitting in bankruptcy—Not sustainable in equity.]—The creditors of A. decided by resolution to accept a composition, payable by instalments, to be secured by A.'s promissory notes & an assignment of his effects to trustees as security. The trustees instructed pltf., a solr., who had filed the petition on behalf of A., to prepare the deed of assignment. Pltf. prepared the deed, which provided that, in case of sale under the assignment, the proceeds should be first applied in paying the costs of sale & pltf.'s costs incurred in the composition & in preparing the deed. There had been no resolution to that effect. Default having been made in payment of the first instalment of the composition, the trustees sold the effects, which produced less than £40, & refused to pay pltf.'s costs up to & including the preparation of the deed, which amounted, when taxed, to more than £40. A. filed a plaint in the county ct., sitting in equity, to enforce his claim. The county ct. judge found as a fact that pltf. had agreed to postpone the costs due to him from the debtor, to the claims of the creditors for their composition, & dismissed the plaint:—*Held*: A.'s claim was not sustainable in equity, & the county ct. judge ought to have dismissed the plaint on the ground that the matter was properly cognisable by the county ct. sitting in bkpcy.—*GRAHAM v. WINTERSON* (1873), L. R. 16 Eq. 243; 42 L. J. Ch. 633; 28 L. T. 803; 21 W. R. 722.

Appointment of receiver.]—See Part VI., Sect. 4, sub-sect. 6, *post*.

SUB-SECT. 2.—TRANSFER OF EQUITABLE ACTIONS.

From county court to Chancery Division of High Court.]—See Part V., Sect. 4, sub-sect. 2, *post*.

From Chancery Division of High Court to county court.]—See Part IV., Sect. 2, sub-sect. 5, *post*.

SECT. 7.—BY CONSENT.

245. No general power to enlarge jurisdiction.]—*SIMPSON v. CROWLE*, No. 213, *ante*.

246. What amounts to—Not appearance by bailiff of different district—To justify non-execution of warrant.]—The county ct. judge of one ct. has no power to order the bailiff of a ct. in a different district who has not levied execution in

pursuance of the warrant of the first ct. to pay compensation under 1846 Act, s. 115, or otherwise, to the party injured.

Where the bailiff of S. appeared before the county ct. judge of N. to justify his conduct in not making a levy, but was nevertheless ordered by the judge of N. to pay compensation:—*Held*: not to be such an acquiescence in the jurisdiction of the court of N. as would estop the bailiff from obtaining a prohibition against the order of the judge of N.—*R. v. SHROPSHIRE COUNTY COURT JUDGE* (1887), 20 Q. B. D. 242; *sub nom.* *R. v. ROGERS*, 57 L. J. Q. B. 143; 58 L. T. 86; *sub nom.* *R. v. NEWPORT (SALOP) COUNTY COURT JUDGE*, *ASHLEY v. NORRIS*, 36 W. R. 476; *sub nom.* *ASHLEY v. NORRIS*, 4 T. L. R. 144, D. C.

Annotation:—*Distd. Watson v. White*, [1896] 2 Q. B. 9.

247. — Not omission to raise question of jurisdiction at trial.]—*SIMPSON v. CROWLE*, No. 213, *ante*.

248. When necessary—Remitted action—Title to land incidentally in question—Written consent necessary.]—*Semble*: where an action in the High Ct. for money had & received has been remitted to the county ct., & when in the county ct. it is ascertained that the title to land will incidentally come in question, the county ct. judge has no jurisdiction to entertain the action in the absence of a written consent of the parties or their solrs.—*TOON v. STANBURY-EARDLY* (1906), 22 T. L. R. 536, D. C.

Remitted actions generally, see Part IV., *post*.

249. When not available—Jurisdiction excluded by statute—Increase of Rent & Mortgage Interest (Restrictions) Act, 1920 (c. 17), s. 5.]—No agreement between a landlord & his tenant can give the ct. the jurisdiction which by above Act, s. 5, the ct. is forbidden to exercise.—*BARTON v. FINCHAM*, [1921] 2 K. B. 291; 90 L. J. K. B. 451; 124 L. T. 495; 85 J. P. 145; 37 T. L. R. 386; 65 Sol. Jo. 326; 19 L. G. R. 185, C. A.

Annotations:—*Refd.* *Glossop v. Ashley*, [1921] 2 K. B. 451; *Reeves v. Davies*, [1921] 2 K. B. 486.

Action commenced in High Court.]—See No. 422, *post*.

How consent given.]—See No. 248, *ante*.

SECT. 8.—IN REPLEVIN.

See, now, 1888 Act, s. 134; Ord. 34.

250. Unlimited in amount.]—*WRIGHT v. RICE* (1848), 12 J. P. Jo. 261.

251. Cannot be joined with other action.]—A plaint in replevin & for an excessive distress having been entered in a county ct. against a landlord & bailiff, defts., by leave of a judge, on affidavit that the rent exceeded £20, sued out a writ of *certiorari* to remove the cause into the Ct. of Exch. The writ was returnable on the day the plaint stood for trial; & defts.' attorney presented the writ to the judge, & offered, on the part of one of defts., to make the declaration required by 1846 Act, s. 121, stating that the other deft., the bailiff, was unable to make it. Deft., the landlord, was too ill to attend; but he had executed a power of attorney to W., authorising him to sign & seal the bond required by the above sect., & generally to perform all such acts about the conduct of the writ as he should think proper. Defts.' attorney tendered the bond, which was conditional to prove, in the superior ct., that the rent exceeded £20; but the clerk of the ct. did not approve of the sureties, in consequence of not having had notice of them in time to inquire into their sufficiency. The judge

Sect. 8.—In replevin. Sects. 9, 10, 11, 12 & 13:
Sub-sect. 1, A.]

refused to allow the *certiorari*, & tried the cause on the ground of the want of time for the clerk of the ct. to inquire into the sufficiency of the sureties, but he did not fix the amount for which they were to be responsible:—*Held*: (1) there was no ground for quashing the writ of *certiorari*; (2) the judge was liable to an attachment for not receiving & returning the writ, although his disobedience was not wilful, but originated in an erroneous construction of an obscure stat.; (3) the declaration required by 1846 Act, s. 121, might be verbally made, either by the attorney in the cause or the party; & it was sufficient if made by one of several defts.; & in this case, the person named in the power of attorney was authorised not only to sign & seal the bond, but also to make the declaration; (4) the act of the judge in receiving the declaration was ministerial; after receiving it, he ought to have fixed the amount of the security; & until he has done so, the question as to the sufficiency of the sureties did not arise; (5) the provisions of 1850 Act, ss. 1, 2, did not apply to complaints in replevin; & therefore the bond was properly conditioned for proving that there was ground for believing that the rent exceeded £20 & not £50; (6) a *certiorari*, under 1846 Act, s. 121, ought to have been made returnable so as to allow sufficient time for the preliminary inquiries which the sect. directs; (7) replevin could not be joined with any other form of action in the county ct.

Semble: 1846 Act, s. 90, which enables a deft. in a county ct. to obtain a *certiorari* by leave of a judge of the superior cts., does not apply to complaints in replevin; but the removal of such complaints is regulated by s. 121.—*MUNGEAN v. WHEATLEY* (1851), 6 Exch. 88; 2 L. M. & P. 155; Cox, M. & H. 445; Rob. L. & W. 526; 20 L. J. Ex. 108; 16 L. T. O. S. 441; 15 J. P. 195; 15 Jur. 110; 155 E. R. 465.

252. Removal into High Court—Mode of.]—
See generally, 251, ante.

253. ——— “Prosecute suit with effect”
—Applicable to defendant.]—1846 Act, s. 121, enables either party to an action of replevin to remove the cause from the county ct., if he declares that the title to a corporeal or incorporeal hereditament is in question, or that the rent or damage in respect of which the distress was taken exceeds £20, & becomes bound with two sureties to prosecute the suit with effect & without delay, & to prove that such title is in dispute, or that there was ground for believing that the rent or damage exceeded £20:—*Held*: the words “prosecute the suit with effect” are applicable to the case of a removal by a deft., who is bound, so far as in him lies, to carry the suit to a successful termination.

is liable for more than the taxed costs as between party & party.—*TUMMONS v. OGLE* (1856), 6 E. & B. 571; 25 L. J. Q. B. 403; 27 L. T. O. S. 154; 20 J. P. 789; 3 Jur. N. S. 82; 4 W. R. 596; 119 E. R. 977.

Annotation:—*Mentd.* R. v. East Stoke (1865), 34 L. J. M. C. 190.

— **By certiorari generally.]—***See* Part IX., Sect. 1, *post*.

254. When title to hereditament in question.]—The jurisdiction of the county ct. is ousted by a plea or cognisance setting up a title to the freehold, although no issue be taken on that part of the plea or cognisance.

Where, therefore, deft. in replevin made cognisance as bailiff of A., alleging that the *locus in quo* was the freehold of A., & that he, as bailiff, took the cattle, etc., damage feasant; & pltf. pleaded that deft. was not the bailiff of A., & did not, as such bailiff, take the cattle, etc.; & issue was joined on this plea:—*Held*: the subsequent proceedings in the county ct. were *coram non iudice*, & void.—*TINNISWOOD v. PATTISON* (1846), 3 C. B. 243; 15 L. J. C. P. 231; 7 L. T. O. S. 229; 136 E. R. 98.

Annotation:—*Mentd.* The Kate (1864), Brown & Lush. 218.

255. ———.]—The county ct. has still cognisance of replevin though title comes in question, subject to the power of removal by either party under 1846 Act, s. 121.—*R. v. RAINES* (1853), 1 E. & B. 855; 22 L. J. Q. B. 223; 21 L. T. O. S. 89; 17 J. P. 536; 17 Jur. 553; 118 E. R. 657.

256. ——— Failure by defendant to remove action.]—Where an action of replevin is commenced in a county ct., & deft. does not take steps to remove it under 1856 Act, s. 67, the ct. has power to try the action notwithstanding title to an incorporeal hereditament comes in question, 1846 Act, s. 58, not applying to an action of replevin.—*FORDHAM v. AKERS* (1863), 4 B. & S. 578; 33 L. J. Q. B. 67; 9 L. T. 478; 12 W. R. 201; 122 E. R. 577; *sub nom.* R. v. GURDON, 3 New Rep. 152.

SECT. 9.—IN BANKRUPTCY.

See, generally, BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 39 et seq.

257. Transfer of proceedings from one court to another—Liquidation of partners—Necessity for resolutions of joint & separate creditors of each debtor.]—In the liquidation of partners a resolution for transfer of the proceedings from one county ct. to another, under r. 288, is not valid unless a similar resolution is passed at meetings of the separate creditors of each debtor.—*Re WOOD, Ex p. HORROCKS* (1882), 19 Ch. D. 367; 51 L. J. Ch. 261; 45 L. T. 692; 30 W. R. 298, C. A.

SECT. 10.—IN ADMIRALTY.

See ADMIRALTY, Vol. I., pp. 243 et seq.

SECT. 11.—IN INTERPLEADER.

SECT. 12.—UNDER BILLS OF EXCHANGE ACT, 1855.

See BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., pp. 467–471.
As by

SECT. 13.—EXCEPTIONS TO JURISDICTION—OUSTER.

SUB-SECT. 1.—TITLE TO CORPOREAL OR INCORPOREAL HEREDITAMENTS IN QUESTION.

A. In General.

258. Incorporeal hereditament—When question of title arises.]—The title to an incorporeal hereditament is in question when either its existence or the right to it is disputed.

32 Geo. 3, c. lxxiv., imposed certain rates & duties on the owners of vessels entering or passing the harbour. A vessel having passed the harbour on her outward & also on her homeward voyage, a claim for two payments under that Act was made upon the owner in respect of each voyage. He made both payments under protest, & sued in the county ct. for the money paid in respect of the last voyage, on the ground that the Act did not entitle the trustees to a second payment under these circumstances:—*Held*: these rates & duties were tolls, & the title to a toll was in question, within the meaning of 1846 Act, s. 58, & the county ct. had no jurisdiction.—*R. v. EVERETT* (1852), 1 E. & B. 273; 118 E. R. 439; *sub nom. ADEY v. TRINITY HOUSE, DEPUTY MASTER*, 22 L. J. Q. B. 3; 20 L. T. O. S. 110; 16 J. P. 807; 17 Jur. 489; 1 W. R. 53.

259. ———.]—This ct. will not grant a writ of prohibition to restrain a judge from proceeding in a plaint where evidence respecting title to land is given, unless such question of title is material to the decision of the case.—*MORTON v. GRAND JUNCTION CANAL CO.* (1858), 6 W. R. 543.

260. **Whether claim must be *bonâ fide*—& exist in point of law.**—To oust the jurisdiction of the county ct., by reason of the proviso in 1846 Act, s. 58, that the ct. shall not have cognisance of any action in which the title to any corporeal or incorporeal hereditaments shall be in question, the claim set up must be a *bonâ fide* one, & the right one that can exist in point of law.

The jurisdiction of the county ct. is not excluded in an action of trespass *quare clausum fregit*, by a claim of deft., as an inhabitant of B., to enter pltf.'s land for the purpose of asserting a right of fishing there. For, first, a custom for all the inhabitants of B., as such, to enter the close of pltf. & take fish there, without limit, is bad; & secondly, the right claimed under such a custom is not a hereditament & therefore not within the proviso in the above Act, s. 58.—*LLOYD v. JONES* (1848), 6 C. B. 81; 5 Dow. & L. 784; Cox, M. & H. 111; 17 L. J. C. P. 206; 11 L. T. O. S. 152; 12 J. P. 567; 12 Jur. 657; 136 E. R. 1182.

Annotations:—*Expld.* *Chew v. Holroyd* (1852), 8 Exch. 249; *Stephenson v. Raine* (1853), 2 E. & B. 744. *Consd.* *Tomkins v. Jones* (1889), 22 Q. B. D. 599. *Refd.* *Dixon v. Wilkinson* (1853), 22 L. J. Ch. 981. *Mentd.* *Murphy v. Ryan* (1868), 16 W. R. 678; *R. v. London County JJ. & L. C. C.*, [1894] 1 Q. B. 453.

261. ——— & substantial.]—On a plaint in trespass in the county ct. deft. objected to the jurisdiction on the ground that he claimed a right for his cattle to stray into the adjoining close *per commun de vicinage*. The county ct. judge decided there was no *bonâ fide* title in dispute. On a motion for prohibition the rule was discharged.

In order to oust the jurisdiction of the county ct. by a claim of title to hereditaments, such claim must be *bonâ fide* & substantial, & in order to determine if it be so, it is competent for the judge to hear the evidence that he may ascertain if the case be within the terms of the proviso. The mere assertion of title by the deft. is not, of itself, sufficient to oust the jurisdiction of the county ct. When, however, the judge has heard & determined that the case is within his jurisdiction, the superior ct. will review his decision upon that point only, & if of opinion that he has wrongly decided, a prohibition will be granted.—*LILLEY v. HARVEY, OWEN v. PEARSE* (1848), 5 Dow. & L. 648, 654, n.; Cox, M. & H. 115; 2 Saund. & C. 312; 17 L. J. Q. B. 357, 359, n.; 11 L. T. O. S. 273; 12 Jur. 1026; 12 J. P. Jo. 455.

Annotations:—*Expld.* *Sewall v. Jones* (1850), 19 L. J. Q. B. 372. *Distd.* *Bunbury v. Fuller* (1853), 1 C. L. R. 893.

262. ——— Or may be fraudulent.]—In an action of trespass to realty in the county ct., the jurisdiction cannot be ousted by an assertion of title in deft., if it appears that the real question is only as to the amount of damages. But if it appear that the question the parties mean to try is one of title, the county ct. has no jurisdiction, although there be no foundation for deft.'s claim of title. *Semble*: where it appears the title to realty is in dispute, the county ct. judge cannot inquire whether it is *bonâ fide* in dispute.

Were a man to put in a claim founded upon a forged deed, it would not, on that account, be the less a claim to the property (*MARTIN, B.*).—*MARSH v. DEWES* (1853), 17 J. P. 490; 17 Jur. 558.

See, also, No. 278, *post*.

263. **Mere assertion of title insufficient.**—*LILLEY v. HARVEY, OWEN v. PEARSE*, No. 261, *ante*.

264. ——— If question of title not in issue.]—*MARSH v. DEWES*, No. 262, *ante*.

265. ———.]—*PAULSER v. KNOTT* (1855), 25 L. T. O. S. 161.

266. ———.]—A mere assertion of title will not oust the jurisdiction of the county ct.: the title must be *bonâ fide* brought into question.

A. was let into possession of premises as tenant to B., & paid him rent. C. claiming title, A. gave up possession to him in consideration of a sum for crops. In an action in the county ct. by B. against A., to recover arrears of rent, & also possession of the premises:—*Held*: whether C.'s title could be set up or not, depended upon whether A. had been evicted by title paramount, or had voluntarily yielded up possession.—*Re EMERY & BARNETT* (1858), 4 C. B. N. S. 423; 27 L. J. C. P. 216; 31 L. T. O. S. 247; 22 J. P. 577; 4 Jur. N. S. 634; 6 W. R. 634; 140 E. R. 1149.

Annotations:—*Mentd.* *Howorth v. Sutcliffe*, [1895] 2 Q. B. 358; *Matthey v. Curling* (1922), 91 L. J. K. B. 593.

267. **Whether jurisdiction ousted by plea—Disputing title.**—*CANNON v. SMALWOOD* (1684), 3 Lev. 203; 83 E. R. 651.

Annotations:—*Apld.* *Tinniswood v. Pattison* (1846), 3 C. B. 243. The case of *Cannon v. Smalwood* is rather startling at first sight, but it is based on principle, & is a distinct authority that here the jurisdiction of the county ct. was at an end the moment the title to the freehold was pleaded (*CRESSWELL, J.*). *Refd.* *Lawford v. Partridge* (1857), 1 H. & N. 621.

268. ——— Issue not joined on plea.]—*TINNISWOOD v. PATTISON*, No. 254, *ante*.

269. ———.]—*HOWORTH v. SUTCLIFFE*, No. 296, *post*.

270. ——— Of not possessed—To action of trespass.]—A plea of not possessed to an action of trespass, takes the case out of the jurisdiction of the new county cts.—*TIMOTHY v. FARMER* (1849), 7 C. B. 814; 137 E. R. 323.

Annotations:—*Refd.* *Latham v. Spedding* (1851), 17 Q. B. 440. *Mentd.* *MacDougall v. Paterson* (1851), 11 C. B. 755.

271. ——— Question of title not in issue.]—Where a pltf. recovers in a superior ct. a less sum than those mentioned in 1850 Act, s. 11, in any of the actions there specified, the onus of proving that he is entitled to costs under s. 13 of the same Act is cast upon him; & if he claims his costs upon the ground that title was in question, under 1846 Act, s. 58, he is bound to establish the fact that the title did really *bonâ fide* come in issue, & not merely that deft. so pleaded that it might possibly have come in issue.

Where to an action of trespass *quare clausum fregit* deft. pleaded not possessed, but no question of title in fact came in question:—*Held*: the jurisdiction of the county ct. was not ousted.—

Sect. 13.—Exceptions to jurisdiction—ouster: Sub-sect. 1, A. & B. (a), (b) & (c).]

LATHAM v. SPEDDING (1851), 17 Q. B. 440; 2 L. M. & P. 378; Cox, M. & H. 498; 20 L. J. Q. B. 302; 17 L. T. O. S. 141; 15 Jur. 576; 117 E. R. 1348.

*Annotations:—***Distd. MacDougall v. Paterson** (1851), 11 C. B. 755. *Refd.* **Collins v. Johnson** (1855), 16 C. B. 588; **Howorth v. Sutcliffe**, [1895] 2 Q. B. 358.

272. Whether title in question—Question for judge—Parol claim.]—LILLEY v. HARVEY, OWEN v. PEARSE, No. 261, *ante*.

273. ———.]—A summons had been served to answer a plaint in the county ct. in the nature of an action on the case for an injury to pltf.'s reversionary interest in land. The injury complained of as set forth in the particulars, was the removal of a boundary fence between the lands of the pltf. & deft., cutting down trees, etc., & the erection of a new fence, in such a manner as to make it appear that a certain portion of pltf.'s land belonged to deft.:—*Held*: deft., upon showing that the title to land was *bonâ fide* in dispute, was entitled to a prohibition, & he was not bound to wait till the county ct. had proceeded to hear the case.

The question which the ct. in such a case has to inquire into, is not whether the title set up by defts. is good, but whether there exists a *bonâ fide* dispute as to the title.—**SEWELL v. JONES** (1850), 1 L. M. & P. 525; Rob. L. & W. 416; 19 L. J. Q. B. 372; 15 Jur. 153.

*Annotations:—**Refd.* **De Haber v. Portugal** (Queen), Wadsworth v. Spain (Queen) (1851), 16 Jur. 164; **London Corpn. v. Cox** (1867), L. R. 2 H. L. 239; **Howorth v. Sutcliffe**, [1895] 2 Q. B. 358.

274. ———.]—PAULSER v. KNOTT (1855), 25 L. T. O. S. 161.

275. Validity of claim—Judge cannot try.]—LILLEY v. HARVEY, OWEN v. PEARSE, No. 261, *ante*.

276. ———.]—SEWELL v. JONES, No. 273, *ante*.

277. ———.]—MARSH v. DEWES, No. 262, *ante*.

278. ———.]—PAULSER v. KNOTT (1855), 25 L. T. O. S. 161.

See, also, No. 260, *ante*.

279. Question of title apparent at trial.]—Upon affidavit that in a plaint in a county ct., evidence set forth in the affidavit had been given to the judge of the ct. that the title to a kitchen & garden were in question, & objection taken to the jurisdiction of the ct. to hear the plaint, but that the judge nevertheless did proceed to hear it, & decided in favour of pltf.:—*Held*: a rule *nisi* for a prohibition to the judge of the county ct. from proceeding further in the matter would be granted & no cause being shown against the rule, rule made absolute upon affidavit of service.—**STILES v. BUSWELL** (1852), 16 J. P. 393.

**280. ——— Judge cannot nonsuit plaintiff—Or award costs to defendant.]—LAWFORD v. PART-
RIDGE**, No. 678, *post*.

Nonsuit generally, *see* Part VI., Sect. 2, sub-sect. 4, *post*.

Remitted action—Jurisdiction by consent.]—*See* No. 248, *ante*.

Proceedings in replevin.]—*See* Nos. 254, 255, *ante*.

Jurisdiction given by special statute—Though title in question.]—*See* No. 281, *post*.

Wrongful assumption of jurisdiction by judge—As ground for prohibition.]—*See* Part IX., Sect. 2, sub-sect. 3, B., *post*.

B. Extent of Exceptions.

(a) Corporeal Hereditaments.

See 1888 Act, s. 60.

281. Land—Disclaimer of ownership.]—Where a party is charged in a county ct. with a liability arising from his being the owner of land, & he disclaims being the owner of that land, this raises a question of title within 1846 Act, s. 58.

Nuisance Removal & Diseases Prevention Act, 1848 (c. 123), gives power to justices to order the owner or occupier of premises to remove any nuisance therein, & if such order be not complied with by such owner or occupier, the guardians of the poor may enter the premises to remove the nuisance. By sect. 2 all costs & expenses incurred in obtaining such order or in carrying the same into effect shall be deemed to be money paid for the use & at request of the owner or occupier of premises in respect whereof such costs & expenses shall have been incurred, & may be recovered by the guardians as such in county ct., or if they think fit before two justices:—*Held*: 1846 Act, s. 58, had been overridden by this provision, & the county ct. had jurisdiction to hear a plaint for such costs & expenses notwithstanding that a question of title to land arose in it.—**R. v. HARDEN** (1853), 2 E. & B. 188; Saund. & M. 135; 22 L. J. Q. B. 299; 21 L. T. O. S. 102; 17 J. P. 614; 17 Jur. 804; 1 C. L. R. 520; 118 E. R. 739.

*Annotation:—**Refd.* **R. v. Harden**, Northwich Union Grdns. v. Holland (1854), 23 L. J. Q. B. 127.

282. Freeholds—Devised to executor—Validity of will disputed after probate.]—A summons was taken out in the county ct. by A. against B., to recover lands under 1846 Act, s. 122. On application for a prohibition by B. it appeared that B. held as tenant to C. in his lifetime two farms, C. being leaseholder of the one, & tenant in fee of the other. C. died, & A. produced a will by which he was devisee of all C.'s real estate, & appointed exor. A. proved the will, & gave B. notice to quit. B. *bonâ fide* disputed the validity of the will:—*Held*: (1) the restriction contained in sect. 58 as to the jurisdiction of the county ct. when title to corporeal hereditament came in question, applied to proceedings under sect. 122; (2) title to the leasehold could not here come in question, inasmuch as the probate was conclusive that the title to that was in A., but title to the freehold did come in question, & the prohibition would go as to the freehold farm, & would be refused as to the leasehold.—**KERKIN v. KERKIN** (1854), 3 E. & B. 399; 18 Jur. 813; 118 E. R. 1192.

283. Land let—Dispute whether whole or part demised.]—On the trial of a plaint for a trespass committed by breaking the doors of certain rooms in a cottage of pltf., pltf.'s case was that he had let deft. a portion of the cottage, & had reserved to himself the rooms in which the trespass was committed. Deft.'s case was that pltf. had let him the whole of the cottage:—*Held*: title to a corporeal hereditament was in dispute under 1846 Act, s. 58, & the county ct. had no jurisdiction over the plaint.—**CHEW v. HOLROYD** (1852), 8 Exch. 249; Saund. & M. 56; 22 L. J. Ex. 95; 20 L. T. O. S. 113; 1 W. R. 68; 16 J. P. Jo. 760; 155 E. R. 1339.

*Annotations:—**Refd.* **London Corpn. v. Cox** (1867), L. R. 2 H. L. 239; **Buccleuch v. Metropolitan Board of Works** (1870), L. R. 5 Exch. 221; **Tomkins v. Jones** (1889), 22 Q. B. D. 599.

284. ——— Title of lessor disputed.]—A plaint was brought in a county ct. for use & occupation. It appeared that pltf. demised the premises to deft. for a year from Michaelmas 1850 & deft. occupied from that date up to the time of the trial.

Deft. paid the rent to pltf. for the half year up to Lady day 1851, but refused to pay rent afterwards. It was proved that J., claiming to be pltf.'s landlord, had given pltf. notice to quit, expiring at Lady day 1851, & ordered deft. not to pay pltf. rent after that day, & that pltf. & C., a deceased occupant of the premises in question, had paid 10s. rent to J. Pltf. contended that this payment was for a part only of the premises, deft. that it was for the whole. Deft. offered to prove by declarations of C., the deceased tenant, that C. paid the rent for the whole. The judge rejected the evidence, but gave judgment for deft. on the ground that pltf.'s title had expired as to part, & that the rent was not apportionable. On appeal on a case stating the above facts:—*Held*: (1) the judgment could not be supported, the evidence ought to have been received, & if when received it showed that the defence was *bond fide*, it would sufficiently raise a question of title to deprive the county ct. of jurisdiction under 1846 Act, s. 58.

(2) It is the general rule that when the judgment is not confirmed applt. gets costs, but it is not inflexible (*per* CUR.).—MOUNTNOY *v.* COLLIER (1853), 1 E. & B. 630; 22 L. J. Q. B. 124; 17 J. P. 132; 17 Jur. 503; 1 W. R. 179; 118 E. R. 573.

Annotations:—As to (1) *Refd.* *Re* Emery & Barnett (1858), 4 C. B. N. S. 423; Howorth *v.* Sutcliffe, [1895] 2 Q. B. 358. As to (2) *Consd.* Leidemann *v.* Schultz (1853), 14 C. B. 38. *Refd.* Foster *v.* Smith (1856), 18 C. B. 156; Schroder *v.* Ward (1863), 13 C. B. N. S. 410. *Generally*, *Mentd.* R. *v.* Birmingham Churchwardens, etc. (1861), 1 B. & S. 763; Serjeant *v.* Nash, Field (1903), 72 L. J. K. B. 630.

285. ——— Claim by third person.]—*Re* EMERY & BARNETT, No. 266, *ante*.

286. ——— Agreement to assign lease.]—Under an agreement between pltf. & deft. deft., in consideration of pltf.'s assigning certain leasehold property to him, agreed to pay to pltf. an annuity by quarterly instalments. In an action brought in the City of London Ct. to recover two of such instalments deft. pleaded that the assignment of the property by pltf. was a condition precedent to the payment of the annuity, & further that the title of pltf. to the property was in question:—*Held*: plaintiffs' property, although leasehold, was an hereditament, the title to which was in question within the meaning of 1888 Act, s. 56, the City of London Ct. had no jurisdiction to try the action & a *certiorari* would be granted.—TOMKINS *v.* JONES (1889), 22 Q. B. D. 599; 58 L. J. Q. B. 222; 60 L. T. 939; 37 W. R. 328; 5 T. L. R. 302, C. A.

287. ——— Existence of tenancy disputed—Defence of *jus tertii*.]—A. & B. had a conversation about the letting of a cottage which A. claimed as heir-at-law of his father, who had been in possession for fifty years before his death, but no agreement was come to. B. afterwards took forcible possession of the cottage, & in a plaint in the county ct. in which A. claimed two years' rent B. set up the title of the lord of the manor:—*Held*: inasmuch as there was no evidence of tenancy the title properly came in question, & a prohibition would issue.—MARWOOD *v.* WATERS (1853), 13 C. B. 820; 138 E. R. 1425.

288. ——— Claim of ownership.]—If in a proceeding in the county ct. to recover possession of a small tenement under 1856 Act, s. 50, it appears that the party in possession of the premises disputes the existence of the tenancy & claims to be the owner of the premises the judge is justified in holding that a question of title is involved, & in therefore declining to adjudicate on the case.—PEARSON *v.* GLAZEBROOK (1867), L. R. 3 Exch. 27; 37 L. J. Ex. 15; 17 L. T. 260; 31 J. P. 824.

289. ——— Notice to quit given by executor—Validity of will disputed after probate—Probate conclusive.]—KERKIN *v.* KERKIN, No. 282, *ante*.

See, generally, EXECUTORS & ADMINISTRATORS.

(b) *Easements and Licenses.*

See 1888 Act, s. 60.

See, generally, EASEMENTS & PROFITS À PRENDRE.

290. Right of pasture.]—LILLEY *v.* HARVEY, OWEN *v.* PEARSE, No. 261, *ante*.

291. Right of fishery.]—LLOYD *v.* JONES, No. 260, *ante*.

292. Custom to overlap adjoining wharf—Navigable river.]—A claim of a custom for the occupiers of wharfs on a navigable river to overlap the adjoining wharfs with their vessels, when being loaded or unloaded, does not raise any question of title to an incorporeal hereditament or a franchise, so as to exclude the jurisdiction of the county ct. by 1846 Act, s. 58.—DAVIS *v.* WALTON (1852), 8 Exch. 153; Saund. & M. 48; 22 L. J. Ex. 25; 20 L. T. O. S. 53; 16 Jur. 954; 1 W. R. 8; 155 E. R. 1299.

293. "Easement"—Restricted to easement of dominant tenement over servient tenement—User of navigable waters.]—By 1888 Act, s. 60, a county ct. judge shall have jurisdiction to try actions in which the title to any corporeal or incorporeal hereditament shall come in question where neither the value of the lands, etc., in dispute, nor the rent thereof, shall exceed £50 by the year, or in case of an easement, where neither the value of the lands, etc., in respect of which the easement is claimed, or on, through, over or under which it is claimed, shall exceed £50 by the year.

In an action tried in the county ct. deft. claimed as an easement the right, as one of the public, to ground his barge on the bed of a navigable river:—*Held*: sect. 60 applied only to easements in respect of which there existed a dominant & servient tenement, so that no right to an easement within the meaning of that sect. came in question in the action.—HAWKINS *v.* RUTTER, [1892] 1 Q. B. 668; 61 L. J. Q. B. 146; 40 W. R. 238; 36 Sol. Jo. 152, D. C.

Annotation:—*Refd.* Howorth *v.* Sutcliffe, [1895] 2 Q. B. 358.

See, also, No. 296, *post*.

(c) *Limit of Value of Subject-matter.*

See 1888 Act, s. 60.

294. How calculated—Title to part only in dispute—Value of disputed part.]—Pltf. sued for trespass to & for damages for obstruction caused by building on & adding to a wall. The wall formed part of the deft.'s house, with which it was continuous, & it appeared that the ownership of the wall, but not of the house, was disputed. The annual value of the house exceeded £20:—*Held*: the relief sought could have been obtained in the county ct. & the master was therefore right in refusing to tax the costs of pltf., who had recovered £10 damages & signed judgment for that sum & costs to be taxed.—RUTHERFORD *v.* WILKIE (1879), 41 L. T. 435, D. C.

295. ——— ———.]—Pltf. was the lessee of certain premises at an annual rental of £56, including a party-wall which separated his house from that of deft. who denied pltf.'s title to the wall, & committed a trespass upon it:—*Held*: inasmuch as the only portion of the premises the title to which was in dispute was under the annual value of £20, & therefore within the provisions of 1867 Act, s. 12, the county ct. had jurisdiction to try the action.—STOLWORTHY *v.* POWELL (1885), 55 L. J. Q. B. 228; 54 L. T. 795, D. C.

Annotation:—*Refd.* Bassano *v.* Bradley, [1896] 1 Q. B. 645.

Sect. 13.—Exceptions to jurisdiction—ouster: Sub-sub-sects. 2, 3, 4, 5 & 6, A.]

296. — Easement — Value of dominant tenement.]—Pltf. sued in the High Ct. for damage to his reversion by reason of deft.'s interference with the flow of water through a pipe under deft.'s land to which pltf. claimed to be entitled in respect of his premises. Deft. by his defence refused to admit pltf.'s title to the easement claimed, pleaded leave & licence from pltf.'s tenant, &, while denying liability, brought 40s. into ct. Pltf. took the 40s. out of ct. in satisfaction of his claim. The yearly value of the premises in respect of which the easement was claimed exceeded £50 :—*Held* : as by the pleadings pltf.'s title to the corporeal or incorporeal hereditament would come in question so that the county ct. would have had no jurisdiction under 1888 Act, s. 56, to try the action even if it had been brought in the county ct., pltf., although he had recovered less than £10 in an action of tort, was entitled to his costs of the action, notwithstanding the provisions of s. 116 of the Act.—*HOWORTH v. SUTCLIFFE*, [1895] 2 Q. B. 358; 64 L. J. Q. B. 729; 73 L. T. 277; 59 J. P. 678; 14 R. 722; *sub nom.* *HOWARTH v. SUTCLIFFE*, 44 W. R. 33; 11 T. L. R. 531, C. A.

297. — Rentcharge—Value of rentcharge.]—Pltfs., trustees of a charity, sued in the county ct. to recover arrears of a rentcharge of £10 a year issuing out of deft.'s land. The summons referred to Charitable Trusts Act, 1853 (c. 137), & leave to proceed had been obtained under that Act :—*Held* : (1) the action was not "proceedings under this Act" within the meaning of sect. 41 of the Act, & therefore the jurisdiction of the county ct. was not excluded by that sect.; (2) the title which came in question within the meaning of 1888 Act, s. 60, was the title to the rentcharge, not the title to the land, & therefore the value of the hereditaments in dispute did not exceed £50 by the year, & the county ct. had jurisdiction.—*BASSANO v. BRADLEY*, [1896] 1 Q. B. 645; 65 L. J. Q. B. 479; 74 L. T. 553; 44 W. R. 576; 40 Sol. Jo. 481, D. C.

(d) Other Cases.

298. Church rate.]—By a local Act for rebuilding a church, trustees were empowered to levy rates upon all houses in the parish, one half to be paid by the landlord & the other half by the tenant, the tenants to pay the whole rate in the first instance, & to deduct a moiety out of the rent, & provision was made that every landlord should allow of such deduction accordingly notwithstanding any agreement to the contrary. After the passing of this Act a lease was granted in the parish to a tenant who covenanted to pay all parliamentary & other taxes & rates. The tenant paid the full rent & the rate, but the landlord refused to deduct a moiety of it from pltf., on the ground that the Act only applied to agreements in existence at the time it was passed. The tenant having sued the landlord in a county ct. for a moiety of the amount so paid for rates :—*Held* : as no question was raised as to the title to any corporeal or incorporeal hereditaments, within 1846 Act, s. 95, there was no ground for a writ of prohibition.—*Re KNIGHT* (1848), 1 Exch. 802; 12 Jur. 101; 154 E. R. 341; *sub nom.* *GWYNNE v. KNIGHT*, 1 Cox, M. & H. 47; 17 L. J. Ex. 168; 10 L. T. O. S. 377; *sub nom.* *Re GIORGIONE v. KNIGHT*, 12 J. P. 506.
Annotation :—*Reid*, *Wooler v. North Eastern Breweries*, [1910] 1 K. B. 247.

299. Paving rate.]—Paving rates assessed under 11 Geo. 3, c. xv., & 57 Geo. 3, c. xxix. are not incorporeal hereditaments, & may therefore be sued for in a county ct.—*Re BADDELEY* (1849), 4 Exch. 508; 154 E. R. 1314; *sub nom.* *BADDELEY v. DENTON*, 7 Dow. & L. 210; 4 New Mag. Cas. 29; 19 L. J. Ex. 44; 14 L. T. O. S. 256; *sub nom.* *Re DENTON*, 13 J. P. 827.

Annotations :—*Mentd.* *Garrard v. Tuck* (1850), 19 L. J. C. P. 232; *Still v. Booth* (1850), 19 L. J. Q. B. 521.

300. Office of parish clerk — Right to levy customary payments.]—Where the right of a person as the parish clerk of a chapelry to recover, in a plaint in a county ct., the ancient customary yearly sum of 4d. from each householder throughout the chapelry, was *bonâ fide* disputed both in respect of the validity of pltf.'s appointment to the office of clerk & his right as such clerk to the payment claimed :—*Held* : the title to an incorporeal hereditament was in question within the meaning of the exception in 1846 Act, s. 58, & the county ct. had no jurisdiction to try the plaint.—*STEPHENSON v. RAINE* (1853), 2 E. & B. 744; 2 Saund. & M. 171; 23 L. J. Q. B. 62; 22 L. T. O. S. 145; 17 J. P. Jo. 760; 18 Jur. 176; 2 C. L. R. 234; 118 E. R. 946; *sub nom.* *STEVENSON v. RAYNE*, 2 W. R. 77.

SUB-SECT. 2.—TOLLS AND DUES.

301. What are—Harbour rates & duties.]—*R. v. EVERETT*, No. 258, *ante*.

302. Whether title in question—Dispute as to charging toll.]—In a plaint brought in a county ct. against a ry. co. to recover damages for expense & loss of time sustained by pltf. in consequence of the improper omission of the co. to convey goods on their line, a question was raised as to the right of the co. to charge toll for empty waggons :—*Held* : the title to toll did not thereby come in question, within the meaning of 1846 Act, s. 58.—*HUNT v. GREAT NORTHERN RY. CO.* (1851), 10 C. B. 900; 2 L. M. & P. 271; Cox, M. & H. 447; 17 L. T. O. S. 63; 138 E. R. 356.

SUB-SECT. 3.—FRANCHISES.

See 1888 Act, s. 56.

303. What are—Not right claimed by custom.]—*DAVIS v. WALTON*, No. 292, *ante*.

304. — Letters patent for new invention.]—The right or privilege granted by letters patent for a new invention is a franchise within the meaning of 1888 Act, s. 56, &, therefore, an action for infringement of patent in which the validity of a patent comes in question, is excluded from the jurisdiction of the county ct.—*R. v. HALIFAX COUNTY COURT JUDGE*, [1891] 2 Q. B. 263; 65 L. T. 104; 39 W. R. 545; 7 T. L. R. 576; *sub nom.* *R. v. YORKSHIRE COUNTY COURT JUDGE*, 60 L. J. Q. B. 550, C. A.
Annotation :—*Consd.* *Bow v. Hart*, [1905] 1 K. B. 592.

305. — Not a trade mark.]—A county ct. has no jurisdiction to entertain an action for infringement of a registered trade-mark. A trade-mark, however, is not a "franchise" within the meaning of 1888 Act, s. 56.—*Bow v. HART*, [1905] 1 K. B. 592; 74 L. J. K. B. 341; 92 L. T. 181; 53 W. R. 372; 21 T. L. R. 251; 49 Sol. Jo. 258, C. A.

— **Right of ferry.]—***See* No. 402, *post*.

SUB-SECT. 4.—ENFORCEMENT OF HIGH COURT JUDGMENTS.

See 1888 Act, s. 63.

NOTE.—*Having regard to 1888 Act, s. 63, the names of cases decided before that Act have been given but their effect has not been set out.*

306. Former law.]—WINSOR v. DUNFORD (1848), 12 Q. B. 603; RANCE v. JAMES (1848), 12 J. P. 106.

307. No action lies on—Though parties different.]—CHEETHAM v. HOLLINGWORTH, [1914] W. N. 25, D. C.

Enforcement of county courts judgments.]—See Part VI., Sect. 2, sub-sect. 8, *post*.

SUB-SECT. 5.—PREVIOUS OR PENDING PROCEEDINGS IN OTHER COURTS.

308. Suit pending in superior court—Jurisdiction of county court not ousted—Different causes of action—Power to postpone payment until after decision in superior court.]—BYRNE v. KNIPE, No. 146, *ante*.

309. ——— Action of ejectment in superior court—Action for recovery of possession in county court.]—BISSILL v. WILLIAMSON, No. 580, *post*.

310. ——— Same cause of action.]—The jurisdiction of the county ct. is not ousted by the pendency of an action for the same cause in a superior ct.—M'MURRAY v. WRIGHT (1862), 11 W. R. 34.

311. Execution from borough court of record.]—The borough ct. of record at D. is not a court for the recovery of small debts within Execution Act, 1844 (c. 96), s. 68. Where, therefore, an execution from such borough ct. had been levied upon the goods of J. W., & T. W., who claimed them, had brought a plaint in the county ct. of D. against pltf. in the first action, & against the officers who made the levy, & a summons in the nature of an interpleader had issued from the borough ct. of record:—*Held*: the jurisdiction of the county ct. was not ousted, & a rule for a prohibition to the county ct. was refused.—WALTERS v. TURTON (1851), Rob. L. & W. 471; Cox, M. & H. 413; 16 L. T. O. S. 361.

SUB-SECT. 6.—REMEDY PROVIDED.

A. By special Statute.

312. No tribunal specified—Damages under Conveyancing Act, 1881 (c. 41).]—The above Act provides that any person damaged by an unauthorised or improper or irregular exercise of the power of sale conferred by the Act shall have his remedy in damages against the person exercising the power:—*Held*: this remedy in damages might be obtained by means of a common law action brought in the county ct. under 1888 Act, s. 56, where the amount claimed was within the county ct. jurisdiction.—AMES v. HIGDON (1893), 69 L. T. 292, D. C.

313. Non-exclusive tribunal—Superior court of record—Jurisdiction given by subsequent County Court Act—Paving rate.]—By 1 & 2 Vict. c. xxxiii., s. 18, a paving rate may be imposed on the occupiers of premises in B. in the county of C., & in case of non-payment it shall be levied by distress & sale of the goods & chattels of the occupier or shall be & may be sued for & recovered, together with full costs of suit, in any of Her Majesty's Cts. of Record at Westminster. On a motion for a prohibition in a plaint brought to recover £8 10s. 8d. for such a rate in the county ct. of C.:—*Held*:

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though the action given by the stat. was only in the superior cts. it was a plea of personal action within 1846 Act, s. 58, & the county ct. had jurisdiction to try the plaint.

The question is not as to the right but as to the remedy. The remedy might by 1 & 2 Vict. c. xxxiii. be a personal action in the Cts. of Record at Westminster. The subsequent Act, 1846 Act, gives the county ct. jurisdiction to hold that personal plea, & the remedy may now be in the county ct. (WIGHTMAN, J.).—STUART v. JONES (1852), 1 E. & B. 22; 1 W. R. 20; 118 E. R. 345; *sub nom.* STEWART v. JONES, 22 L. J. Q. B. 1; 20 L. T. O. S. 64; 17 J. P. 55; 16 Jur. 1020.

314. ——— Two justices or sheriff—Damage to gas undertaking—Gasworks Clauses Act, 1847 (c. 15).]—A lamp post had been knocked down by the negligent driving of the defts.' servant:—*Held*: pltf. could maintain an action for negligence in the county ct. against the masters as sect. 20 of the above Act was not exclusive.—CRYSTAL PALACE GAS CO. v. IDRIS & CO. (1900), 82 L. T. 200; 64 J. P. 452; 16 T. L. R. 180; 44 Sol. Jo. 229, D. C.

Annotations:—*Refd.* Birmingham Corpn. v. Allsopp (1918), 88 L. J. K. B. 549. *Mentd.* Ashton v. Eccles Corpn. (1906), 71 J. P. 55.

315. ——— Justices—Distress (Costs) Act, 1817 (c. 93).]—Where a bailiff in distraining for a poor rate has retained out of the amount realised by the sale of the distress an unreasonable charge for the taking, keeping & selling of the distress, the remedy of the person aggrieved is not confined to an application to justices for an order under sect. 2 of the above Act. The county ct. has jurisdiction to try an action in which repayment is claimed of so much of the charge as is unreasonable.—R. v. PHILBRICK, *Ex p.* EDWARDS, [1905] 2 K. B. 108; 92 L. T. 571; 69 J. P. 221; 53 W. R. 527; 49 Sol. Jo. 461; 3 L. G. R. 679; *sub nom.* R. v. BRIDPORT COUNTY COURT JUDGE, *Ex p.* EDWARDS, 74 L. J. K. B. 464, D. C.

316. Exclusive tribunal—Arbitration—Friendly Societies Act, 1855 (c. 63).]—A plaint having been brought in a county ct., at the hearing on Sept. 11, 1862, defts. excepted to the jurisdiction, on the ground that the matter was a dispute between members of a friendly society which by the rules of the society was to be settled by a committee of the society, & that the county ct. had therefore no jurisdiction by reason of sect. 40 of the above Act. The judge overruled the objection & gave a verdict for pltf. Between Sept. 20 & Sept. 24, notices were served on pltf. & his attorney & on the judge & registrar of the ct. of defts.' intention to apply for a prohibition. On Oct. 8 defts. were served with an order from the ct. to pay the amount of debt & costs, & on Oct. 10 one of them paid the amount to the registrar to avoid an execution. On the same day a summons was taken out on behalf of defts., calling on pltf. & the judge of the county ct. to show cause why a prohibition should not issue. This summons was served on Oct. 13, being returnable on Oct. 14, when it was adjourned to Oct. 24. On Oct. 16 the money was paid out of ct. by the registrar to pltf.'s attorney. The matter having been referred to the ct. on Oct. 24:—*Held*: the application had been delayed too long, & on that ground under the circumstances a writ of prohibition ought not to issue. *Qu.*: whether sect. 40 of the above Act absolutely ousts the jurisdiction of the county cts., in friendly society cases, where the rules of the society provide a specific tribunal for the settlement of the matter in dispute.—DENTON v. MARSHALL (1863), 1 H. & C. 654; 1 New Rep.

Sect. 13.—Exceptions to jurisdiction—ouster: Sub-sect. 6, A., B. & C. Sect. 14. Part. IV. Sects. 1 & 2: Sub-sect. 1, A. & B. (a).]

242; 32 L. J. Ex. 89; 7 L. T. 689; 27 J. P. 345; 9 Jur. N. S. 337; 11 W. R. 268; 158 E. R. 1046.

—— **Railway Charges Acts.**—See CARRIERS, Vol. VIII., pp. 205, 206, Nos. 1313–1319.

Telegraph Act, 1878 (c. 76).—See No. 321, *post*.

See, generally, ARBITRATION, Vol. II., pp. 350 *et seq*.

—— **Justices—Railways Clauses Consolidation Act, 1845 (c. 20), s. 145.**—See CARRIERS, Vol. VIII., pp. 98, 111, Nos. 656, 749.

317. — Commissioners ceasing to exist.—In 1812 a canal was constructed under a special Act which provided that any damage caused by the undertaking should be assessed by a jury to be summoned by certain comrs. appointed by the Act. In 1912 the canal burst its banks, & did damage. The comrs. had then long ceased to exist:—*Held*: the remedy was under the special Act & not at common law, but as the comrs. had ceased to exist the damage must be assessed by the county ct.—WALKER v. CANAL CO. (1913), 2 L. J. C. C. 112, D. C.

318. — General delegates' meeting—Approved society—National Insurance Act, 1911 (c. 55), s. 67 (1).—By the rules of an approved society under the above Act, it was provided that disputes arising between insured members & the society should be decided by the general delegates' meeting.

Pltf., an insured member of the society, sent to their local secretary a claim for sickness benefit accompanied by a medical certificate which stated that she was suffering from debility & unable to work. The society required the certificate to be amended by a statement of the cause of the debility, & refused to pay unless this was done. Pltf. thereupon sued the society in the county ct. claiming an injunction to restrain them from refusing to accept & consider the medical certificate as evidence of her claim to sickness benefit, & also a sum of money representing three weeks' sickness benefit:—*Held*: the matter was a dispute within sect. 67 (1) of the above Act, & it must be decided by the tribunal created by the society's rules, & therefore the county ct. had no jurisdiction to entertain the claim.—BAILEY v. CO-OPERATIVE WHOLESALE SOCIETY (INSURANCE SECTION), [1914] 2 K. B. 233; 83 L. J. K. B. 948; 110 L. T. 816; 78 J. P. 285; 30 T. L. R. 299; 58 Sol. Jo. 304; 12 L. G. R. 545, D. C.

319. — Munition tribunal—Munitions of War Acts, 1915 & 1916.—Pltf. was a workman employed on piecework by defts. in their controlled establishment upon the terms that if there was no work there was to be no pay. No notice to terminate the contract of service was required on either side. Owing to a strike of some workmen defts. closed their works for a week. Pltf. sued defts. in the county ct., alleging a breach by them of their implied undertaking to provide him with a reasonable amount of work during the week the works were closed, & contending that the above Act had imported a term that seven days' notice was necessary in order to terminate the contract of service:—*Held*: the county ct. had no jurisdiction to entertain the action which was for breach of an obligation created by the above Acts inasmuch as a specified tribunal had been provided by those Acts to deal with breaches of obligations arising thereunder.—HULME v.

FERRANTI, [1918] 2 K. B. 426; 87 L. J. K. B. 938; 118 L. T. 719; 34 T. L. R. 500; 62 Sol. Jo. 668; 16 L. G. R. 813, D. C.

320. — Board of Education—Education Act, 1902 (c. 42).—It being the duty of the local education authority under sect. 7 (3) of above Act to pay the wages of the school cleaner appointed by the managers, a dispute between the managers & the local education authority as to the proper amount of such wages is a matter which the Board of Education alone can determine, & a county ct. has no jurisdiction to adjudicate upon it.—WEST SUFFOLK COUNTY COUNCIL v. OLOREN-SHAW, [1918] 2 K. B. 687; 88 L. J. K. B. 384; 120 L. T. 94; 82 J. P. 292; 16 L. G. R. 711, D. C.

—— **Charitable Trusts Act, 1853 (c. 137), s. 41.**—See CHARITIES, Vol. VIII., p. 391, No. 2112.

B. By Regulations or Rules.

Of friendly societies.—See FRIENDLY SOCIETIES.

Of building societies.—See BUILDING SOCIETIES, Vol. VII., p. 493, Nos. 238 *et seq*.

Of industrial, provident & other similar societies.—See INDUSTRIAL, PROVIDENT & SIMILAR SOCIETIES.

C. By Agreement to refer.

Whether jurisdiction of court ousted—By agreement to refer to arbitration.—See ARBITRATION, Vol. II., p. 350, Nos. 263 *et seq*.

321. Delegation of powers by Postmaster-General to company under Telephone Acts—Agreement by company to refer disputes to arbitration—No jurisdiction of county court judge to act as arbitrator—Under Telegraph Act, 1878 (c. 76), ss. 3, 4.—The Postmaster-General delegated certain powers to the N. T. Co. under the Telegraph Acts, & the co. made an agreement with the corpn. of T. W. to exercise those powers within the borough in respect of certain specified works. It was provided by the agreement that, except in the case of the specified works, the co. should not exercise any of the powers conferred on the Postmaster-General by the Acts, in respect of which the consent of the corpn. was necessary, without the further written consent of the corpn. The co. applied for the consent of the corpn. to further works, but the consent was refused. The co. then applied to the county ct. judge to arbitrate, under Telegraph Act, 1878, s. 4, which provides that any difference arising between the Postmaster-General & a local authority shall be referred to the county ct. judge as an arbitrator:—*Held*: the county ct. judge had no jurisdiction to entertain the application of the co., inasmuch as the corpn. had an absolute right to refuse their consent to the proposed work & had not consented thereto.—NATIONAL TELEPHONE CO. v. TUNBRIDGE WELLS CORPN. (1901), 85 L. T. 368; 17 T. L. R. 459, C. A.

Annotation:—Consd. Turner v. Kingsbury Collieries, 3 K. B. 169.

See, generally, TELEGRAPHS & TELEPHONES.

SECT. 14.—OBJECTION TO JURISDICTION.

That amount in excess of jurisdiction.—See Sect. 3, *ante*.

That title to corporeal or incorporeal hereditaments in question.—See Sect. 13, sub-sect. 1, *ante*.

322. Under 1856 Act, s. 39—Right to object—To second trial.—The provisions in 1856 Act, s. 39, & Ord. 9, r. 5, enabling a deft. in the county ct. to a claim exceeding £20 in contract or £5 in

tort, to object to the trial taking place in the county ct., on giving notice five clear days before the "return day," do not apply to the case of a second trial. Where, therefore, a new trial of an action had been, on the application of a defendant, granted by the county ct. judge:—*Held*: deft. could not, under the above statute, take objection to the new trial being had in the county ct.—*CAMPBELL v. FAIRLIE* (1880), 49 L. J. Q. B. 445, D. C.

323. — To action under Employers' Liability Act, 1880 (c. 42).]—*Held*: 1856 Act, s. 39, was intended to apply only to actions which could be brought either in one of the superior cts. or in a county ct., & therefore did not apply to an action under the above Act of 1880, which by s. 6 of that Act must be brought in a county ct.—*R. v. CITY OF LONDON COURT JUDGE* (1885), 14 Q. B. D. 905; 54 L. J. Q. B. 330; 52 L. T. 537; 33 W. R. 700; 1 T. L. R. 434, C. A.

324. — Duty of registrar—To receive bond—Sufficiency of sureties.]—Where in a plaint in a county ct. pltf. claims more than £5 damages for a tort, & deft. seeks to have the case tried in a superior ct., under 1856 Act, s. 39, & tenders to the registrar, pursuant to that sect. & s. 70, Form 31, a bond executed by himself & two sureties, the registrar's duty is only to inquire into the sufficiency of the sureties; & he cannot refuse to receive the bond, on the ground that deft. is by law incapable of executing a valid bond.—*Re YOUNG v. BROMPTON, ETC., WATERWORKS CO.* (1861), 1 B. & S. 675; 31 L. J. Q. B. 14; 26 J. P. 118; 8 Jur. N. S. 176; 121 E. R. 865; *sub nom. R. v. KENT COUNTY COURT REGISTRAR, Re YOUNG v. BROMPTON, CHATHAM, ETC., WATERWORKS CO.*, 5 L. T. 310; *sub nom. R. v. ROCHESTER COUNTY COURT REGISTRAR*, 10 W. R. 57.

By application for prohibition.]—See Part IX., Sect. 2, post.

325. Effect of taking objection—Privileged exemption—Right of defendant to remove plaint into High Court by certiorari.]—A justice of the peace sued in a county ct. for an act done in the execution of his office, having given notice, under Justices Protection Act, 1848 (c. 44), s. 10, that he objects to being sued in the county ct., cannot after such notice remove the plaint into the superior ct. by *certiorari*.—*WESTON v. SNEYD* (1857), 1 H. & N. 703; 2 Saund. & M. 185; 26 L. J. Ex. 161; 28 L. T. O. S. 293; 21 J. P. 198; 5 W. R. 317; 156 E. R. 1384.

326. Waiver of objection—Acceptance of costs—Under judge's order.]—Where a party accepts costs under a judge's order, which, but for the order would not at that time be payable, he cannot afterwards object that the order was made without jurisdiction.

s. 118, which empowers the judge of the county ct. to adjudicate on all claims "to or in respect of" goods taken in execution by process from that ct., is not confined to the determination of claims to the goods themselves, but extends also to trespasses committed in the execution of the process.—*TINKLER v. HILDER* (1849), 4 Exch. 187; Rob. L. & W. 71; Cox, M. & H. 246; 18 L. J. Ex. 429; 13 L. T. O. S. 238; 13 J. P. 412; 13 Jur. 684; 154 E. R. 1176.

Annotations:—*Reid. Jessop v. Crawley* (1850), 15 Q. B. 212; *Jousiffe v. Bayley* (1866), 15 L. T. 219; *Hills v. Renny* (1880), 5 Ex. D. 313. *Mentd. Winter v. Bartholomew* (1856), 25 L. J. Ex. 62.

327. — Not appearance by third parties & successful objection taken to third party notices.]—*R. v. DEWSBURY COUNTY COURT JUDGE* (1889), 88 L. T. Jo. 44, D. C.

— Defence to application for prohibition.]—*See Part IX., Sect. 2, sub-sect. 4, post.*

Part IV.—Remitted Actions.

SECT. 1.—WHO MAY REMIT.

See, now, 1919 Act, ss. 1, 2.

328. Master of Supreme Court.]—By the General Rules of 1867, made under the authority of 30 & 31 Vict. c. 68, s. 1, the judges ordered that the masters should transact all such business as had been formerly transacted by a judge sitting at chambers, except certain matters therein excepted:—*Held*: (1) the master had jurisdiction under the rules to hear an application to remit an action to the county ct. on failure of pltf. to give security for costs under 1867 Act, s. 10; (2) the master having refused to make an order the ct. would not review his decision.—*PALMER v. ROBERTS* (1873), 29 L. T. 403; 22 W. R. 577.

Annotation:—*As to* (1) *Reid. Walsh v. Smith* (1874), 30 L. T. 304.

329. —.]—By 30 & 31 Vict. c. 68, s. 1, authority was given to the judges to authorise the masters to exercise such jurisdiction as was then exercised by a judge sitting at chambers. By 1867 Act, s. 7, a judge at chambers was given power to send certain causes for trial to a county ct.:—*Held*: under the provisions of these stats. the masters have jurisdiction to send a cause for trial before a county ct.—*WALSH v. SMITH* (1874), 30 L. T. 304; 23 W. R. 576.

See R. S. C., Ord. 35, r. 6; Ord. 54, r. 12.

SECT. 2.—WHAT ACTIONS MAY BE REMITTED.

SUB-SECT. 1.—ACTIONS OF CONTRACT.

A. In General.

330. "Good cause to the contrary"—Intention to proceed under R. S. C., Ord. 14.]—It is a good cause for adjourning an application to remit an action for trial to the county ct. that a summons for judgment under R. S. C., Ord. 14, is pending.—*SMITH v. HURLEY* (1884), Bitt. Rep. in Ch. 56.

331. — Point of mercantile law involved.]—*GINNER v. KING* (1890), 7 T. L. R. 140; 34 Sol. Jo. 294, C. A.

B. Amount of Claim.

(a) Claim not exceeding Statutory Amount.

See, now, 1919 Act, s. 1.

332. Claim for statutory amount—Increased by claim for interest.]—A claim indorsed on a writ of "£50 & interest at the rate of £5 per cent. per annum from the date hereof until payment or judgment," is a claim exceeding £50 within the meaning of 1867 Act, s. 7, & the action cannot be sent to a county ct. under that sect.

On an application at chambers in such a case to send the action to the county ct. there is no power to impose a condition as to the costs of

Sect. 2.—What actions may be remitted: Sub-sect. 1, B. (a), (b) & (c); sub-sect. 2, A., B. & C.; sub-sects. 3, 4 & 5.]

the trial in the superior ct.—*INSLEY v. JONES* (1878), 4 Ex. D. 16; 48 L. J. Q. B. 222; 27 W. R. 111.

333. Counterclaim for unliquidated damages.]—An action of contract brought in the High Ct. for a sum not exceeding £100 to which a counterclaim for unliquidated damages is pleaded can be remitted to the county ct.—*GUILFORD v. LAMBETH*, [1895] 1 Q. B. 92; 64 L. J. Q. B. 95; 71 L. T. 738; 43 W. R. 97; 11 T. L. R. 63; 39 Sol. Jo. 58; 14 R. 86, C. A.

Annotation:—Consd. Morgan v. Bullen (1894), 39 Sol. Jo. 152.

334. —.]—MORGAN v. BULLEN (1894), 11 T. L. R. 153; 39 Sol. Jo. 152, D. C.

As to whether counterclaims alone can be remitted, see 1919 Act, s. 1.

(b) Claim reduced below Statutory Amount.

See, now, 1919 Act, s. 1.

NOTE.—Having regard to 1919 Act, s. 1, the names of cases decided before that Act have been given but their effect has not been set out.

335. Claim reduced by payment after action brought.]—OSBORNE v. HOMBURG (1875), 1 Ex. D. 48; *FOSTER v. USHERWOOD* (1877), 3 Ex. D. 1; *GRAY v. HOPPER* (1888), 21 Q. B. D. 246; *HODGSON v. BELL* (1890), 24 Q. B. D. 525; *CHARLES (JOHN) & SON v. CORY* (1919), 35 T. L. R. 208.

336. Claim reduced by set-off.]—PERCIVAL v. PEDLEY (1887), 18 Q. B. D. 635; *LEWIS v. LEWIS* (1887), 20 Q. B. D. 56.

337. Claim reduced by abandonment of excess—After issue of writ in High Court.]—DIERKEN v. PHILPOT, No. 370, *post*.

338. Claim reduced by amendment of writ.]—SNEADE v. WOTHERTON BARYTES & LEAD MINING Co., [1904] 1 K. B. 295.

(c) Claim for Unliquidated Damages.

See, now, 1919 Act, s. 1.

NOTE.—Having regard to 1919 Act, s. 1, the names of cases decided before that Act have been given but their effect has not been set out.

339. Formerly no jurisdiction to remit.]—KNIGHT v. ABBOTT (1882), 10 Q. B. D. 11; *MACKAY v. BANNISTER* (1885), 16 Q. B. D. 174; *MOUFLET v. WASHBURN* (1886), 54 L. T. 16; *BASSETT v. TONG*, [1894] 2 Q. B. 332.

SUB-SECT. 2.—ACTIONS OF TORT.

A. In General.

340. Nature of action—Slander—Under 1867 Act, s. 10—Notwithstanding Judicature Act, 1873 (c. 66), ss. 66, 67.]—Notwithstanding the provisions of the above Act, ss. 66, 67, which apply the provisions of 1867 Act, s. 10, to all actions in the High Ct. in which any relief is sought which can be given in a county ct. there is still jurisdiction under 1867 Act, s. 10, to remit an action for slander to a county ct. for trial.—*STOKES v. STOKES* (1887), 19 Q. B. D. 419; 56 L. J. Q. B. 494; 36 W. R. 28; 3 T. L. R. 743, C. A.

341. — Damages for want of skill.]—Pltf. in an action in the High Ct. alleged in the statement of claim that she employed deft., a dentist, for reward to extract a tooth by his painless process, but that the tooth was so unskillfully extracted that portions of it were left in the pltf.'s jaw, whereby illness, pain & suffering were

caused to her:—Held: the action was an action of tort within the meaning of 1888 Act, s. 60, & might be remitted to the county ct. under that sect. on the ground that the pltf. had no visible means of paying deft.'s costs should a verdict not be found for the pltf.—*EDWARDS v. MALLAN*, [1908] 1 K. B. 1002; 77 L. J. K. B. 608; 98 L. T. 824; 24 T. L. R. 376; 52 Sol. Jo. 316, C. A.

342. Discretion of judge—"Fit to be prosecuted in High Court"—Slander against married woman.]—Where in consequence of an imputation of unchastity an action of slander was brought by a married woman without visible means of paying the costs, the ct. thought the imputation sufficiently grave to make the action fit to be tried in the superior ct.—*CRITCHLEY v. BROWN* (1886), 2 T. L. R. 238, D. C.

343. — Plaintiff must show grounds.]—1888 Act, s. 66, provides that in certain cases actions of tort commenced in the High Ct. may be remitted for trial to the county ct. unless (*inter alia*) pltf. satisfies the judge of the High Ct. that he has a cause of action fit to be prosecuted in the High Ct. It is not, however, necessary for pltf. to show that he has a cause of action which must succeed, but rather that he must satisfy the judge that he has cause of action of superior fitness to be tried in the High Ct.—*FARRER v. LOWE* (1889), 53 J. P. 183; 5 T. L. R. 234, D. C.

Annotation:—Mentd. Perry v. London General Omnibus Co. (1916), 85 L. J. K. B. 1609.

Counterclaims.]—See 1919 Act, s. 1.

B. Amount of Claim.

See 1919 Act, s. 1.

344. Claim exceeding statutory amount—Claim in detinue for return or value of chattel—Order for delivery of chattel on payment of amount of lien—Amount of damages not quantified.]—1919 Act, s. 1, provides (*inter alia*) that, in any action founded either on contract or tort & commenced in the High Ct., where the amount claimed or remaining in dispute in respect thereof does not exceed £100, either party may at any time apply to the ct. or a judge for an order that the claim shall be transferred to a county ct., & the ct. or a judge may grant the application.

Pltf. brought a High Ct. action, claiming on his writ the return of a motor lorry or its value, which was over £100, & damages for its detention. Defts. alleged a right to detain it under a general lien & the master made an order that, on pltf.'s paying into ct., to abide the event, the amount of £56 claimed by defts. under their lien, the lorry should be returned to pltf., & at the request of defts., that the action should be remitted to a county ct. There was no evidence before the master as to the amount of pltf.'s claim for damages, but only evidence as to the value of the lorry & also evidence that he was under an obligation to deliver it under a contract of sale to a customer. The order was affirmed by the judge. On appeal to the Ct. of Appeal, evidence was given that pltf. had, by reason of the detention, lost his opportunity of selling the lorry to his customer & that his loss amounted to £125:—Held: in the absence of evidence by defts. that pltf.'s claim for damages did not exceed £100, there was no power to make the order for remission.—*ROBERTS v. KING (G. W.) & Co.* (1920), 37 T. L. R. 170; 65 Sol. Jo. 188, C. A.

C. Plaintiff without Visible Means of paying Costs.

See, now, 1919 Act, s. 2.

345. As reasonably ascertainable.]—By the

term visible means as used in 1867 Act, s. 10, is intended such means as could be fairly ascertained by a reasonable person in the position of deft. On the filing of an affidavit the jurisdiction of the judge arises, & he is to satisfy himself not merely whether pltf. has any visible means, but whether he has any means at all of paying the costs, & the judge has a judicial discretion whether he will make the order. On an application under above Act, s. 10, it appeared from the affidavit that deft. was in possession of certain property of pltf. under a claim for rent for £5,929, that pltf. had no property upon which an execution under a judgment for £2,404 could be levied, & his furniture had been sold under an execution, & that he had assigned his property for the benefit of his creditors. It also appeared that pltf. was being employed as a colliery manager at a weekly wage of £4, the employment being determinable on three months' notice, or on payment of three months' salary in lieu of notice, or without notice in the event of wilful misconduct:—*Held*: whether or not the salary could be attached, pltf. had no substantial means of paying the costs of the action in the event of the verdict being for deft., & an order was rightly made under s. 10.—*LEA v. PARKER* (1884), 13 Q. B. D. 835; 54 L. J. Q. B. 38; 33 W. R. 101, C. A.

346. Necessity for defendant's affidavit as to.—The High Ct. has no jurisdiction to remit an action of tort to the county ct. under 1867 Act, s. 10, without an affidavit under such sect. as to pltf.'s want of means.

In an action of tort commenced in the High Ct., the parties agreed to have it remitted to the county ct. An order for that purpose was drawn up & taken before the master, but no affidavit was made stating that pltf. had no visible means of paying deft.'s costs should he fail to obtain a verdict. The master made the order, but the county ct. judge postponed the trial, & made a special return setting out those facts for the opinion of the High Ct.:—*Held*: the order remitting the action was wrongly made, & the county ct. judge had adopted the proper course.—*R. v. MARYLEBONE COUNTY COURT JUDGE* (1883), 50 L. T. 97, D. C.

Annotation:—*Consd.* *R. v. Mellor*, [1914] 2 K. B. 588.

347. Discretion of judge where affidavit filed by defendant—No affidavit in reply by plaintiff.—A judge at chambers may properly decline to remit an action to a county ct. under 1867 Act, s. 10, without requiring an affidavit from pltf. in answer to deft.'s affidavit under that sect.—*COXWELL v. LONDON GENERAL OMNIBUS CO.* (1879), 27 W. R. 381, D. C.

348. — As to means of plaintiff.—*LEA v. PARKER*, No. 345, *ante*.

349. — — ——*M'CARTHY v. VALLIS* (1887), 4 T. L. R. 193, D. C.

350. Infant suing by father as next friend—Proof of father's want of means sufficient.—Where an infant pltf. of tender years, suing in a remitted action by his father as next friend, is living with his father, who is impecunious, it is not necessary, upon deft.'s application for security for costs under 1888 Act, s. 66, to give evidence as to the infant's means, but it is sufficient to prove that the father has no visible means of paying costs.—*MASLING v. MOTOR HIRING CO. (MANCHESTER), LTD.*, [1919] 2 K. B. 538; 89 L. J. K. B. 109; 121 L. T. 515; 35 T. L. R. 515, C. A.

351. Plaintiff admitted as poor person in High Court—No jurisdiction to direct suit as poor person in county court.—A judge of the High Ct. has jurisdiction under 1888 Act, ss. 65, 66, to make an

order remitting an action brought in the High Ct. for trial in the county ct. notwithstanding that an order has been made under R. S. C., Ord. 16, relating to poor persons, admitting pltf. to prosecute the action as a poor person. He has, however, no jurisdiction to add to the order remitting the action a direction that pltf. be at liberty to sue as a poor person in the county ct.

Semble: a county ct. judge has jurisdiction to admit a pltf. to sue as a poor person in the county ct.—*PERRY v. LONDON GENERAL OMNIBUS CO.*, [1916] 2 K. B. 335; 85 L. J. K. B. 1609; 115 L. T. 101; 32 T. L. R. 583; 60 Sol. Jo. 566, C. A. *Annotation*:—*Consd.* & *Folld.* *Cook v. Imperial Tobacco Co.*, [1922] 2 K. B. 158.

352. — — ——A county ct. has no jurisdiction to admit a pltf. to sue as a poor person in the county ct.

Where pltf. has been admitted to take proceedings in tort in the High Ct. as a poor person under Ord. 16, rr. 22–31, a master or judge may nevertheless properly exercise his discretion under 1919 Act, s. 2, in remitting the action for trial in the county ct., notwithstanding that the effect of such remittal, in cases in which pltf. has no means at all, owing to the absence of authority to admit him to sue in the county ct. as a poor person, be to deprive him of all power to continue the prosecution of the action. The master or judge, however, when exercising the discretion to remit ought to take that fact into consideration.—*COOK v. IMPERIAL TOBACCO CO.*, [1922] 2 K. B. 158; 127 L. T. 474; 38 T. L. R. 700; 67 Sol. Jo. 10, C. A.

SUB-SECT. 3.—COUNTERCLAIMS.

See, now, 1919 Act, s. 1.

SUB-SECT. 4.—ACTIONS FOR RECOVERY OF LAND.

See 1919 Act, s. 1 (3).

SUB-SECT. 5.—EQUITABLE ACTIONS.

See 1888 Act, s. 69.

353. Remittal refused—Though subject-matter within county court jurisdiction—Where applicant in default.—Where a party to a suit in the Ct. of Ch. has not obeyed an order of that ct., although the subject-matter may be under £500, the judge to whose ct. the suit is attached will not order a transfer of it to the county ct. under 1867 Act, s. 142.—*MAUDESLEY v. MAUDESLEY* (1868), 18 L. T. 51.

354. — — — In absence of special reasons.—Although the subject-matter of a suit is within the jurisdiction of the county ct., the ct., in the absence of any special reasons, will not order the suit to be transferred to the county ct.—*PICARD v. HINE* (1868), 18 L. T. 705.

355. — — — Application to save expense of witness.—Pltf. had entered his action, being an action for specific performance of a contract, for trial in the Associates' Book for Middlesex. Motion by deft. to have it struck out & entered in the Ch. Registrar's book allowed. Motion by pltf. to have the action transferred to the county ct. at B., so as to avoid the expense of bringing up witnesses to L., refused, although the purchase-money being under £500 the action was within

Sect. 2.—What actions may be remitted: Sub-sects. 5 & 6. Sects. 3 & 4: Sub-sects. 1 & 2. Sect. 5: Sub-sect. 1.]

the county ct. jurisdiction.—*SYKES v. FIRTH* (1877), 46 L. J. Ch. 627.

Annotation:—Expld. Brooke v. Wigg (1878), 8 Ch. D. 510.

356. — Hearing in county court likely to be lengthy.]—READING CORPN. v. FEWSTER (1910), 55 Sol. Jo. 125.

357. After action transferred to High Court—When re-transfer ordered.]—On a motion for an order re-transferring to the county ct. of D. an action commenced in that ct. for payment of the amount due on a mtge. of freehold property & in default foreclosure & possession of the property, it appeared that, although the mtge. debt of £575 had by various payments been reduced to £461 before action brought, the county ct. judge was of opinion that, as the amount of the advance had exceeded £500, the matter was beyond the jurisdiction of the county ct., & ordered the action to be transferred to the Ch. Div. of the High Ct. of Justice:—*Held*: by 1888 Act, ss. 67 (3), 68, the action might be re-transferred to the county ct. of D.—*SHIELDS, WHITLEY & DISTRICT AMALGAMATED MODEL BUILDING SOCIETY v. RICHARDS* (1901), 84 L. T. 587; 45 Sol. Jo. 537.

358. — Order of transfer to High Court made without proper information—Powers of county court judge on re-transfer of action to county court.]—COWNEY v. THOMPSON (1890), 89 L. T. Jo. 222.

SUB-SECT. 6.—APPLICATIONS TO ATTACH DEBTS OR LEVY EXECUTION AGAINST MEMBER OF FIRM.

See 1919 Act, s. 3.

SECT. 3.—TO WHAT COURTS ACTIONS MAY BE REMITTED.

359. Any county court convenient to parties—Discretion of judge as to convenience.]—Under 1888 Act, s. 65, a judge in chambers has power to transfer certain actions for trial in the county ct. "in which the action might have been commenced or in any court convenient thereto":—

Held: the word "thereto" was meaningless & should be rejected, & the phrase read as "convenient to the parties."—*BURKILL v. THOMAS*, [1892] 1 Q. B. 312; 61 L. J. Q. B. 322; 66 L. T. 150; 40 W. R. 250; 8 T. L. R. 288; 36 Sol. Jo. 230, C. A.

Annotations:—Reid. R. v. Mellor, [1914] 2 K. B. 588. *Mentd. Ford v. Blurton, Ford v. Sauber* (1922), 38 T. L. R. 801.

360. — —.]—Held: the words "in any ct. convenient thereto" in 1888 Act, s. 65, mean in any county ct. which the judge at chambers may deem to be convenient to the parties; & the judge has a discretion to exercise upon the question of convenience which must vary according to the circumstances of each case.

Where an order is made under the above sect. for the trial of an action in a county ct., the judge has no jurisdiction to inquire into what circumstances were taken into account when the order was made, or into the question whether his ct. is a convenient ct. or is convenient to the parties, or whether any other ct. would be more convenient, or the like. His duty is to obey the order & try the action in due course in its proper turn, as if it had been an action originally commenced in his ct.

Where the High Ct. makes an order under 1888 Act, s. 131, directing a county ct. judge to hear & determine an action which he has refused to hear, the ct. can only deal with the costs of the proceedings before it, & has no jurisdiction to order the county ct. judge to pay the costs thrown away in the county ct. by reason of his refusal to hear the action.—*R. v. MELLOR*, [1914] 2 K. B. 588; 83 L. J. K. B. 996; 110 L. T. 802; 30 T. L. R. 355; 58 Sol. Jo. 361, C. A.

SECT. 4.—THE ORDER OF REMITTAL.

SUB-SECT. 1.—FORM OF.

See, now, 1919 Act, s. 4 (2).

361. Should fix time within which action to be entered in county court.]—DAVID v. HOWE, No. 365, *post*.

Order bearing signature of judge impressed by stamp—County court judge cannot inquire into circumstances under which made.]—See No. 369, *post*.

Remitting action in which plaintiff suing as "poor person."]—*See* No. 351, *ante*.

SUB-SECT. 2.—EFFECT OF.

See, now, 1919 Act, s. 4.

Whether jurisdiction of High Court ceases—As to costs.]—See Sect. 8, *post*.

362. — As to application under R. S. C., Ord. 17, r. 8—Remittal under 1888 Act, s. 65.]—In an action against several defts. on a joint & several contract, one of defts. died intestate. Afterwards an order was made transferring the action to the county ct. Afterwards an administrator was appointed of the estate of deceased deft. The action was tried in the county ct., & resulted in judgment for defts. The administrator afterwards took out a summons in the High Ct., under Ord. 17, r. 8, asking that pltf. be ordered to proceed with the action against him, or that the action should be dismissed:—

Held: by the order of transference the entire action was sent into the county ct., & thereafter any further application could only have been made in the county ct.—*DUKE v. DAVIS*, [1893] 2 Q. B. 260; 62 L. J. Q. B. 549; 69 L. T. 490; 41 W. R. 673; 4 R. 518, C. A.

Annotations:—Folld. Buckley & Beach v. National Electric Theatres, [1913] 2 K. B. 277. *Reid. D'Errico v. Samuel*, [1896] 1 Q. B. 163.

363. — Before documents lodged with registrar of county court—Failure of plaintiff to give security within time prescribed—Jurisdiction to extend time.]—An order was made under 1867 Act remitting an action to the county ct. unless security was given for costs within a week. Pltf. did not give security within the time limited, but after that time applied for & obtained an order extending the time for giving security:—*Held*: until pltf. had lodged the writ & order remitting the action with the registrar of the county ct. the action remained in the superior ct., & consequently there was jurisdiction to make the order extending the time for giving security.—*WELPLY v. BUHL* (1878), 3 Q. B. D. 253; 47 L. J. Q. B. 151; 38 L. T. 115; 26 W. R. 300, C. A.

Annotations:—Consd. Driscoll v. King (1883), 49 L. T. 599. *Apld. D'Errico v. Samuel*, [1896] 1 Q. B. 163. *Reid. R. v. Holroyd* (1884), 32 W. R. 870.

364. — — — Jurisdiction to make order as to further interrogatories.]—Where the time limited by an order made under 1888 Act,

s. 66, remitting an action commenced in the High Ct. for trial to a county ct., has expired, & pltf. has failed to give security within the time prescribed, the action nevertheless remains in the High Ct. until pltf. has lodged the original writ & such order with the registrar of the county ct.; & until that has been done a master of the High Ct. has jurisdiction on the application of pltf. to make an order for further & better answers to interrogatories.—*D'ERRICO v. SAMUEL*, [1896] 1 Q. B. 163; 65 L. J. Q. B. 197; 73 L. T. 680; 44 W. R. 356; 12 T. L. R. 151, C. A.

Annotation:—*Reid*. *Buckley & Beach v. National Electric Theatres*, [1913] 2 K. B. 277.

365. — Jurisdiction to order lodgment of documents.—An order transferring an action to a county ct. should fix a time within which pltf. is to enter the action in the county ct.

In an action commenced in the Ch. Div., an order had been made transferring the action to the county ct. Pltf. having failed to set down the action in the county ct.:—*Held*: until the action had been set down in the county ct. the superior ct. still possessed jurisdiction; & pltf., within one week of service of the order then made, must lodge the necessary documents with the registrar of the county ct.—*DAVID v. HOWE* (1884), 27 Ch. D. 533; 53 L. J. Ch. 1053; 50 L. T. 753; 32 W. R. 844.

366. — After documents lodged with registrar of county court—Expiration of time for appealing.—An action of contract having been brought in the High Ct., the master made an order under 1888 Act, s. 65, remitting the action for trial to the county ct. After the time for appealing against that order had expired pltf. under that sect. lodged the writ & the order with the registrar of the county ct. Defts. subsequently appealed against that order, & the High Ct. judge made an order extending the time for appealing & setting aside the order of the master remitting the action:—*Held*: (1) as the order of the master remitting the action to the county ct. had not been appealed against within the proper time, & the documents in the action had been lodged in the county ct., the action had been effectually transferred to the county ct. & had become a county ct. action; (2) the High Ct. judge had no longer jurisdiction to make any order in respect of it, & the order of the High Ct. judge should be set aside & the order of the master restored.—*BUCKLEY & BEACH v. NATIONAL ELECTRIC THEATRES, LTD.*, [1913] 2 K. B. 277; 82 L. J. K. B. 739; 108 L. T. 871, C. A.

Delay in lodging documents with registrar of county court, *see* Sect. 5, sub-sect. 1, *post*.

367. — As to appeal from county court—Whether appeal from Divisional Court without special leave—Remittal under 1867 Act, s. 10.—Where a cause has been remitted for trial before a county ct. under above Act, it becomes a county ct. cause, & the determination of a Div. Ct., on appeal from the decision of the county ct. judge is within Jud. Act, 1873 (c. 66), s. 45, & therefore final, unless special leave to appeal be given.—*BOWLES v. DRAKE* (1881), 8 Q. B. D. 325; 51 L. J. Q. B. 66; 45 L. T. 576; 30 W. R. 333, C. A.

Annotations:—*Consd.* *Babbage v. Coulbourn* (1882), 52 L. J. Q. B. 50. *Reid*. *Harris v. Judge*, [1892] 2 Q. B. 565; *Spring v. Fernandez*, [1912] 1 K. B. 294.

368. — Remittal under 1856 Act, s. 26.—An action brought in the High Ct., but sent for trial before a county ct. under above Act, does not thereby become a cause in the county ct., but remains in the High Ct., so that an appeal will lie from the judgment of a Div. Ct., on a

motion in the cause, without special leave being obtained under Jud. Act, 1873 (c. 66), s. 45.—*BABBAGE v. COULBOURN* (1882), 52 L. J. Q. B. 50; 46 L. T. 794, C. A.

369. Order binding on county court judge—No power to inquire into validity of order.—By 1867 Act, ss. 34, 35, the City of London Ct. is made a county ct. for all purposes, & all the county ct. Acts apply to it, & consequently, the proper mode of proceeding against the judge of the City of London Ct. is by rule under 1856 Act, s. 43; & the proviso in s. 35, reserving all rights & privileges of the judge, has no application to the case. When an order purporting to be made by a judge at chambers, & bearing the signature of the judge impressed by a stamp, in the usual way, transferring a cause from the superior ct. to the county ct., is served on the judge of the county ct., he is bound to obey the order, & he cannot inquire into the circumstances under which it was made.—*BLADES v. LAWRENCE* (1874), L. R. 9 Q. B. 374; 43 L. J. Q. B. 133; 30 L. T. 378; 22 W. R. 643.

Annotations:—*Reid*. *Howard v. Graves* (1885), 1 T. L. R. 515; *Kutner v. Phillips*, [1891] 2 Q. B. 267; *R. v. Mellor*, [1914] 2 K. B. 588. *Mentd.* *De Beauvais v. Green* (1906), 22 T. L. R. 816.

370. — Order not appealed against—Expiration of time for appealing.—In an action of contract brought in the High Ct. in which the sum indorsed on the writ exceeded £100 pltf. at the hearing by a master of a summons under 1888 Act, s. 65, abandoned the excess above £100, & the master made an order for trial of the action in the county ct. Deft. did not appeal against the order, but at the trial in the county ct. objected to the jurisdiction. The judge, considering himself bound by the order, tried the action & gave judgment for pltf., & deft. thereupon applied for a writ of prohibition:—*Held*: deft. not having appealed against the order the objection raised at the trial was made too late, & the county ct. judge was not bound to inquire into the circumstances under which the order was made, & was not guilty of any excess of jurisdiction in trying the action.—*DIERKEN v. PHILPOT*, [1901] 2 K. B. 380; 70 L. J. K. B. 675; 85 L. T. 246; 49 W. R. 703; 17 T. L. R. 491; 45 Sol. Jo. 557, D. C.

Annotations:—*Consd.* *Sneade v. Wotherton Barytes & Lead Mining Co.*, [1904] 1 K. B. 295; *Charles v. Cory* (1919), 35 T. L. R. 208.

371. — Duty to try action as if originally commenced in county court.—*R. v. MELLOR*, No. 360, *ante*.

372. When order improperly made—Duty of county court judge.—*R. v. MARYLEBONE COUNTY COURT JUDGE*, No. 346, *ante*.

373. — Appeals against order.—*R. v. MELLOR*, No. 360, *ante*. *See* Part IV., Sect. 6, *post*.

Application for new trial.—*See* No. 393, *post*.

SECT. 5.—PROCEDURE AFTER REMITTAL.

SUB-SECT. 1.—LODGING DOCUMENTS WITH REGISTRAR.

See, now, 1919 Act, s. 4.

374. Delay in lodging writ & order—Plaintiff may be compelled to proceed or abandon action—By summons.—(1) Where an action is remitted to the county ct. under 1867 Act, s. 10, & pltf. does not lodge the original writ & the order with the registrar of the county ct., the proper course for deft. to pursue is to apply by summons at chambers to compel pltf. either to proceed with the action or abandon it.

(2) The county ct. judge cannot refuse to hear

Sect. 5.—Procedure after remittal: Sub-sects. 1 & 2, A., B., C., D., E. & F. Sect. 6.]

the action on the ground that there has been delay in lodging the writ & order with the registrar. —*DRISCOL v. KING* (1883), 49 L. T. 599; *sub nom. R. v. HOLROYD*, 32 W. R. 370, D. C.

Annotations:—Consd. Duke v. Davis (1893), 62 L. J. Q. B. 549. *Follid. D'Errico v. Samuel* (1896), 65 L. J. Q. B. 197.

375. — Time limit fixed by High Court.]—*DAVID v. HOWE*, No. 365, *ante*.

376. — No ground for refusal of county court judge to try case.]—*DRISCOL v. KING*, No. 374, *ante*.

See, further, Nos. 363, 364, 365, 366, ante.

SUB-SECT. 2.—PROCEEDINGS IN COUNTY COURT.

A. Parties.

Parties in county court proceedings, *see, generally*, Part V., Sect. 1, *post*.

377. Striking out defendant — Misjoinder.] —*RENNISON v. WALKER*, No. 381, *post*.

378. Adding defendant without his consent—County court judge not entitled to.]—Where an action has been remitted for trial in the county ct. under 1867 Act, s. 10, the county ct. judge has no power to add a deft. without his consent.—*MULLENEISEN v. COULSON* (1888), 20 Q. B. D. 667; 57 L. J. Q. B. 334; 58 L. T. 562; 36 W. R. 524, D. C.

Substitution of executor for deceased defendant.]—*See* No. 480, *post*.

B. Amendment.

Amendment generally, *see* Part V., Sect. 6, *post*.

379. Discretion of judge to allow—General rule.]—An action commenced in the High Ct. by a writ specially indorsed with a claim for £40 16s. for the price of goods sold & delivered, work & labour done, & materials supplied was remitted to the county ct. under 1888 Act, s. 65. In the county ct. pltf. amended his particulars by adding a claim based in substance upon collusion & fraud on the part of deft.'s surveyor:—*Held*: although the action had been turned into one comprising a composite claim in contract & tort which could not have been remitted to the county ct. under s. 65, the county ct. judge had, under that sect. & Ord. 14, r. 12, & Ord. 33, r. 2, jurisdiction to entertain the action with the claim which had been so amended after remittal, & to allow or disallow the amendment as in the exercise of his discretion he thought fit.—*SPRING v. FERNANDEZ*, [1912] 1 K. B. 294; 81 L. J. K. B. 201; 105 L. T. 792; 56 Sol. Jo. 110, D. C.

380. Of proceedings—Power of judge to amend—Variances & accidental mistakes—No power to add new plea.]—Where a cause commenced in a superior ct. is sent down, after issue joined, for trial in a county ct. under 1856 Act, s. 26:—*Semble*: (*BLACKBURN & MELLOR, JJ.*) the judge of the county ct. before whom the cause is tried may, by virtue of sect. 57 of the above Act, amend all defects & errors in the proceedings, such as variances & accidental mistakes, but cannot add a new plea, as that would be raising a different issue from that which the judge of the superior ct. in his discretion sent down to be tried. *Semble*: (*HANNEN, J.*) in such a case the judge of the county ct. may not only amend variances & accidental mistakes, but may exercise the same powers of amendment generally as a judge of the superior ct. sitting at *nisi prius*.—*THOMAS v. PURCELL* (1870), 22 L. T. 474.

381. — Misjoinder of defendants.]—Where a cause is sent down for trial to a county ct. under 1856 Act, s. 26, the county ct. judge has power at the trial to amend the misjoinder of defts. under Common Law Procedure Act, 1852 (c. 76), s. 37.—*RENNISON v. WALKER* (1872), L. R. 7 Exch. 143; 41 L. J. Ex. 43; 26 L. T. 167; 20 W. R. 471.

382. Of claim—Power of judge to convert liquidated claim—Into claim for unliquidated damages.]—An action commenced in the High Ct. by a specially indorsed writ to recover a liquidated sum less than £50 was remitted to a county ct. under 1888 Act, s. 65:—*Held*: the county ct. judge had power under sect. 87 to amend the claim by converting it into a claim for unliquidated damages, although the action, if originally brought to recover unliquidated damages, could not have been remitted.—*SPENCER, WHATLEY & UNDERHILL v. FORSTER & Co.*, [1905] 1 K. B. 434; 74 L. J. K. B. 288; 92 L. T. 163; 21 T. L. R. 224, D. C.

Annotations:—Consd. Spring v. Fernandez, [1912] 1 K. B. 294. *Reid. Everall v. Brown* (1905), 53 W. R. 664.

383. — Plaintiff entitled to add alternative statutory claim.]—Pltf., who was employed by defts., commenced an action in the High Ct. at common law to recover damages for personal injuries sustained by him owing to their negligence. The action was remitted to the county ct. under 1888 Act, s. 66. Pltf. then delivered particulars of his claim, & added, in addition to his claim at common law, an alternative claim under Employers' Liability Act, 1880 (c. 42):—*Held*: he was entitled so to do.—*WOOD v. WEBER* (1908), 99 L. T. 195; 24 T. L. R. 587; *sub nom. WARD v. WEBER*, 52 Sol. Jo. 482, D. C.

384. — Remitted action of contract—Addition of claim in respect of tort—Jurisdiction of judge to try composite claim.]—*SPRING v. FERNANDEZ*, No. 379, *ante*.

C. Special Defences.

Notice of special defence in county court proceedings generally, *see* Part V., Sect. 5, sub-sect. 1, *post*.

385. Necessity for notice of—Special defence pleaded in High Court.]—*THOMAS v. HODGENS* (1896), 41 Sol. Jo. 112, D. C.

D. Security for Costs.

Costs generally, *see* Part VII., *post*.

386. Trustee in bankruptcy—Bankruptcy of plaintiff before documents lodged with registrar.]—Where an action of contract, brought in the High Ct., is ordered to be tried in a county ct. under 1888 Act, s. 65, & before pltf. has lodged the original writ & the order with the registrar of the county ct. he becomes bankrupt & a trustee is appointed & an order is made in the High Ct. joining the trustee as pltf. in the action, the judge of the county ct. has no jurisdiction to order the trustee to give security for the costs of the action under s. 94.—*HEMMING v. DAVIES*, [1898] 1 Q. B. 660; 67 L. J. Q. B. 458; 78 L. T. 500; 14 T. L. R. 309; 42 Sol. Jo. 365; 5 Mans. 73, D. C.

387. Limited liability company—Under Companies (Consolidation) Act, 1908 (c. 69), s. 278.]—Where upon the application of defts. under 1888 Act, s. 66, a case is remitted for trial in the county ct. upon the failure of pltf. to provide, when ordered, full security for defts.' costs, or to satisfy a judge of the High Ct. that they have cause of action fit to be presented in the High Ct., the judge of the county ct. to which the case has been remitted may, when plaintiffs are a limited co. & it

appears that they will be unable to pay the costs of defts. if unsuccessful, order plffs. to give security for costs under above Act, s. 278.—*PLASYCOED COLLIERIES CO., LTD. v. PARTRIDGE, JONES & Co., LTD.* (1911), 104 L. T. 807; 55 Sol. Jo. 481, D. C.

E. Stay of Proceedings.

Stay of actions generally, see Part V., Sect. 4, *post*.

388. Till payment of costs of previous action in superior court—Between same parties.]—Where an action commenced in the High Ct. has been transferred to a county ct. under 1867 Act, s. 10, the county ct. judge has power to make an order staying the proceedings until pltf. has paid the costs of a previous action brought by him in the High Ct. against same deft.—*R. v. BAYLEY* (1882), 8 Q. B. D. 411; 30 W. R. 522; *sub nom.* *R. v. BAYLEY, Re MASON & AIRD*, 51 L. J. Q. B. 244, D. C.

Trial.

Trial of actions in county courts generally, see Part VI., *post*.

389. Right to trial by jury—No special terms imposed in order.]—Where a cause is sent to a county ct. for trial, under 1856 Act, s. 26, & no special terms are imposed by the order, the parties are entitled, the demand being of sufficient amount, to have it tried by a jury, & this notwithstanding a second trial is directed in a case where the first trial was by the judge, without a jury.—*FORD v. TAYLOR* (1877), 3 C. P. D. 21; 47 L. J. Q. B. 116; 37 L. T. 431; 26 W. R. 170, D. C.

390. Plaintiff not restricted to claim in writ & particulars—Statement of claim to be regarded—& evidence received in support.]—When an action is remitted from the High Ct., under 1867 Act, for trial, & the writ & statement of claim, if any, are lodged in the county ct. together with particulars given under Ord. 20, r. 1, the county ct. judge ought not to restrict pltf. to proof of the claim as indorsed on the writ or stated in the particulars, but should take cognizance of the statement of claim, & if asked to do so, receive evidence in support of the allegations therein.—*JOHNSON v. PALMER* (1879), 4 C. P. D. 258; 27 W. R. 941, D. C.

391. Title to land incidentally coming in question—No jurisdiction to hear action in absence of consent of parties.]—*TOON v. STANBURY-EARDLEY*, No. 248, *ante*.

392. Defendant not entitled to sum up evidence.]—An action remitted from the Q. B. Div. to a county ct. was tried before the county ct. judge with a jury. After deft.'s evidence had closed, his counsel claimed to address the jury, but the judge refused to allow it. The jury having given a verdict for pltf., deft. applied for a rule *nisi* for a new trial on the ground that his counsel ought to have been allowed to sum up the evidence:—*Held*: as the right claimed did not exist at common law, & Common Law Procedure Act, 1854 (c. 125), s. 18, which gave such a right in the superior cts. did not apply to county cts., there was no ground for interfering with the practice of any county ct. in which deft. was not allowed to sum up the evidence.—*DYMOCK v. WATKINS* (1883), 10 Q. B. D. 451; 48 L. T. 393; 31 W. R. 331, C. A.

393. New trial—Application to county court.]—An application for a new trial in an action remitted to a county ct. must be made to that ct.—*WHITE v. MAINWARING* (1877), 25 W. R. 253, D. C.

SECT. 6.—APPEALS AGAINST REMITTAL.

See, now, 1919 Act, s. 4.

Appeals generally, see Part VIII., *post*.

394. Whether order open to review—Order remitting action of tort.]—By 1867 Act, s. 10, in certain actions in the superior cts. the judge of the ct. in which the action is brought may make an order that the cause be tried in a county ct., unless pltf. give security for costs to the satisfaction of a master, or satisfy the judge that he has a cause of action fit to be prosecuted in the superior ct. A judge of one of the superior cts., sitting in chambers for all the cts., although not a judge of the particular ct. in which the action is brought, has jurisdiction to make an order under the above sect. The order of the judge is open to review by the ct.: & his decision is not final as to whether pltf. has a cause of action fit to be prosecuted in the superior ct.—*OWENS v. WOOSMAN, OWENS v. JONES* (1868), L. R. 3 Q. B. 469; 9 B. & S. 243; 37 L. J. Q. B. 159; 18 L. T. 357; 16 W. R. 932.

Innotations:—*Consd.* *Hillman v. Mayhew* (1876), 1 Ex. D. 132. *Refd.* *Clapham v. Oliver* (1874), 22 W. R. 655.

395. Whether court will review—After verdict—On objection not taken when order made.]—An order in chambers that a case commenced in a superior ct. be tried at a county ct., under 1856 Act, s. 26, will not be rescinded after verdict, on the ground that when the order was made, issue was not joined, if no objection was then taken on that ground.

After action commenced upon a bill of exchange, but before delivery of declaration, pltf. applied to a master in chambers, for an order to have the case tried at a county ct.; although deft. appeared & objected to this order, the point that by the above Act there was no power to remove a case until after issue joined was not raised. The order was made, the trial took place, & after verdict deft. applied to rescind the master's order & set aside subsequent proceedings:—*Held*: deft. was concluded from making such an objection.—*TOMKINS v. BEARD* (1868), 18 L. T. 363; *sub nom.* *TOMPKINS v. BEARD*, 16 W. R. 729.

Annotation:—*Distd.* *Foster v. Usherwood* (1877), 3 Ex. D. 1.

396. — Order remitting suit in equity.]—*LINFORD v. GUDGEON*, No. 60, *ante*.

397. — Refusal to make order.]—*PALMER v. ROBERTS*, No. 328, *ante*.

398. — Order remitting action—Order obviously wrong.]—Upon an order under 1867 Act, s. 10, directing a cause to be tried in a county ct. in default of security being given for deft.'s costs, or of satisfying the judge that pltf. has a cause of action fit to be prosecuted in the superior ct., an appeal lies to the superior ct. But such ct., although entertaining an opinion that the cause is one which might be fit to be tried in the superior ct., will not interfere with the decision of the judge at chambers unless it is of opinion that such decision is obviously wrong.—*JENNINGS v. LONDON GENERAL OMNIBUS CO.* (1874), 30 L. T. 266.

399. — — —.]—Before the ct. will review the discretion of a judge in remitting an action to the county ct., on pltf. failing to give security for costs, it must be very clearly shown that the judge wrongly exercised such discretion.

An action for seduction was remitted to the county ct. by a judge at chambers, under 1867 Act, s. 10, by which the judge has power to remit such action to the county ct. on the application of deft., unless pltf. shall give security for costs, or satisfy the judge that he has a cause of action fit to be prosecuted in a superior ct. Pltf. deposed that he was advised that it was expedient, as a matter of law, that the action should be tried in

Sect. 6.—Appeals against remittal. Sects. 7 & 8: Sub-sects. 1 & 2, A. & B.; sub-sect. 3.]

a superior ct. The ct. was equally divided in opinion as to whether the discretion of the judge had been rightly exercised, but refused a rule to review it.—*RIPPON v. JOYCE* (1874), 31 L. T. 475.

400. Time for appealing—Expiration of time—Objection not maintainable at trial.]—*DIERKEN v. PHILPOT*, No. 370, *ante*.

401. — Formerly not after documents lodged with registrar of county court.]—*BUCKLEY & BEACH v. NATIONAL ELECTRIC THEATRES, LTD.*, No. 366, *ante*.

See, now, 1919 Act, s. 4 (1).

As to effect of lodging documents with registrar of county court.]—*See Part IV., Sect. 5, sub-sect. 1, ante.*

SECT. 7.—RE-TRANSFER AFTER REMITTAL.

402. Power of High Court to order—Under 1888 Act, s. 126—**Action remitted from Chancery Division.]—**A writ having been issued in the Ch. Div. of the High Ct. for an injunction to restrain disturbance of a ferry, the judge in the Ch. Div., on an interlocutory application for an interim injunction, ordered the action to be transferred to the county ct. under s. 69 of the above Act.

By s. 56 of the above Act it is provided that except as in the Act provided the county ct. shall not have cognizance of any action in which the title to any franchise shall be in question. During the proceedings in the county ct. it became apparent that the title to the ferry was in question. An application was accordingly made under s. 126 of the above Act to remove the action into the High Ct.:—*Held*: the action was “commenced in the county ct.” within the meaning of that sect. & the High Ct. had jurisdiction to make the order.—*GENERAL ESTATES CO. v. BEAVER*, [1912] 2 K. B. 398; 81 L. J. K. B. 761; 106 L. T. 793, D. C.; *subsequent proceedings*, [1913] 2 K. B. 433; [1914] 3 K. B. 918, C. A.

Power of High Court to remove actions commenced in county court generally, *see Part IX., Sect. 1, post*.

SECT. 8.—COSTS.

SUB-SECT. 1.—JURISDICTION OF HIGH COURT.

See, now, 1919 Act, s. 12.

NOTE.—*Having regard to 1919 Act, s. 12, the names of cases decided before that Act have been given but their effect has not been set out.*

403. Former law.]—*MACLEUR v. MACLEUR* (1868), L. R. 1 P. & D. 604; *MOODY v. STEWARD* (1870), L. R. 6 Exch. 35; *INSLEY v. JONES* (1878), 4 Ex. D. 16; *HARRIS & SONS v. JUDGE*, [1892] 2 Q. B. 565; *DUNN v. APPLETON*, [1898] 1 Q. B. 564.

SUB-SECT. 2.—ACTIONS FOUNDED ON CONTRACT.

A. In General.

See, now, 1919 Act, ss. 11, 12.

NOTE.—*Having regard to 1919 Act, ss. 11, 12, the names of cases decided before that Act have been given but their effect has not been set out.*

404. Former discretion of county court judge.]—*EVERALL v. BROWN*, [1906] 2 K. B. 884; *BENNETT v. DRAKE* (1907), 97 L. T. 132.

405. Less than £20 recovered.]—*ARMITAGE v.*

FISON & Co. (1892), 67 L. T. 415; *WHITE v. COHEN*, [1893] 1 Q. B. 580; *PEARCE v. BOLTON*, [1902] 2 K. B. 111; *LAMB BROTHERS v. KEEPING* (1914), 111 L. T. 527.

406. Less than £50 recovered.]—*HARRIS & SONS v. JUDGE*, [1892] 2 Q. B. 565; *SIMPSON v. PARSONS* (1904), 48 Sol. Jo. 622.

407. Less than £40 recovered—Sufficiency of order—Under 1919 Act, s. 12.]—An action founded on contract was commenced in the High Ct., & subsequently transferred to the county ct., where pltf. recovered less than £40. The county ct. judge ordered “Judgment for pltf. with costs to be taxed column B.”:—*Held*: although the order was not a sufficient order under the proviso to 1919 Act, s. 12, so as to entitle pltf. to his costs of so much of the proceedings as took place in the High Ct., it was a sufficient order under the earlier part of that sect. to entitle him to his costs incurred in the county ct. subsequently to the transfer, & the registrar was bound to tax the latter costs accordingly.—*HAWKINS v. MILN*, [1921] 3 K. B. 633; 91 L. J. K. B. 15; 125 L. T. 767, D. C.

Actions tried in High Court.]—*See PRACTICE & PROCEDURE.*

B. Effect of Judgment under R. S. C., Ord. 14.

See, now, 1919 Act, ss. 11, 12.

408. Costs of & prior to order to remit—Less than £20 recovered under R. S. C., Ord. 14.]—An action of contract brought in the High Ct. for more than £50 was remitted to the county ct. after pltf. had recovered less than £20 under Ord. 14. They recovered in all less than £50:—*Held*: pltf. were not entitled to costs on the supreme ct. scale in respect of the part of the proceedings which had taken place in the High Ct.—*WILSON v. STATHAM*, [1891] 2 Q. B. 261; 60 L. J. Q. B. 725; 39 W. R. 686; 7 T. L. R. 450, D. C.

*Annotation:—**Expld.* *Harris v. Judge* (1892), 67 L. T. 19.

409. — Defendant successful in county court.]—In an action brought in the High Ct. pltf. applied for summary judgment under Ord. 14. Deft. obtained leave to defend as to part of the claim on the terms of his paying the balance of £3 to pltf., & the action was remitted to the county ct. Deft. paid the £3 to pltf. & the action proceeded. At the trial judgment was entered for deft. with costs on the higher scale:—*Held*: the ct. had a discretion, under the 1888 Act, s. 113, to order pltf. to pay to deft. the costs of the proceedings under Ord. 14 notwithstanding that pltf. had by those proceedings succeeded in obtaining satisfaction of a portion of their claim.—*MENTORS, LTD. v. EVANS*, [1912] 3 K. B. 174; 81 L. J. K. B. 1111; 107 L. T. 82; *sub nom.* *MENTORS, LTD. v. WHITE*, 56 Sol. Jo. 502, C. A.

410. — More than £20 recovered under R. S. C., Ord. 14.]—*WOODIN v. BAILEY* (1894), 98 L. T. Jo. 89.

411. Whether more than £50 recovered—Claim for & payment under R. S. C., Ord. 14 of more than £50—Less than £20 recovered in county court.]—In an action to recover £104 deft., in pursuance of an order made upon an application by pltf. for leave to sign final judgment, paid £90 to pltf.’s solr., & the action as to the balance of £14 was transferred to the county ct. The £14 was paid into ct. in the county ct.:—*Held*: pltf. had recovered £104 in the action & was therefore entitled to have his costs in the county ct. taxed upon scale C. applicable where the amount exceeds £50 & not upon scale H. which applies where less than £20 is recovered.—*KEEBLE v. BENNETT*, [1894] 2 Q. B. 329; 63 L. J. Q. B. 694; 71 L. T.

247; 42 W. R. 539; 38 Sol. Jo. 547; 10 R. 290, D. C.

Annotations:—*Distd.* *Bailey v. Watson*, [1898] 2 Q. B. 270. *Apprvd.* *White v. Headland's Patent Electric Storage Battery Co.* (1899), 68 L. J. Q. B. 354. In my opinion *Keeble v. Bennett* was right, & we ought to overrule *Bailey v. Watson* (CHITTY, L.J.). *Consd.* *Pearce v. Bolton*, [1902] 2 K. B. 111.

412. — £20 recovered in county court.—In an action brought in the High Ct. to recover £73 8s. 3d. as the price of goods sold & delivered an order was made under Ord. 14 by which leave was given to pltf. to sign judgment for £53 8s. 3d., & leave was given to defts. to defend as to the residue of the claim, & it was ordered under 1888 Act, s. 65, that the action should be tried in the county ct. Pltf. signed judgment for £53 8s. 3d. under the order, & at the trial in the county ct. he recovered judgment for £20, the residue of his claim, & costs:—*Held*: pltf. was entitled to have his costs in the county ct. taxed upon the scale applicable where the amount recovered exceeds £50. *Bailey v. Watson*, No. 413, *post*, *overd.*—*WHITE v. HEADLAND'S PATENT ELECTRIC STORAGE BATTERY CO.*, [1899] 1 Q. B. 507; 68 L. J. Q. B. 354; 80 L. T. 442; 47 W. R. 273; 15 T. L. R. 189, C. A.

Annotations:—*Expld. & Distd.* *Wright v. Bull*, [1900] 2 Q. B. 124. *Consd.* *Pearce v. Bolton*, [1902] 2 K. B. 111; *Aston Tube Works v. Dumbell*, [1904] 1 K. B. 535; *Mentors v. Evans*, [1912] 3 K. B. 174.

413. Whether more than £20 recovered—Claim for & payment under R. S. C., Ord. 14 of more than £20—Less than £10 recovered in county court.—In an action of contract brought in the High Ct. upon an application for judgment under Ord. 14 an order was made that pltf. be at liberty to sign final judgment for a sum of £27 part of the amount claimed with costs to be taxed, that defts. have leave to defend as to a sum of £2 odd which was the residue of the claim then remaining in dispute, & that the action be tried in the county ct. under 1888 Act, s. 65. Defts. paid the £27 & taxed costs & afterwards pltf. lodged the writ & order in the county ct. At the trial in the county ct. pltf. recovered the £2 odd with costs:—*Held*: he was entitled to a taxation of his costs on the lower scale in use in county cts. where the sum recovered exceeds £2 but does not exceed £10 & not on the higher scale, col. B., where the sum recovered exceeds £20 but does not exceed £50.—*BAILEY v. WATSON & CO.*, [1898] 2 Q. B. 270; 67 L. J. Q. B. 802; 78 L. T. 720; 14 T. L. R. 463; 42 Sol. Jo. 572, D. C.

Annotation:—*Overd.* *White v. Headland's Patent Electric Storage Battery Co.*, [1899] 1 Q. B. 507. If the Divisional Ct. in deciding *Bailey v. Watson* are to be taken to have put a different construction on s. 65, I think they did what, having regard to the previous decision by which they were bound (*Keeble v. Bennett*), they were not entitled to do; in my opinion there was no difference in principle (*A. L. SMITH, L.J.*). In my opinion *Keeble v. Bennett* was right & we ought to overrule *Bailey v. Watson* (CHITTY, L.J.).

414. Defendant's costs—Plaintiff recovering part of claim under R. S. C., Ord. 14—Judgment for defendant in county court—As to residue of claim.—In an action brought in the High Ct. to recover £20 2s. as the price of goods sold & delivered an order was made under Ord. 14 by which leave was given to pltf. to sign judgment for £8 14s. if that amount was not paid within seven days, & leave was given to the deft. to defend as to the residue of the claim, & it was ordered, under 1888 Act, s. 65, that the action should be tried in the county ct. Deft. paid the sum of £8 14s. under the order, & at the trial in the county ct. judgment was given for him, no order being made as to costs:—*Held*: pltf. having succeeded in the action in recovering the sum of £8 14s. deft. was not entitled to costs,

although he had obtained judgment in the county ct.—*WRIGHT & SON v. BULL*, [1900] 2 Q. B. 124; 69 L. J. Q. B. 529; 82 L. T. 568, D. C.

Annotations:—*Consd.* *Aston Tube Works v. Dumbell*, [1904] 1 K. B. 535. *Refd.* *Everall v. Brown*, [1906] 2 K. B. 884.

415. — — — — ——An action founded on contract having been brought in the High Ct. for £71, pltf. took out a summons for judgment under Ord. 14, & an order was made giving defts. leave to defend on paying £23 into ct. within seven days, otherwise final judgment for that sum, with liberty to defend as to the residue of pltf.'s claim. Defts. paid the £23 into ct. within the seven days, & the action having been sent for trial in the county ct. under 1888 Act, s. 65, defts. gave notice to pltf., more than five clear days before the day appointed for the hearing, that they consented to judgment for the £23. At the hearing the county ct. judge gave judgment for defts. as to the residue of the claim, with costs from the date of their notice consenting to judgment for £23:—*Held*: defts. were entitled to costs from the date of their notice consenting to judgment, & those costs ought to be taxed according to scale C. of the county ct. scales of costs, being the scale applicable where the subject-matter or sum recovered exceeds £50.—*ASTON TUBE WORKS, LTD. v. DUMBELL*, [1904] 1 K. B. 535; 73 L. J. K. B. 208; 90 L. T. 315; 52 W. R. 444; 20 T. L. R. 165; 48 Sol. Jo. 209, D. C.

Annotations:—*Apprvd. & Apld.* *Everall v. Brown*, [1906] 2 K. B. 884. *Refd.* *Sargeant v. Watts*, [1917] 2 K. B. 624.

416. — — — — — On counterclaim.—*M'EACHEN & CO. v. SALLYCO MINERAL WATER CO.* (1903), 19 T. L. R. 208, D. C.

417. — — — — — Costs of proceedings under R. S. C., Ord. 14.—*MENTORS, LTD. v. EVANS*, No. 409, *ante*.

SUB-SECT. 3.—ACTIONS FOUNDED ON TORT.

418. What is "action of tort"—Not action nominally to recover damages for tort—Claim for injunction main part of relief sought.—An action, claiming damages for trespass to land & an injunction, was transferred under 1888 Act, s. 69, from the Ch. Div. of the High Ct. to a county ct. The action resulted in a verdict for deft. for whom judgment was entered. On appeal a Div. Ct. directed that judgment should be entered for pltf. for nominal damages & an injunction, but without costs, on the ground that pltf. had recovered less than £10 in an action founded on tort, & was disentitled, under the above Act, s. 116, to the costs of the action. On appeal:—*Held*: an action which, though nominally brought to recover damages for a tort includes a claim for an injunction as the main part of the relief sought, is not an action founded on tort within the sect. & pltf. was entitled to the costs of the action.—*KEATES v. WOODWARD*, [1902] 1 K. B. 532; 71 L. J. K. B. 325; 86 L. T. 369; 50 W. R. 258; 18 T. L. R. 288, C. A.

Annotations:—*Apld.* *Du Pasquier v. Cadbury, Jones*, [1903] 1 K. B. 104; *Deverell v. Milne*, [1920] 2 Ch. 52. *Refd.* *Doherty v. Thompson* (1906), 94 L. T. 626; *Trotter v. Windham* (1907), 23 T. L. R. 676.

—*See, generally, PRACTICE & PROCEDURE.*

419. Costs incurred in "High Court"—Costs in Court of Appeal not included.—After an order had been made remitting an action of tort to the county ct., under 1888 Act, s. 66, but before the writ & order were lodged with the registrar, an interlocutory appeal was taken by pltf. to the Ct. of Appeal, & was allowed with costs. The

Sect. 8.—Costs: Sub-sect. 3. Part V. Sects. 1, 2 & 3: Sub-sects. 1, 2 & 3, A.]

action was subsequently tried in the county ct., & pltf. succeeded:—*Held*: the provisions of 1888 Act, s. 66, did not apply to the costs in the Ct. of Appeal, & those costs must be taxed by the taxing officer of the High Ct., & not by the regis-

trar of the county ct.—*D'ERRICO v. SAMUEL* (1896), 75 L. T. 59; 12 T. L. R. 515, C. A.

420. Unliquidated demand—Recovery of less than amount claimed—Ord. 58, r. 17.]—SARGEANT v. WATTS, No. 706, post.

Action tried in High Court.]—See PRACTICE & PROCEDURE.

Part V.—Procedure.

SECT. 1.—PARTIES.

See, generally, PRACTICE & PROCEDURE.

As regards set-off or counterclaim.]—See Sect. 5, sub-sect. 3, post.

Power of judge to add & substitute parties.]—See Sect. 6, post.

—At trial.]—See Nos. 528, 529, 530, post.

In remitted actions.]—See Part IV., Sect. 5, sub-sect. 2, A., ante.

SECT. 2.—JOINDER AND SEPARATION OF CAUSES OF ACTION.

See, generally, PRACTICE & PROCEDURE.

421. Replevin—With any other form of action.]—MUNGEAN v. WHEATLEY, No. 251, ante.

SECT. 3.—SUMMONS AND SERVICE.

SUB-SECT. 1.—PLAINT AND SUMMONS.

422. Necessity for—Action transferred from High Court by agreement.]—When an action has been commenced in one of the superior cts., & afterwards it has been agreed between the parties that it shall be brought into the county ct. under 1856 Act, s. 23, no jurisdiction is given to the county ct. judge to try such action in the county ct. without the usual preliminaries, but the action must be commenced again in the county ct. in the usual manner by summons & plaint.—*PEARCE v. WINKWORTH* (1873), 28 L. T. 710.

See 1888 Act, s. 64.

Remitted actions.]—See Part IV., Sect. 5, ante.

423. Filing *praecipe*—By agent not being solicitor—Valid.]—Pltf. in the county ct. may lawfully employ an agent who is not a solr. to initiate proceedings & file the necessary *praecipe* on his behalf.—*KINNELL & Co. v. HARDING, WACE & Co.*, [1918] 1 K. B. 405; 87 L. J. K. B. 342; 118 L. T. 429; 34 T. L. R. 217; 62 Sol. Jo. 267, C. A.

424. Issue of—In blank—Irregular.]—The practice of issuing county ct. processes in blank for the attornies to fill up after they have been issued by the county clerk is highly irregular.—*R. v. COLLIER* (1831), 5 C. & P. 160.

Sufficiency of.]—See Nos. 429, 430, post.

425. Default summons—Who may issue—Not assignee of debt.]—A county ct. judge struck out a default summons upon the ground that the summary procedure given by 1888 Act, s. 86, was not intended to apply to cases where debts had been assigned. He was, however, willing to deal with the case upon an ordinary summons being issued instead of a default summons. Pltfs. obtained a rule *nisi* for a mandamus to hear & determine, etc.:—*Held*: the judge had not declined jurisdiction, & the rule would be discharged.

The Act requires that there should be an affidavit

in the prescribed form, & that form is one which is not applicable to the assignee of a debt (*CAVE, J.*).—*R. v. PONTYPOOL COUNTY COURT JUDGE & TOMPKINS* (1894), 63 L. J. Q. B. 702; 71 L. T. 17; 10 R. 356, D. C.

See 1888 Act, s. 86.

426. —Claim exceeding £5—Leave to issue out of district—Sufficiency of affidavit.]—In the affidavit for leave to issue a default summons out of the district, Paragraph 4 of the Form 14a of the rules (that debt. is not a domestic or menial servant, etc.), is not material when the amount exceeds £5, & it is not necessary to insert the paragraph.—*GORDON v. EVANS*, [1894] 1 Q. B. 248; 63 L. J. Q. B. 329; 70 L. T. 70; 42 W. R. 193; 10 T. L. R. 151; 38 Sol. Jo. 111; 9 R. 120, C. A.

SUB-SECT. 2.—PARTICULARS.

427. Signature to—Lithographed indorsement insufficient.]—Held: (*LORD ESHER, M.R., diss.*) in order to entitle pltf. in an action in a county ct. to the costs of entering a plaint by a solr. the solr. must sign the particulars, & a lithographed statement of the solr.'s name on the particulars was insufficient.—*R. v. COWPER* (1890), 24 Q. B. D. 533; 59 L. J. Q. B. 265; 38 W. R. 408; 6 T. L. R. 179, C. A.

Annotations:—Distd. France v. Dutton, [1891] 2 Q. B. 208. *Mentd. Brydges v. Dix* (1891), 7 T. L. R. 215; *De Beauvais v. Green* (1906), 22 T. L. R. 816.

428. —Signature of solicitor's clerk sufficient.]—By the rules certain sums may be allowed to a solr. for preparing particulars of claim & copies thereof provided such particulars & copies are signed by the solr. Particulars were signed in the name of the solr. by his clerk in pursuance of a general authority for this purpose:—*Held*: the signature was sufficient.—*FRANCE v. DUTTON*, [1891] 2 Q. B. 208; 60 L. J. Q. B. 488; 64 L. T. 793; 39 W. R. 716, D. C.

429. Sufficiency of—Must disclose substance of action.]—A summons issued by a county ct., which does not disclose the substance of the action set forth in the plaint on which the summons is founded, is a nullity, & the service of such summons is not a service within the meaning of rr. 6–10.

Pltfs. described debt. in a summons out of the county ct. as exor. of B., & on debt.'s appearance opened the case against him as exor. of D. The cause of action having accrued in 1842, the judge directed a fresh summons to be issued, describing debt. as exor. of D. & bearing the same date as the first summons, in order to save Stat. Limitations:—*Held*: it was not a case in which this ct. ought to interfere with what the judge had done.—*FOSTER v. TEMPLE* (1848), 5 Dow. & L. 655; *Cox, M. & H.* 185; 17 L. J. Q. B. 230; 11 L. T. O. S. 267; 12 J. P. 553; 12 Jur. 655.

430. —.]—(1) The Ct. of C. P. will not take notice of any informality in the plaint in the county ct., that being a matter of practice to be dealt with by the judge at the hearing.

(2) Although there are no formal pleadings in the county cts. the common law is to prevail as far as it is applicable, & notwithstanding it is unnecessary to demur in writing, yet objections of a formal kind to the process should be made early in the proceedings. An objection to a summons & particulars that they do not state "the substance of the action" within 1846 Act, ss. 59, 75, may be properly overruled on the ground that it is not made until after deft. has pleaded orally the general issue, payment & release.

(3) In the summons deft. was described as "yeoman" merely, & the particulars annexed to the plaint were "to the sinking of a shaft at, etc., to putting up a machine, to cash paid for turf for drying clothes," & the cause of action accrued to pltf. as miners engaged by the captain of a mine in which deft. was a shareholder:—*Held*: the cause of action was sufficiently disclosed in the summons & particulars.

1846 Act, s. 78, empowers certain judges of the superior cts. to frame general rules of practice & forms of procedure in the county cts., & enacts that in any case not expressly provided for therein, or by the rules, the general principles of practice in the superior cts. of common law may be adopted & applied at the discretion of the judges to actions & proceedings in their several cts. Now by the practice of the superior cts. certain objections of form are required to be taken at the earliest practicable moment. That is a principle of reason & justice. If deft., instead of demurring when he may do so, pleads or enters into an inquiry of fact, he waives the formal objection (*MAULE, J.*).—*SARGENT v. WEDLAKE* (1851), 11 C. B. 732; 16 J. P. 185; 138 E. R. 662; *sub nom. WEDLAKE v. SARGENT*, Cox, M. & H. 553; 18 L. T. O. S. 122; 15 Jur. 1134.

431. Objection to—Cannot be taken after defendant has pleaded in county court.—*SARGENT v. WEDLAKE*, No. 430, *ante*.

432. Effect of—On extent to which plaintiff may call evidence.—Upon a plaint against a tenant for dilapidations, pltf. is as much bound to apply his proof to the particulars as in an action for goods sold; & though general evidence of the dilapidations stated therein may be given, evidence of general dilapidations, or of dilapidations not included in the particulars is not sufficient, supposing the objection taken at the trial.—*SMITH v. DOUGLAS* (1855), 16 C. B. 31; 3 C. L. R. 752; 139 E. R. 665; *sub nom. DOUGLAS v. SMITH*, 25 L. T. O. S. 69.

Amendment of—At trial.—*See* Part VI., Sect. 1, sub-sect. 3, B., *post*.

In remitted actions.—*See* Nos. 379, 383, *ante*.

SUB-SECT. 3.—SERVICE.

A. In General.

433. In action to recover land—Delivery of summons to bailiff within time specified by Ord. 7, r. 8, obligatory—Even though summons served by bailiff within specified time.—Pltf. in an action in the county ct. to recover lands delivered the summons to the bailiff 39 clear days & the bailiff served it upon deft. 38 clear days, before the return day. At the hearing the county ct. judge ruled that the service was good, & tried the case,

giving judgment for pltf.:—*Held*: (1) the provision in Ord. 7, r. 8, with respect to the time of delivering the summons to the bailiff was obligatory & not merely directory, & therefore the judge ought not to have tried the case; (2) deft.'s proper remedy was to appeal from the judge's ruling, & not to apply for a prohibition against the issue of execution on the judgment.

Even if prohibition does lie, deft. has a right of appeal (*GROVE, J.*).—*BARKER v. PALMER* (1881), 8 Q. B. D. 9; 51 L. J. Q. B. 110; 45 L. T. 480; 30 W. R. 59, D. C.

Annotations:—*Reid. Jones' Trustees v. Gittins* (1884), 51 L. T. 599; *Sweetland v. Turkish Cigarette Co.* (1899), 80 L. T. 472; *Turner v. Kingsbury Collieries*, [1921] 3 K. B. 169. *Mentd. Smythe v. Wiles*, [1921] 2 K. B. 66.

434. Proof of—Where service not personal—Sufficiency of proof in discretion of judge.—R. 11 under 1846 Act required that where the service of a summons had not been personal, it must be proved to the satisfaction of the judge that the service of such summons came to the knowledge of deft. ten clear days before the return day of the summons. On motion for a prohibition:—*Held*: the sufficiency of the proof of service was entirely a question for the discretion of the judge of the county ct., & a superior ct. would not interfere where he had exercised such discretion.—*ZOHRAH v. SMITH* (1848), 5 Dow. & L. 635; Cox, M. & H. 106; 2 Saund. & C. 231; 17 L. J. Q. B. 174; 11 L. T. O. S. 133; *sub nom. ZORAB v. SMITH*, 12 Jur. 603.

435. — — — —.]—A summons in a plaint in a county ct. under the 1846 Act, having been served at a wrong place deft. had no knowledge of the proceedings until his goods were taken in execution. Before judgment proof was given to the satisfaction of the judge, that the summons had been served as required by sect. 80. The judge refused to set aside the proceedings, except on terms to which deft. declined to accede:—*Held*: the judge had jurisdiction over the matter, & a prohibition would not lie.—*ROBINSON v. LENAGHAN* (1848), 2 Exch. 333; 5 Dow. & L. 713; Cox, M. & H. 97; 17 L. J. Ex. 174; 11 L. T. O. S. 129; 12 Jur. 399; 154 E. R. 520; *sub nom. Re LENECHAN*, 12 J. P. 709.

436. — — — —.]—A writ of prohibition was moved for to prohibit a county ct. judge from proceeding in an action brought upon a bill of exchange, upon the ground amongst others that the summons was not duly served on deft.:—*Held*: this was for the county ct. judge to determine.—*WATERS v. HANDLEY* (1848), 6 Dow. & L. 88; Cox, M. & H. 139; 11 L. T. O. S. 268.

437. —Where service personal—Defendant giving notice of intention to defend—& appearing at trial.—1867 Act, s. 2, enacts that in any action in a county ct. for the price of goods sold to deft. to be dealt with in the way of his trade, pltf. may issue a summons in a specified form, & such summons shall be personally served on deft., & if deft. does not give notice of his intention to defend, pltf. may, without proof of his claim, upon proof of service of the summons, have judgment against deft. Pltf. issued a summons under this sect. The summons was personally served upon deft., who duly gave notice of his intention to defend, & appeared at the return day to defend the action. The judge ruled that pltf. must prove personal service of the summons, but pltf. was unable to prove the service. The judge then declined to hear the case, & directed a nonsuit:—*Held*: pltf. was not bound to prove the personal service, & an order would be made under 1856 Act, s. 43, directing the judge to proceed to hear & determine

Sect. 3.—Summons and service: Sub-sect. 3, A., B. & C. Sect. 4: Sub-sects. 1 & 2.]

the cause.—*DAVIS v. PEARCE* (1870), L. R. 5 C. P. 435; 22 L. T. 441; 18 W. R. 736.

See, now, 1888 Act, s. 131.

438. By advertisement—Defendant unknown—Action to enforce charge against “owner of” specified “plot”—Public Health Act, 1875 (c. 55), s. 257.]—A certain plot of land was subject to a charge in favour of pltfs. under above Act for certain apportioned expenses of paving, etc., a private street, incurred by pltfs. for the owner in default, under s. 150, together with interest thereon. The expenses & interest remaining unpaid, & pltfs. being unable to find the owner in default, purported to commence an action in the county ct. to enforce their charge. The action was entered & entitled “The W. Urban District Council, pltfs., & the owner of plot No. 188, deft.” An order was then obtained by pltfs. for substituted service on deft. by advertisement. This order was obtained on an affidavit by pltfs.’ surveyor that he had made repeated efforts, but had failed, to ascertain the present owner of the plot, & that notices of apportionment & of a demand for payment had been posted on the said land. Subsequently an order was made that the expenses & interest were a charge upon the land, & that pltfs. were to be at liberty to sell the premises subject to a reserved price, & a further order was made declaring that upon such sale the owner of the plot should be a trustee for the purchaser within the meaning of Trustee Act, 1893 (c. 53), & that pltfs. be appointed to convey the plot for the estate of the owner. The land was sold, but the purchaser, objecting to the title, refused to complete. Pltfs. obtained an order in the county ct. for specific performance, & the purchaser’s counterclaim for rescission of the agreement of sale & return of deposit was dismissed:—*Held*: (1) the order for substituted service & the orders based thereon were bad; (2) on the facts of the case deft. had not waived his objection to title, & the order for specific performance would be set aside, & judgment entered for deft. on his counterclaim.—*WEALDSTONE URBAN DISTRICT COUNCIL v. EVERSLED* (1905), 69 J. P. 258; 3 L. G. R. 722, D. C.

439. By post—Delay in delivery—Summons not deemed to have been delivered in “ordinary course of post.”]—*LORDEN v. KEAN*, [1916] W. N. 404, C. A.

Substituted service generally, *see* PRACTICE & PROCEDURE.

B. Out of England or Wales.

440. Action subsequently transferred to High Court—Right to raise objection as to service out of jurisdiction—Scope of county court rule.]—Ord. 51, r. 23, which relates to service out of the jurisdiction, though more extensive than any existing rule applicable to the High Ct. is within the powers of making rules conferred by 1888 Act, s. 164.

Service having been effected in Scotland under rule 23 on deft. in an administration action, the action was transferred to the High Ct. on the ground that the value of the estate exceeded the limit of the jurisdiction of the county ct. Deft. answered interrogatories in the county ct., but objected to the order for service both in the county ct. & the High Ct.:—

Held: (1) though the order for service would have been valid if the action had remained in the county ct. after the transfer, the question depended upon R. S. C., Ord. 11, rr. 1 (d) & 2, & deft. ought to have an opportunity of filing evidence as to the

domicil of the testator & as to whether there was an adequate concurrent jurisdiction in Scotland; (2) there had been no waiver by deft. of the right to object to the service.—*WOOD v. MIDDLETON*, [1897] 1 Ch. 151; 66 L. J. Ch. 149; 75 L. T. 480; 45 W. R. 184; 41 Sol. Jo. 157.

See, now, Ord. 7, rr. 41–49.

441. How set aside—Prohibition—Although application to set aside permissible under Ord. 7, r. 49.]—The ct. in the exercise of its discretion will prohibit, on the ground of absence of jurisdiction, further proceedings in a county ct. action founded on an alleged breach of contract within the district, where, deft. being resident in Scotland, the county ct. judge has, contrary to Ord. 7, r. 41 (e), made an order for the service of the summons on deft. in Scotland, although there is an alternative remedy open to deft. by way of an application to the county ct. judge under Ord. 7, r. 49, to set aside the service or to discharge the order authorising such service.—*CHANNEL COALING Co. v. ROSS*, [1907] 1 K. B. 145; 76 L. J. K. B. 145; 95 L. T. 728, D. C.

C. Under Bills of Exchange Act, 1855.

See BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., pp. 467–471. As regards county courts the Act has been repealed by 1919 Act, s. 27, sched., & Ord. 7, rr. 29b–39.

SECT. 4.—STAY AND TRANSFER OF ACTIONS AND OTHER PROCEEDINGS.

SUB-SECT. 1.—STAY.

442. Under Arbitration Act, 1889 (c. 49), s. After notice of intention to defend.]—Pltfs. had supplied defts. with goods under a contract which contained a term that disputes between the parties should be submitted to arbitration. A sum of money being alleged to be due to pltfs. for goods so supplied, proceedings were taken in the county ct. & a default summons was served upon defts., who filled up the slip attached to the summons giving notice of their intention to defend the action. Defts. subsequently applied to the judge for a stay of the action under the above Act. The section provides that if any party to a submission commences any legal proceedings in any ct. against any other party to the submission in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, & before delivering any pleadings or taking any other steps in the proceedings, apply to that ct. to stay the proceedings, & that ct. may make an order staying the proceedings. Pltfs. contended that the statement by defts. of their intention to defend was a step in the proceedings, since it entitled them to raise any defence other than a special defence, of which notice must be given, & that, consequently, they were not entitled to apply for a stay of the proceedings. The judge refused to stay the action:—*Held*: the giving notice of an intention to defend by filling up the slip attached to the default summons was merely the equivalent of entering appearance in the High Ct., & defts. had not taken any step in the proceedings after appearance which disentitled them to apply for a stay.—*AUSTIN & WHITELEY LTD. v. BOWLEY (S.) & SON* (1913), 108 L. T. 921, D. C.

See, also, ARBITRATION, Vol. II., p. 361, No. 311, & generally, pp. 362 *et seq.*

443. Frivolous & vexatious action.]—Upon an order made by a magistrate under Defence of the

Realm Consolidation Act, 1914 (c. 8), the police entered certain premises & seized documents there. Among them were some which were claimed by a person who was not a party in the prosecution. Prior to an order for the destruction of the documents so seized he brought an action in the county ct. against the Director of Public Prosecutions & the Chief Comr. of Police in respect of the detention of his documents. A writ of *certiorari* to quash the order for destruction subsequently made having been refused, defts. in the action of detainee applied to the county ct. judge, to have it dismissed as frivolous & vexatious. The application was heard *in camera*, & the judge dismissed the action:—*Held*: (1) county cts. have an inherent, as well as a statutory jurisdiction, under 1888 Act, s. 164, to stay or dismiss an action which is frivolous & vexatious; (2) a county ct. has jurisdiction to hear matters *in camera* where it is necessary in the interests of justice that the public should be excluded.—*NORMAN v. MATHEWS* (1916), 85 L. J. K. B. 857; 114 L. T. 1043; 32 T. L. R. 303; 80 J. P. Jo. 100, D. C.; *affd.* 32 T. L. R. 369, C. A.

444. — Application for—Power to hear in camera.—*NORMAN v. MATHEWS*, No. 443, *ante*.

On objection to jurisdiction—Under 1888 Act, s. 62.—See Part III., Sect. 14, *ante*.

At trial.—See No. 580, *post*.

SUB-SECT. 2.—TRANSFER.

445. Necessity for application by one of parties—To enable judge to order transfer.—Where a county ct. judge, on the ground of the previous misconduct of jurors in a certain district, refused to try a case there with a jury, though deft. had required one, & offered to change the venue so that it might be tried by a jury in another district, but on such offer being refused tried the case alone:—*Held*: he had exceeded his jurisdiction, & had no power, under 1856 Act, to change the venue except upon the application of one of the parties.—*R. v. BERE* (1885), 2 T. L. R. 106, D. C.

446. How application made—By summons.—*ANON.*, [1876] W. N. 12.

447. — By application to judge—Not application for certiorari.—When a party to an action in the county ct. which is eminently a county ct. case, desires to remove the action from that county ct. on the ground that the jury are likely to be biased, the proper course is not to apply for *certiorari*, but to ask the county ct. judge to transfer the action to another county ct.—*CLARE RURAL DISTRICT COUNCIL v. COLLEN* (1907), 72 J. P. 115, D. C.

To High Court—By certiorari—Under 1888 Act, s. 126.—See Part IX., Sect. 1, sub-sect. 2, *post*.

On application by Crown.—See CONSTITUTIONAL LAW, Vol. XI., pp. 526, 527, Nos. 303, 308, 309.

448. — Equitable actions—Plaint alleging estate within jurisdiction—Proved at hearing to exceed jurisdiction.—A plaintiff was instituted in the county ct. for the administration of the estate of testator alleging, as pltf. then believed to be the fact, that the estate was worth less than £500. Previous to the hearing, notice was given by deft. to pltf. that the estate was worth more than £500, & at the hearing this was proved to be the case. The judge made an order transferring the suit to the Ct. of Ch.:—*Held*: he was right in so doing.—*BIRKS v. SILVERWOOD* (1872), L. R. 14 Eq. 101; 41 L. J. Ch. 638; 27 L. T. 18.
Annotation:—*Consd. Thomson v. Flinn* (1874), L. R. 17 Eq. 415.

449. — Amount exceeding jurisdiction—If apparent on face of proceedings.—1867 Act, s. 14, does not repeal 1865 Act, s. 9. The two sects. must be construed together, & where it appears from the plaint itself that the county ct. has no jurisdiction the suit ought to be dismissed under 1867 Act, s. 14, but where the want of jurisdiction appears only from evidence produced after the institution of the suit, the proper course is to order the proceedings to be transferred to the Ct. of Ch. under 1865 Act, s. 9.—*THOMSON v. FLINN* (1874), L. R. 17 Eq. 415; 43 L. J. Ch. 256; 29 L. T. 829; 38 J. P. 229; 22 W. R. 293.

450. — Held: upon the true construction of 1888 Act, ss. 67, 68, 114, the duty of the county ct. judge is as follows: If upon the face of the proceedings, apart from any evidence given or affidavits filed, it is obvious that the value of the estate exceeds £500, it is the duty of the county ct. judge to dismiss the action under sect. 114. Where it is a matter in dispute whether the estate is or is not over the value of £500, the county ct. judge ought to determine the matter judicially, & if he comes to the conclusion that the value of the subject-matter brings the case within his jurisdiction, it is his duty to go on & hear the action. If, however, he comes to the conclusion that the subject-matter is over £500, his duty is not to dismiss the action, but to transfer the proceedings to the High Ct. under sect. 68.—*SUNDERLAND v. GLOVER*, [1915] 1 K. B. 393; 84 L. J. K. B. 266; 112 L. T. 128; 59 Sol. Jo. 91, D. C.

451. — If apparent only from evidence after institution of suit.—*THOMSON v. FLINN*, No. 449, *ante*.

452. ——*SUNDERLAND v. GLOVER*, No. 450, *ante*.

453. — Reduced by subsequent transactions to sum within jurisdiction.—*R. v. ROMSEY COUNTY COURT JUDGE* (1893), 5 R. 275, D. C.

454. — After estate finally wound up.—Where an estate exceeding £500 has been administered in a county ct., & the estate finally wound up, the High Ct. has discretion to refuse an order directing the matter to be reopened & the action transferred to the Ch. Div.—*PRANGNELL v. PRANGNELL* (1893), 62 L. J. Q. B. 346, D. C.

Power to order re-transfer.—See Nos. 357, 358, *ante*.

455. — Winding up proceedings.—A co. had been ordered to be wound up by the county ct., & a motion in that winding-up by the liquidator in the nature of a misfeasance summons charged the resp. with misfeasance or breach of trust & involved a large sum of money. Six affidavits had been sworn on the part of the applicant, one of which contained ninety-eight folios. The county ct. judge was unable to give the case a continuous hearing, & in the event of appeal the case would first go to a Divisional Ct., but if heard by the High Ct. that appeal would be excluded. In these circumstances resp. issued this adjourned summons to have the proceedings transferred to the High Ct., & the judge, in giving his decision, laid down the future practice in such cases in the High Ct.:—

Held: the discretion of the ct. would be exercised & the proceedings ordered to be transferred to the High Ct., as the claims on the notice of motion were in the nature of three separate actions involving charges of fraud, & the hearing of such a case ought not to be interrupted.—*RE VESTAL HOSIERY CO., LTD.* (1922), 126 L. T. 631; 66 Sol. Jo. 334.

Sect. 4.—Stay and transfer of actions and other proceedings: Sub-sect. 2. Sect. 5: Sub-sect. 1, A. (a), (b), (c) & (d), B. & C.; sub-sects. 2 & 3. Sect. 6.]

456. — Subsequent proceedings regulated by practice of High Court—Discovery & production of documents.]—In an action for the recovery of land commenced by plaint in a county ct. & afterwards transferred to the Ct. of Ch., the proceedings after transfer will be conducted according to the practice of the High Ct., so that pltf. is not entitled to discovery & production until he has delivered a statement of claim in the action.—*DAVIES v. WILLIAMS* (1879), 13 Ch. D. 550; 49 L. J. Ch. 352; 42 L. T. 469; 28 W. R. 223.

Effect of—On time within which money must be paid into court—Under Ord. 9, r. 12.]—See No. 485, *post*.

From High Court—By agreement—Necessity for commencement of action in county court by plaint & summons.]—See No. 422, *ante*.

— By order of remittal.]—See Part IV., *ante*.

SECT. 5.—DEFENCE AND COUNTERCLAIM.

SUB-SECT. 1.—NOTICE OF DEFENCE.

A. Necessity for.

(a) To Default Summons.

457. Within what time notice must be given.]—Where a default summons is personally served on deft. under 1888 Act, s. 86 (1), deft. must give notice of his intention to defend within eight days after service. If the notice be given after this period it is too late & of no effect. The same considerations apply to cases where an order has been made under 1888 Act, s. 86 (5), giving pltf. liberty to proceed as if personal service had been effected after a certain number of days.—*R. v. PARRY (JUDGE)*, [1916] 2 K. B. 107; 85 L. J. K. B. 1428; 114 L. T. 1178, D. C.

458. Effect of giving notice—Not equivalent to “taking step in proceedings”—Within Arbitration Act, 1889 (c. 49), s. 4.]—*AUSTIN & WHITELEY, LTD. v. BOWLEY (S.) & SON*, No. 442, *ante*.

(b) Of Set-off and Counterclaim.

459. Defence of breach of warranty—Action for price of goods sold.]—To a claim for the price of goods sold the defence of a breach of warranty is not a set-off within Ord. 10, r. 10; nor has it by the passing of the Sale of Goods Act, 1893 (c. 71), s. 53, become a statutory defence within r. 18 of that Ord.; therefore notice of such a defence need not be given under Ord. 10.

Semble: a statutory defence is one which has its origin only in a statute.—*BRIGHT v. ROGERS*, [1917] 1 K. B. 917; 86 L. J. K. B. 804; 117 L. T. 61; 61 Sol. Jo. 370, D. C.

(c) Of Statutes of Limitation.

460. Defence under Public Authorities Protection Act, 1893 (c. 61), s. 1.]—The above Act is a statute of limitations within the meaning of Ord. 10, r. 14. Therefore, where a public body are sued in the county ct. & give notice that they intend to rely on the special defence that pltf.'s claim is barred by a statute of limitations, they are entitled under that notice to rely upon the above Act without specifying the year, chapter & sect. or title of the statute.—*GREGORY v. TORQUAY CORPN.*, [1912] 1 K. B. 442; 81 L. J. K. B. 385; 105 L. T. 886; 76 J. P. 73; 10 L. G. R. 179, C. A.

Annotation:—*Mentd.* The Llandoverly Castle, [1920] P. 119.

Sufficiency of notice.]—See No. 474, *post*.

(d) Of Statutory Defences.

461. “Statutory defence” defined.]—*BRIGHT v. ROGERS*, No. 459, *ante*.

462. 1888 Act, s. 54—Defence by bailiff.]—*DENNY v. BENNETT*, No. 62, *ante*.

463. Employers’ Liability Act, 1880 (c. 42), s. 4—No notice of injury given.]—In an action under above Act deft. cannot rely upon the defence that the notice of injury required by s. 4 of the Act has not been given unless he has given notice that he intends to rely upon it as a “statutory defence” pursuant to Ord. 10, rr. 10 & 18.—*CONROY v. PEACOCK*, [1897] 2 Q. B. 6; 66 L. J. Q. B. 425; 76 L. T. 465; 61 J. P. 310; 45 W. R. 502; 41 Sol. Jo. 425, D. C.

Annotations:—*Refd.* *Pritchard v. Couch* (1913), 57 Sol. Jo. 342. *Mentd.* *Moriarty v. Regent’s Garage Co.*, [1921] 2 K. B. 766.

464. Solicitors Act, 1843 (c. 73), s. 37—Non-delivery of signed bill of costs by solicitor.]—The defence to an action brought by a solr. to recover a bill of costs, that the solr. had not delivered a signed bill of costs one month before action brought, as required by above Act, s. 37, is a statutory defence within the meaning of Ord. 10, rr. 10 & 18, & when the action is brought in a county ct. notice of such defence ought to be given in pursuance of those rules.—*LEWIS & DAVIES v. BURRELL* (1897), 77 L. T. 626; 14 T. L. R. 148; 42 Sol. Jo. 135, D. C.

465. Sale of Goods Act, 1893 (c. 71), s. 4—No memorandum in writing.]—In an action on a contract for the sale of goods of the value of £10 the defence of Stat. Frauds as re-enacted by above Act, is a “statutory defence” within the meaning of Ord. 10, r. 18a, & deft. if he intends to rely on it must give notice of it under r. 10.—*BRUTON v. BRANSON*, [1898] 2 Q. B. 219; 67 L. J. Q. B. 827; 79 L. T. 247; 14 T. L. R. 457, D. C.

Annotations:—*Apld.* *Willis v. Lovick*, [1901] 2 K. B. 195. *Distd.* *Bright v. Rogers*, [1917] 1 K. B. 917. *Consd.* *Thomas v. Gower R. C.*, [1922] 2 K. B. 76. *Refd.* *Renton v. King* (1905), 93 L. T. 10; *Pritchard v. Couch* (1913), 57 Sol. Jo. 342; *Roe v. Naylor* (1918), 87 L. J. K. B. 958.

466. Gaming Act, 1892 (c. 9), s. 1—Gaming & wagering contract—Action for commission.]—In an action in the county ct. for commission, the defence that the promise to pay commission was null & void under Gaming Act, 1892, s. 1, as being made in respect of a gaming & wagering contract, is a statutory defence of which notice must be given under Ord. 10, rr. 10 & 18a.—*WILLIS v. LOVICK*, [1901] 2 K. B. 195; 70 L. J. K. B. 656; 84 L. T. 713; 49 W. R. 540, D. C.

Annotation:—*Consd.* *Renton v. King* (1905), 93 L. T. 10.

—.]—See, also, No. 476, *post*.

See, now, Ord. 10, r. 18.

467. Public Authorities Protection Act, 1893 (c. 61), s. 1—A statute of limitations.]—*GREGORY v. TORQUAY CORPN.*, No. 460, *ante*.

468. Bills of Exchange Act, 1882 (c. 61), s. 87—No due presentment of promissory note.]—*PRITCHARD v. COUCH* (1913), 57 Sol. Jo. 342, D. C.

469. Coal Mines Act, 1911 (c. 50), s. 102 (8)—Defence by mine owner—Action for damages for fatal accident to workman.]—*ROGERS v. WESTMINSTER BRYMBO CO.* (1914), 3 L. J. C. C. 36.

470. Sale of Goods Act, 1893 (c. 71), s. 53—Breach of warranty.]—*BRIGHT v. ROGERS*, No. 459, *ante*.

471. Apportionment Act, 1870 (c. 35), s. 3—Defence to claim for apportioned sum.]—Sect. 3 of the above Act which provides that an apportioned part of rent or other payment shall be recoverable when the next entire portion shall have become due,

& not before, establishes a statutory defence within the meaning of Ord. 10, rr. 10, 18, so that if deft. intends to rely thereon he must give notice as required by the rules.—*MORIARTY v. REGENT'S GARAGE CO.*, [1921] 1 K. B. 423; 37 T. L. R. 180, D. C.; *reversd.* on other grounds, [1921] 2 K. B. 766, C. A.

472. Highway Act, 1835 (c. 50), s. 67—Defence by highway authority—Action to restrain diversion of water from highway on to plaintiff's land.]—A rural district council, in whom the powers of a surveyor of highways under the above Act were vested, diverted water from a highway on to lands belonging to pltf. In an action brought in the county ct. to restrain such diversion defts. contended that they were acting within the powers conferred upon them by sect. 67 of above Act. They gave no notice under Ord. 10, r. 18, of their intention to rely on a statutory defence, & pltf. contended that this defence was therefore not open to them, unless the Judge granted an adjournment on terms under Ord. 10, rr. 10, 10a. The county ct. judge overruled the objection & decided that sect. 67 of above Act afforded no defence. On defts.' appeal pltf. again took the preliminary objection that the defence under the above Act was not open to defts. The ct. decided to hear the case on the merits & to pronounce one judgment on the whole case:—*Held*: (1) the defence raised under sect. 67 of above Act was a "statutory defence" within the meaning of Ord. 10, r. 18, & notice therefore ought to have been given; (2) notwithstanding the absence of notice the county ct. judge was entitled to hear the defence if, in his opinion, pltf. would not be prejudiced, & the granting of an adjournment would involve the parties in needless delay & expense; (3) sect. 67 of the above Act did not authorise a highway authority to divert water on to private lands.—*THOMAS v. GOWER RURAL COUNCIL*, [1922] 2 K. B. 76; 91 L. J. K. B. 666; 127 L. T. 333; 86 J. P. 147; 38 T. L. R. 598, D. C.

Sufficiency of notice.]—*See* No. 476, *post*.

473. Refusal of judge to allow adjournment—To enable statutory defence to be pleaded—Appeal.]—*MOON v. LAWLER* (1903), 38 L. Jo. 231, D. C.

Validity of agreement to withdraw.]—*See* No. 477, *post*.

B. Sufficiency of.

474. Statute of limitations—Omission to specify particular statute.]—In an action in the county ct., a notice of the special defence of Stat. Limitations is sufficient if the statement in the notice follows, without any addition, form 95a, which is, that the claim for which deft. is summoned is barred by a Stat. of Limitations, & deft. need not specify the particular statute on which he intends to rely.—*EATON v. TAPLEY*, [1899] 1 Q. B. 953; 68 L. J. Q. B. 638; 80 L. T. 797; 47 W. R. 463; 43 Sol. Jo. 458, D. C.

475. ———.]—*GREGORY v. TORQUAY CORPN.*, No. 460, *ante*.

476. Gaming Act, 1845 (c. 109), s. 18—Reference to sufficient.]—By Ord. 10, r. 18, where deft. relies on a statutory defence he shall in his statement set forth the year, chapter & sect. of the statute in the short title, & the particular matter on which he relies, or otherwise sufficiently indicate the nature of the defence on which he relies.

In an action deft. pleaded that the action was null & void, & deft. relied on the above Act, s. 18:—*Held*: there had been a sufficient indication of the defence within the rule.—*RENTON v. KING* (1905), 93 L. T. 10; 21 T. L. R. 577; 49 Sol. Jo. 552, D. C.

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C. Withdrawal of.

477. Agreement to withdraw—Statutory defence—Validity of.]—In an action in a county ct. on a cheque given for bets lost by deft. to pltf. deft. gave notice of a defence under the Gaming Acts. Before the hearing the parties entered into terms of settlement, whereby deft. agreed to give to pltf. two bills payable at a future date, & the hearing of the action was adjourned, & deft. also agreed to withdraw his plea of the Gaming Act & not to set up such plea in respect of either of the two bills. Deft. accordingly withdrew the notice of defence. He did not pay the first bill, & he gave notice withdrawing his notice of withdrawal of the defence. At the adjourned hearing the county ct. judge gave judgment for pltf. for the amount of the cheque upon the ground that deft. could not, by reason of the agreement, avail himself of the statutory defence:—*Held*: the agreement not to set up the statutory defence was invalid, & as deft. had withdrawn his notice of withdrawal of that defence, the defence was before the ct., & the county ct. judge ought to have given effect to it.—*COOPER v. WILLIS* (1906), 22 T. L. R. 582; 50 Sol. Jo. 527, D. C.

SUB-SECT. 2.—UNDER BILLS OF EXCHANGE ACT, 1855.

See BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., pp. 467–471. As regards county cts. the Act has been repealed by 1919 Act, s. 27, sched., & Ord. 7, rr. 29b–39.

SUB-SECT. 3.—SET-OFF AND COUNTERCLAIM.

478. Counterclaim proved against one joint plaintiff—Ord. 10, r. 8.]—*HALL v. FAIRWEATHER* (1901), 18 T. L. R. 58, D. C.

479. Addition of parties—Party against whom only alternative cause of action alleged.]—A person cannot be joined as deft. to a counterclaim under Ord. 10, r. 22, against whom an alternative cause of action only is alleged.—*TIMES COLD STORAGE CO. v. LOWTHER & BLANKLEY, LOWTHER & BLANKLEY v. TIMES COLD STORAGE CO. & NEW ZEALAND SHIPPING CO.*, [1911] 2 K. B. 100; 80 L. J. K. B. 901; 104 L. T. 637; 55 Sol. Jo. 442, D. C.

Annotation:—Reid. Smith v. Buskell, Buskell v. Smith & G. W. Ry., [1919] 2 K. B. 362.

Notice of set-off or counterclaim.]—*See* No. 459, *ante*.

Counterclaim against two co-plaintiffs—No evidence against one co-plaintiff—Duty of judge to decide case against other co-plaintiff.]—*See* No. 478, *ante*.

Effect of judgment on counterclaim—For amount in excess of jurisdiction—Right to sue in High Court for balance.]—*See* No. 557, *post*.

SECT. 6.—

480. Substitution of parties—After order for new trial—Death of defendant—Action continued against executors.]—An action had been brought in the High Ct. to recover damages for injuries sustained while riding on an omnibus by the breakdown of an axle-tree. By order under the 1867 Act the action had been remitted to the county ct. At the trial, the jury found for pltf. with £50 damages. The county ct. judge ordered

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a new trial on the ground of the verdict being contrary to the evidence. Before such new trial, deft. died & an application by pltf. to continue the action against the exors. was refused on the ground that the action did not survive. On appeal:—*Held*: the action did survive; an order should be made as asked; & the action should be removed into the High Ct.—**CARRUTHERS v. FISHER** (1889), 24 L. J. N. C. 135, D. C.

Annotation:—*Reid*. *How v. L. & N. W. Ry.*, [1891] 2 Q. B. 496.

481. — “At any stage of proceedings” — Motion by defendant to set aside order for possession — Substitution of wife as defendant.]—Deft., who was serving abroad as a soldier, was the tenant of certain premises, & the tenancy having been determined by notice to quit, & deft.'s wife refusing to give up possession, the landlords entered a plaint against deft., & served a summons on the premises, which was irregularly served. Deft. did not appear, & the county ct. judge made an order for possession against deft. under 1888 Act, s. 138. Deft. by his solr. having moved to set aside the order, the judge under Ord. 14, r. 2, substituted the tenant's wife as deft., & made an order for possession against her:—*Held*: the tenant's wife was a person holding or claiming by, through, or under the tenant, within the meaning of 1888 Act, s. 138; &, although the service of the summons on the tenant was invalid, his motion to set aside the order for possession was a stage of the proceedings, & there was jurisdiction under Ord. 14, r. 2, to substitute the tenant's wife as deft. in the place of the tenant.—**ARTIZANS, LABOURERS & GENERAL DWELLINGS CO. v. CLIFFORD**, [1918] 2 K. B. 213; 87 L. J. K. B. 966; 119 L. T. 209; 34 T. L. R. 418, C. A.

At trial.]—See Part VI., Sect. 1, sub-sect. 3, B., *post*.

In remitted actions.]—See Part IV., Sect. 5, sub-sect. 2, B., *ante*.

In admiralty causes.]—See **ADMIRALTY**, Vol. I., p. 248, No. 1759.

SECT. 7.—PAYMENT INTO AND OUT OF COURT.

SUB-SECT. 1.—PAYMENT INTO COURT.

See, generally, **PRACTICE & PROCEDURE**.

482. With denial of liability—Not admission of liability.]—Deft. in an action in a county ct. paid money into ct., stating at the same time in a memorandum addressed to the registrar that the payment was made “without prejudice to deft.'s defence to this action & while denying pltf.'s cause of action”:—*Held*: the payment into ct. was not an admission of liability, & the deft. was entitled to dispute his liability at the hearing. The county ct. Rules, 1886, embody the results of the decision in *Berdan v. Greenwood* (3 Ex. D. 251), & apart from the notice deft. was entitled to pay money into ct. & afterwards to dispute his liability at the hearing.—**HARPER v. DAVIS** (1887), 19 Q. B. D. 170; 56 L. J. Q. B. 444; 36 W. R. 77, D. C.

Annotation:—*Reid*. *Munday v. L. C. C.* (1915), 85 L. J. K. B. 325.

483. — Admitting negligence & denying damage.]—Pltfs. claimed damages in the county ct. for injury to their horse caused through the negligence of defts.' servant. The defts. paid into ct. under Ord. 9, r. 12, a sum of £40, with the following notice: “Take notice that defts. admit

that the accident was caused through their negligence, but that they deny the alleged damage, & whilst in this manner denying liability, they bring into ct. the sums of £40, & £2 9s. 10d. in respect of costs, & say that this sum is sufficient to satisfy pltfs.' claim.” Pltfs. recovered the amount paid into ct. & no more:—*Held*: damage being the gist of the action, the notice admitting negligence but denying damage was a valid & proper notice denying liability, & defts. should have the costs of the action incurred after date of the payment into ct.—**MUNDAY (J. R.), LTD. v. LONDON COUNTY COUNCIL**, [1916] 2 K. B. 331; 85 L. J. K. B. 1509; 115 L. T. 99; 80 J. P. 403; 32 T. L. R. 559; 60 Sol. Jo. 587; 14 L. G. R. 1055, C. A.

Annotation:—*Mentd*. *Davies v. Scott Lewis*, [1918] W. N. 166.

484. Without denial of liability—Admission up to amount paid in—Not of liability for every item of claim.]—In an action in the county ct. to recover £27 for work done, defts. paid £10 into ct. without denial of liability:—*Held*: the payment into ct. merely admitted a liability to the extent of £10, & except as to that amount defts. were not precluded from showing that the work was not done at their request.—**HENNEL v. DAVIES**, [1893] 1 Q. B. 367; 62 L. J. Q. B. 220; 68 L. T. 220; 41 W. R. 284; 37 Sol. Jo. 232; 5 R. 209, D. C.

Annotation:—*Consd*. *Chiverton v. Ede*, [1921] 2 K. B. 30.

— To whom payment out ordered.]—See No. 489, *post*.

485. Within what time—Action transferred to another county court—“Five clear days.”]—Action was transferred from B. county ct. to M. county ct., & between the return days, but five days before the M. return day defendants paid money into M. ct.:—

Held: it was in time within Ord. 9, r. 11.—**STEVENS v. HOUNSLOW BURIAL BOARD** (1889), 61 L. T. 839; 54 J. P. 309; 38 W. R. 236, D. C.

See, now, Ord. 9, r. 12.

486. To abide event of action—Bankruptcy petition against defendant before judgment—Money protected from date of payment in.]—**TOMLINSON v. HAMPSON** (1894), 38 Sol. Jo. 401, D. C.

Annotation:—*Reid*. *Re Ford, Ex p. Trustee*, [1900] 2 Q. B. 211.

See, generally, **BANKRUPTCY & INSOLVENCY** Vol. IV., p. 359, Nos. 3349–3355.

Effect on costs.]—See Nos. 686, 698, 724, 726, *post*.

SUB-SECT. 2.—PAYMENT OUT OF COURT.

487. To whom ordered—Payment in to abide event—Bankruptcy of defendant—Claim by official receiver.]—**TOMLINSON v. HAMPSON** (1894), 38 Sol. Jo. 401, D. C.

Annotation:—*Reid*. *Re Ford, Ex p. Trustee*, [1900] 2 Q. B.

488. — Payment in under judgment—Bankruptcy of defendant—Claim by trustee.]—Upon an application under Ord. 9, r. 21, by a successful pltf. for the payment out of ct. to him of money paid into ct. under 1888 Act, s. 105, in satisfaction of the judgment debt, the trustee in bkpcy. of the deft. is not entitled to set up a claim to the money in question, on behalf of the bkpts.' estate.—**LONDON FANCY BOX CO., LTD. v. BERKELEY** (1906), 95 L. T. 727, D. C.

489. — Payment in without denial of liability—Judgment for defendant.]—A landlord brought an action in the county ct. under Increase of Rent & Mortgage Interest (Restrictions) Act, 1920 (c. 17), s. 3 (1) (f), for recovery of possession of a dwelling-house & mesne profits. The tenant,

who took the view that the tenancy had not been determined & who ought not therefore to have made any payment into ct., by a slip paid into ct. a sum which represented the rent for which according to her view she was liable, but included no sum in respect of costs, the payment being made without any denial of liability or defence of tender. The county ct. judge gave judgment for the deft. with costs, & directed that the money in ct. should be paid out to her. Deft. undertook to pay the rent due. On appeal:—*Held*: (1) (LUSH, J.) as deft. had paid the money into ct. without a denial of liability the judge had no jurisdiction to direct that it should be paid out to any one except pltf.; but that in the circumstances there was no practical purpose to be served by reversing the order of the judge on this point & ordering deft. to repay the money to pltf., she having undertaken to pay to him the rent due. (2) (McCARDIE, J.) the judge had jurisdiction to direct that the money should be paid out to deft., & in the circumstances he had rightly directed that it should be paid to her.—*CHIVERTON v. EDE*, [1921] 2 K. B. 30; 90 L. J. K. B. 491; 124 L. T. 765; 37 T. L. R. 242; 65 Sol. Jo. 260; 19 L. G. R. 217, D. C.

SECT. 8.—DISCONTINUANCE, CONFESSION AND ADMISSIONS.

490. Admission must be such as dispenses with all proof—To deprive successful plaintiff of costs of hearing.]—In order that a deft. may rely on Ord. 9, rr. 4 & 5, to deprive a successful pltf. of the costs of the hearing at the trial, the admission made by him must be clean & clear, & such a one that it dispenses with any proof on behalf of pltf.—*PINCOTT v. LETTS* (1897), 77 L. T. 160, D. C.

Costs generally, *see* Part VII., *post*.

491. Admission must be signed by party personally—Not by agent.]—Under 1888 Act, ss. 98 & 99, the registrar cannot enter up judgment for pltf. upon a statement admitting the debt or demand which has been signed by an agent of the party against whom the plaint has been entered; the registrar can only act upon a statement which has been signed by the party himself.—*R. v. MULLIGAN (JUDGE)* (1909), 25 T. L. R. 341, D. C.

See, now, 1919 Act, s. 5.

SECT. 9.—OTHER INTERLOCUTORY PROCEEDINGS.

SUB-SECT. 1.—INTERROGATORIES AND DISCOVERY OF DOCUMENTS.

See, generally, DISCOVERY, INSPECTION, & INTERROGATORIES.

492. When allowed — Application under Rivers Pollution Act, 1876 (c. 75), s. 10—Requiring person not to commit offence.]—An application by a sanitary authority to a county ct. judge for an order under the above Act requiring a person to abstain from the commission of an offence under that Act, is not a penal proceeding, inasmuch as until the order has been made & has been disobeyed no question of penalty can arise, & the proceeding is therefore civil & not criminal, & one in which discovery & interrogatories may be allowed.—*DERBY CORPN. v. DERBYSHIRE COUNTY COUNCIL*, [1897] A. C. 550; 66 L. J. Q. B. 701; 77 L. T. 107; 62 J. P. 4; 46 W. R. 48, H. L.

Annotation:—Mentd. *R. v. Manchester Profiteering Committee, Ex p. L. & Y. Ry.* (1920), 89 L. J. K. B. 1089.

493. Action transferred to High Court.]—*DAVIES v. WILLIAMS*, No. 456, *ante*.

SUB-SECT. 2.—INSPECTION OF PROPERTY.

494. Belonging to tenants in common—Some of whom not before court.]—By Ord. 12, r. 3, the ct. may, upon the application of any party to an action or matter, make an order for the inspection of property as therein mentioned, & for the purpose authorise any persons to enter upon or into any land or building in the possession of any party to such action or matter:—*Held*: an order cannot be made under the above rule to inspect the property of several tenants in common, some of whom are not before the ct.—*COOMES & SON v. HAYWARD*, [1913] 1 K. B. 150; 82 L. J. K. B. 117; 107 L. T. 715, D. C.

SUB-SECT. 3.—NOTICES TO ADMIT AND PRODUCE.

495. "Document"—Plan prepared for purposes of trial.]—A plan made for the purpose of illustration such as a plan of the scene of an accident prepared for the purposes of the trial is not a "document" within the meaning of Ord. 18, r. 6, & need not be included in a notice to admit documents.

Ord. 18, r. 6, only applies to documents which a party desires to give in evidence, & a plan like this, which is intended, not as evidence of any facts, but merely to illustrate the party's case, is not such a document. A plan of that kind is dealt with by a different rule, Ord. 53, r. 44, which provides that "persons who prepare plans for the purpose of illustration, & who, if called at the trial, prove the correctness of such plans only, shall not be entitled to allowances as expert & scientific witnesses, but shall be allowed for their attendance upon the scale applicable to ordinary witnesses" (LUSH, J.).—*HAYES v. BROWN*, [1920] 1 K. B. 250; 89 L. J. K. B. 63; 122 L. T. 313, D. C.

SECT. 10.—JURY AND ASSESSORS.

SUB-SECT. 1.—JURY.

See, generally, JURIES.

See, now, 1888 Act, s. 101; Administration of Justice Act, 1920, s. 3.

496. Right to trial by — Not limited to original trial—First trial by judge alone.]—When a case is heard before a county ct. judge without a jury & a new trial is afterwards granted generally at the instance of pltf., the latter may demand to have the case tried by a jury on the second occasion, even though his application for a new trial had not stated that it was to be by jury.—*R. v. HARWOOD* (1853), Bail Ct. Cas. 144; 22 L. J. Q. B. 127; 17 Jur. 87; 1 W. R. 165.

Annotation:—Fold. *Ford v. Taylor* (1877), 3 C. P. D. 21.

497. — — —.]—*FORD v. TAYLOR*, No. 389, *ante*.

498. — Action not of nature of causes assigned to Chancery Division.]—In an action in the county ct. to recover £20 damages for breach of a repairing covenant, deft. gave due notice of demand for a jury, but notwithstanding the judge in the exercise of his discretion heard the case alone:—*Held*: deft.'s right to a jury was absolute & a new trial must be ordered.—*METCALF v. BIRTLE* (1890), 34 Sol. Jo. 244, D. C.

499. — Action to enforce right relating to land—To restrain defendant from setting fire to heather.]—Pltf., who was the owner of certain land, demised the exclusive right of sporting & shooting over the land for two years to a person who employed deft. as his head gamekeeper. A

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fire having broke out in the heather on the land, deft., thinking that the means taken by pltf.'s men would not be successful in extinguishing it, set fire to certain strips of heather on the land to leeward of the approaching conflagration in order that the fire might be checked when it reached the places where the strips of heather had already been burnt down by him. Pltf. brought an action in the county ct. claiming 10s. damages for trespass & an injunction. Deft. contended that it was necessary for the preservation of his employer's sporting rights over the land to use the above means for extinguishing the fire, & he gave notice requiring the action to be tried with a jury:—*Held*: the action was brought to enforce a right relating to land & for the recovery of damages in respect thereof within the meaning of Ord. 22, r. 3, & therefore deft. was entitled to have the action tried with a jury.—*R. v. SURREY COUNTY COURT JUDGE*, [1910] 2 K. B. 410; *sub nom. R. v. FARNHAM & ALDERSHOT COUNTY COURT JUDGE*, 79 L. J. K. B. 802; 103 L. T. 250; 26 T. L. R. 503, D. C.

— *Admiralty cause.*—*See* ADMIRALTY, Vol. I., pp. 248, 249, Nos. 1764, 1765.

— *Power of judge to try case alone.*—*See* No. 445, *ante*; Nos. 517, 519, *post*.

500. Time of notice of demand for—“ . . . clear days before day of hearing ” or “ return day ”
—Day to which hearing adjourned not included.—By r. 104, notice to try a case by a jury under 1846 Act, ss. 70, 71, is to be given “ three clear days before the day of hearing ; ” & by r. 105, where the notice has not been given in due time, or if at the hearing both parties desire to try by jury, the judge may, on such terms as he shall think fit, adjourn the cause, etc. A cause was ordered to be tried in a county ct., & Feb. 18 was appointed for the hearing. Deft. posted a demand for a jury which did not arrive three days before Feb. 18, & on Feb. 16 made a fresh demand. On Feb. 18, the case, on account of the non-attendance of deft.'s counsel, was adjourned by consent till Mar. 19; & on that day, no jury having been summoned, the case was tried without a jury in spite of deft.'s protest, & pltf. obtained a verdict:—*Held*: deft. was not entitled to a new trial, for “ the day of hearing ” meant the day originally fixed for hearing, so that the demand for a jury was too late, & the adjournment did not aid, as it was not an adjournment ordered by the judge in the exercise of his discretion, for the purpose of

allowing a jury to be summoned.—*FLETCHER v. BAKER* (1874), L. R. 9 Q. B. 370; 43 L. J. Q. B. 112; 30 L. T. 675; 22 W. R. 646.

Annotation:—*Folld. R. v. Leeds County Court Registrar* (1886), 16 Q. B. D. 691.

501. —————Under Ord. 39b. r. 4, the notice must be given fifteen clear days before the day originally fixed for the return of the summons & not before a day to which the hearing has been adjourned.—*R. v. LEEDS COUNTY COURT REGISTRAR* (1886), 16 Q. B. D. 691; 55 L. J. Q. B. 365; 34 W. R. 487, D. C.

Annotation:—*Mentd. Bridge v. Adams* (1899), 63 J. P. Jo. 394.

See, now, Ord. 22, r. 1.

502. Special jury—Cannot be had as such.—A special jury as such cannot be had in the county ct. (*LUSH, L.J.*).—*Re LEAROYD, WILTON & Co., Ex p. ARMITAGE* (1881), 17 Ch. D. 13; 44 L. T. 262; 29 W. R. 772, C. A.

Annotations:—*Mentd. Re Roberts, Ex p. Price* (1882), 21 Ch. D. 553; *Re Lowenthal* (1884), 13 Q. B. D. 238; *Re Barnett, Ex p. Reynolds* (1885), 15 Q. B. D. 169; *Sharp*

When ordered — In admiralty cause.—*See* ADMIRALTY, Vol. I., pp. 248, 249, Nos. 1764, 1765.

Functions of — In admiralty cause.—*See* ADMIRALTY, Vol. I., p. 249, No. 1766.

— **In workmen's compensation proceedings.**—*See* MASTER & SERVANT.

SECT. 11.—ARBITRATION.

Stay of proceedings—When submission to arbitration.—*See* No. 442, *ante*, & generally, ARBITRATION, Vol. II., p. 361, No. 311, pp. 362 *et seq.*

SECT. 12.—ACTIONS IN FORMÂ PAUPERIS.

See, generally, PRACTICE & PROCEDURE.

503. Power of judge to admit plaintiff to sue as poor person.—By 1846 Act, ss. 78, 129, the judges of the county cts. have power to admit persons to sue *in formâ pauperis* in their cts.—*CHINN v. BULLEN* (1849), 8 C. B. 447; 7 Dow. & L. 297; 19 L. J. C. P. 42; 14 L. T. O. S. 203; 13 J. P. 780; 14 Jur. 201; 137 E. R. 583.

Annotations:—*Consd. Cook v. Imperial Tobacco Co.*, [1922] 2 K. B. 158. *Refd. Perry v. London General Omnibus Co.*, [1916] 2 K. B. 335.

504. ————*PERRY v. LONDON GENERAL OMNIBUS CO.*, No. 351, *ante*.

505. ————A county ct. has no jurisdiction to admit a pltf. to sue as a poor person in the county ct.—*COOK v. IMPERIAL TOBACCO CO.*, No. 352, *ante*.

Appeal in formâ pauperis.—*See* No. 887, *post*.

Part VI.—Trial, Judgment and Execution.

SECT. 1.—TRIAL.

SUB-SECT. 1.—PERSONS QUALIFIED TO PRACTISE.

See, now, 1888 Act, s. 72.

506. Right of audience — Solicitor acting generally in action—Who is—Question for judge.—By 1852 Act, s. 10, it was enacted that it should be lawful for an attorney acting generally in the action for such party, but not an attorney retained as an advocate by such first-mentioned attorney, to appear in a county ct. plaint instead of the party, & to address the ct., etc.:—*Held*: it was for the county ct. judge to decide upon the facts whether or not any attorney appearing at the trial came

within the foregoing sect., & if there should be any evidence upon which he could form an opinion, this ct. would not interfere with his judgment.—*R. v. SPOONER, SHREEVE v. CHARLESWORTH* (1868), 18 L. T. 325.

Annotation:—*Refd. R. v. Oxfordshire County Court Judge*, [1894] 2 Q. B. 440.

507. ————It is a question of fact, for the county ct. judge alone to determine, whether an attorney appearing for a party to a suit in the county ct. be “ an attorney acting generally in the action for such party ” as required by 1852 Act, s. 10. *Semble*: an attorney who acts generally in the action for the party is not deprived

of his right to appear for such party in the county ct. merely by his being a clerk to another attorney (BOVILL, C.J.).—BOOKHAM v. POTTER, *Ex p.* ROGERS (1868), L. R. 3 C. P. 490; 37 L. J. C. P. 276; 18 L. T. 479; 16 W. R. 806.

Annotations:—*Consd.* R. v. Snagge (1894), 63 L. J. Q. B. 689; Seymour v. Turner (1894), 38 Sol. Jo. 256. *Refd.* Cottrell v. G. W. Ry. (1894), 39 Sol. Jo. 116.

508. ————.]—At the hearing of an interlocutory application by the employer for the order that the workman should give particulars of incapacity, the workman was represented by the managing clerk of the solr. on the record, himself an admitted solr. The county ct. judge refused to hear him, as not being the proper person to appear in ct. :—

Held: the refusal was within the discretion of the judge. For this purpose there is no distinction between interlocutory & final matters.—ROGERS v. HOLBORN METROPOLITAN BOROUGH (1914), 7 B. W. C. O. 432, C. A.

509. ———— Solicitor acting as clerk to another solicitor.]—BOOKHAM v. POTTER, *Ex p.* ROGERS, No. 507, *ante*.

510. ———— Not solicitor acting as managing clerk to retained solicitor.]—S., who has taken out his certificate & who is employed as managing clerk by a firm of solrs. has no right of audience in matters in which his employers are retained, although he has the entire management of the proceedings, as he is not “the solr. acting generally in the action.”—R. v. OXFORDSHIRE COUNTY COURT JUDGE, [1894] 2 Q. B. 440; 58 J. P. 752; 10 R. 381; *sub nom.* R. v. SNAGGE, 63 L. J. Q. B. 689; 70 L. T. 874; 42 W. R. 603; 10 T. L. R. 547; *sub nom.* R. v. SNAGGE, *Ex p.* INCORPORATED LAW SOCIETY, 38 Sol. Jo. 565, D. C.

TURNER (1894), 38 Sol. Jo. 256.

512. ————.]—ROGERS v. HOLBORN METROPOLITAN BOROUGH, No. 508, *ante*.

513. ———— Interlocutory proceedings.]—ROGERS v. HOLBORN METROPOLITAN BOROUGH, No. 508, *ante*.

——— Agent of limited company.]—See CORPORATIONS, Vol. XIII., p. 414, No. 1340.

——— At Bankruptcy Court.]—See BANKRUPTCY & INSOLVENCY, Vol. V., p. 611, Nos. 5486, 5487.

Unqualified person practising as solicitor — Contempt of court—Power of Judge to deal with.]—See No. 1122, *post*.

the judge of the county ct. & defts. to show cause why the cause should not be re-entered & restored to the list for hearing. The case was disposed of & at an end by the non-appearance of plffs., & the striking out of the cause, & nothing remained for the judge to do but to exercise his discretion as to whether it should be re-entered, which he had done by refusing the application. He had exercised his jurisdiction, & this ct. had no power to interfere. *Qu.*: whether, though the cause was at an end by plffs. not appearing, it was so ended that plffs. could maintain no other action as though it had been decided by a verdict or a judgment against them.—JENNINGS v. LONDON GENERAL OMNIBUS Co. (No. 2) (1874), 30 L. T. 640; 22 W. R. 757.

515. ———— At adjourned hearing—Duty of judge to strike case out—No jurisdiction to hear case.]—Upon the hearing of a plaint in the county ct., the case was adjourned by the judge for the attendance of a witness whom the parties had not intended to call. Upon the adjournment defts. appeared, but neither plff. nor the witness appeared, & the judge directed judgment to be entered for defts. with costs:—*Held*: the county ct. judge had no jurisdiction to hear & determine the case in the absence of plff., but should have ordered it to be struck out under 1846 Act, s. 79.—JORDAN v. JONES (1880), 44 J. P. 800.

516. Defendant — At hearing of default summons—Power of registrar to strike out counterclaim—& give judgment for plaintiff without proof that debt due.]—A default summons under 1888 Act, s. 86, was issued in the county ct. to recover the amount of a solr.'s bill of costs. Deft. gave notice of defence & of a counterclaim for negligence. Notice of trial was given for a day in the vacation when the judge would be absent. On that day the case was called on before the registrar, but neither deft. nor any one on his behalf was present. The registrar, on the application of plff., struck out the counterclaim &, without further proof of the debt being due & owing, gave judgment for plff. for the amount of the claim. Upon an application for prohibition to the county ct. judge against proceeding further upon the judgment so obtained:—*Held*: the registrar had jurisdiction, & that, even if he was wrong in not requiring proof that the debt was due & owing & in striking out the counterclaim, the mistake was matter for appeal & not for prohibition.—HOOPER v. HILL, [1894] 1 Q. B. 659; 63 L. J. Q. B. 598; 70 L. T. 224; 42 W. R. 394; 10 T. L. R. 251; 9 R. 332, C. A.

SUB-SECT. 2.—NON-APPEARANCE OF PARTIES.

See, now, 1888 Act, s. 88.

514. Plaintiff—Withdrawal by plaintiff's counsel before case begun—Order for payment of defendants' costs—Refusal of judge to re-enter plaint.]—The non-appearance of a plff. at the time appointed for the hearing of a cause in the county ct., more especially when that is followed up by an order for the giving of costs, in conformity with r. 111, terminates the case. Where, therefore, the judge, in ct. & in the hearing of the jurors about to be sworn on the trial, having made observations which plffs.' counsel considered to be prejudicial to his clients' case, & such as would prevent his having an impartial hearing, & he consequently retired from the ct., & the cause was struck out, & defts.' costs in the action were afterwards taxed by the registrar, in the absence & under protest of plff.'s attorney, & an order was made on plffs. for payment of them; & the judge subsequently refused plffs.' application to re-enter the cause for hearing; the Ct. of Exchequer refused a rule calling upon

SUB-SECT. 3.—POWERS OF JUDGE AND REGISTRAR.

A. In General.

517. To try case alone—After jury cause referred to arbitration—& failure of reference to arbitration.]—SCRIVEN v. DEIGHTON (1848), 13 J. P. Jo. 68.

518. ———— After refusal to try case with jury at certain venue—& offer to change venue declined.]—R. v. BERE, No. 445, *ante*.

519. ———— After case set down for trial with jury.]—ANON., [1910] W. N. 98.

When right to jury arises, see Part V., Sect. 10, sub-sect. 1, *ante*.

520. Where defendant sued in double capacity.]—Deft. was sued in the county ct. in the double capacity as exor. of A. & administrator of B. On the trial deft. objected that plffs. ought to elect in which capacity they proceeded against him; & further, that there was no evidence that the attorney, who appeared in support of the claim, had been duly authorised by plffs., who were the

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guardians of the poor of a parish, to bring the action. The judge overruled both objections, & gave judgment against deft. generally:—*Held*: assuming the decision to be incorrect, as the judge acted within his jurisdiction, such objections afforded no ground for a prohibition.—**LEXDEN & MUNSTER UNION GUARDIANS v. SOUTHGATE** (1854), 10 Exch. 201; 23 L. J. Ex. 316; 23 L. T. O. S. 210; 2 C. L. R. 1478; 156 E. R. 415; *sub nom.* *Ex p. SOUTHGATE*, 18 J. P. 442; 2 W. R. 530.

Annotation:—**Consd. Hill v. Swift** (1855), 10 Exch. 726.

521. Where corporation suing as plaintiff.]—LEXDEN & MUNSTER UNION GUARDIANS v. SOUTHGATE, No. 520, *ante*.

522. To stay proceedings—Action for recovery of possession—Action of ejectment pending in High Court.]—BISSILL v. WILLIAMSON, No. 580, *post*.

Staying proceedings generally, *see* Part V., Sect. 4, sub-sect. 1, *ante*.

523. To give judgment—After juror withdrawn by consent—& subsequent withdrawal by party of such consent.]—An action of trespass to land was sent for trial to a county ct. under 1867 Act, s. 10. The cause came on for trial before a jury, but before the trial was completed the parties agreed that a juror should be withdrawn & that the judge should say what should be done between them. At the next meeting of the ct., the judge was ready to pronounce his opinion, but deft., without assigning any reason, withdrew his consent, & the judge consequently did not give any decision:—*Held*: (BRETT, J. diss.**) the withdrawal of a juror had not under the circumstances put an end to the action because deft. had not performed his part of the arrangement under which pltf. consented to such withdrawal, & the ct. would make absolute a rule calling upon the judge of the county ct. to appoint a day for a rehearing.—**NORBURN v. HILLIAM** (1870), L. R. 5 C. P. 129; 39 L. J. C. P. 183; 22 L. T. 67; 18 W. R. 602.**

Annotation:—**Mentd. Thomas v. Exeter Flying Post Co.** (1887), 18 Q. B. D. 822.

524. To inquire into validity of magistrate's certificate of dismissal—Given under Offences against the Person Act, 1861 (c. 100), s. 44—In previous summons for assault.]—A certificate under sect. 44 of the above Act of the dismissal by a magistrate of a charge of assault, can only be granted where there has been a hearing "upon the merits," & both parties have attended before the magistrate, & there has been a proper inquiry into the facts of the case. A prosecutor gave notice to a person against whom he had obtained a summons for an assault that he should not attend before the magistrate or offer evidence in support of the summons, & did not in fact attend or offer evidence, but the person charged attended & obtained from the magistrate a certificate of dismissal under the above sect.:—*Held*: (1) there had not been a hearing upon the merits, the magistrate had no jurisdiction to grant certificate, & the certificate was therefore no bar under sect. 45 to a subsequent action in the county ct. to recover damages in respect of the same assault; (2) (LORD COLERIDGE, C.J., dubitante**) upon the trial of the action in the county ct. the judge had power to inquire into the validity of the certificate, & to consider whether the magistrate in granting it had acted within his jurisdiction.—**REED v. NUTT** (1890), 24 Q. B. D. 669; 59 L. J. Q. B. 311; 62 L. T. 635; 54 J. P. 599; 38 W. R. 621; 6 T. L. R. 266; 17 Cox, C. C. 86, D. C.**

525. To decline to try case alone—& grant application for new trial with jury—Where conflict of evidence.]—On the trial of a case before the judge of the City of London County Ct. a conflict of evidence arose on a question of fact, which the judge declined to decide, but he gave judgment *pro forma* for deft., leaving pltf. to apply to him for a new trial before a jury. An order for a new trial having been made:—*Held*: this practice could not be sustained.—MARSHALL v. BLUMAN** (1893), 10 T. L. R. 85, D. C.**

526. To hear matters in camera.]—NORMAN v. MATHEWS, No. 443, *ante*.

To decide whether solicitor acting generally in action.]—*See* Sub-sect. 1, *ante*.

To deal with contempt of court.]—*See* Part X., Sect. 1, *post*.

On non-appearance of parties.]—*See* Sub-sect. 2, *ante*.

In interpleader.]—*See* INTERPLEADER.

To nonsuit.]—*See* Sub-sect. 4, *post*.

To order new trial.]—*See* Sect. 3, sub-sect. 1, *post*.

B. Amendment.

527. Description of parties—Defendant—Issue of fresh summons—Dated to save Statute of Limitations.]—FOSTER v. TEMPLE, No. 429, *ante*.

528. — Plaintiff.]—An action was brought in a county ct. in which M., the inspector appointed by the local authority for the county of H. under Contagious Diseases (Animals) Act, 1869, c. 70, was pltf., & S. deft. In the particulars the local authority claimed £4 10s. for the hire of a meadow for 26 days, & the keep & other expenses of certain animals seized under Contagious Diseases (Animals) Act, 1867 (c. 70), s. 57. Objection was taken by deft. that the action ought to have been brought in the name of the local authority & not of M., the inspector. The judge, without the consent of deft., amended the summons by striking out M. & substituting the "local authority for, etc.," as pltf. under 1856 Act, s. 57, & r. 122, & gave judgment for the amount claimed:—*Held*: the amendment, which was not a substitution of one pltf. for another, but the amendment of the description of pltf., was rightly made.—MILLS v. SCOTT** (1873), L. R. 8 Q. B. 496; 42 L. J. Q. B. 234; 29 L. T. 96; 37 J. P. 807; 21 W. R. 915.**

529. Addition of parties.]—A married woman advanced £250 upon the security of a deposit of title-deeds of real estate. Her husband died, & she married a second time. Shortly after her second marriage her husband borrowed some money upon a deposit of the same deeds. Subsequently she separated from her husband, & a deed was then executed, whereby the husband released to his wife all his interest in her real & personal estate. The husband became bkpt., & his assignee, having paid off the second mtge., obtained possession of the deeds. Upon the death of the first mtgee. the bkpt.'s assignee filed a plaint in the county ct., making the mtgee.'s exors. the only defts., & claiming to be paid the £250, or in default that the property might be sold. The county ct. judge, overruling an objection taken that the bkpt.'s wife was a necessary party, made the order prayed:—*Held*: the wife was a necessary party, & the case must stand over in the county ct., with liberty to pltf. to amend his plaint by adding parties.—ROBINSON v. O'KELL** (1870), 22 L. T. 399.**

530. — Co-plaintiff.]—It is within the jurisdiction of the county ct. judge under 1888 Act to add a co-pltf.—R. v. CLERKENWELL COUNTY COURT JUDGE (1890), 7 T. L. R. 40, D. C.

—*See, generally, PRACTICE & PROCEDURE.*

531. Particulars of claim—Amendment to give jurisdiction—Part of cause of action without & part within jurisdiction—Prohibition granted as to part of cause of action without jurisdiction.]—WALSH *v.* IONIDES, No. 1059, *post*.

532. ——— Substitution of different cause of action.]—HOPPER *v.* WARBURTON, No. 66, *ante*.

533. ——— Reduction of amount claimed.]—Where, in an action of tort in a county ct., pltf., who by his plaint claims £50, puts in his evidence the damage sustained by him at a higher sum, the jurisdiction of the county ct. is not thereby ousted.

It is not necessary in such a case that pltf. should have abandoned the excess before the trial. The county ct. judge may at the trial make the requisite amendment in the particulars.—BODGER *v.* NICHOLLS (1873), 28 L. T. 441; 37 J. P. 397.

*Annotation:—*Mentd. Ward *v.* Hobbs (1878), 4 App. Cas. 13.

534. ——— Common law action for amount beyond jurisdiction—Regarded as equitable claim within jurisdiction.]—GODFREY *v.* LAZARUS (1887), 4 T. L. R. 101, D. C.

*Annotations:—*Refd. R. *v.* Westmoreland County Court Judge, Ingleton *v.* Maudsley (1887), 36 W. R. 477.

535. ——— Addition of person in service of employer against whom negligence alleged—Negligence complained of under different subsection of Employers' Liability Act, 1880 (c. 42), s. 1, than negligence originally alleged.]—A county ct. judge has power at the trial to amend the particulars filed with the plaint.

In an action to recover damages for personal injuries under the above Act:—*Held*: the county ct. judge had power, under the general jurisdiction conferred by 1856 Act, s. 57, to amend the particulars by allowing the name of a person in the service of deft., & an allegation that the injuries were caused by his negligence, to be added, though thereby the negligence complained of came under a different sub-sect. of sect. 1 of the above Act.—DOUGHTY *v.* FIRBANK (1883), 48 L. T. 530, D. C.

In remitted action.]—*See* Part. IV., Sect. 5, sub-sect. 2, B., *ante*.

In proceedings under Workmen's Compensation Act, 1906 (c. 58).]—*See* MASTER & SERVANT.

In Admiralty causes.]—*See* ADMIRALTY, Vol. I., p. 248, Nos. 1759, 1760.

C. Adjournment.

536. Necessity for consent of judge—To adjournment agreed upon by parties.]—(1) R. 26 of Ord. 37, which enables parties to a county ct. action, "at any time before the action is called on, by consent & without payment of any trial fee, to postpone the direct," does not enable such parties to adjourn the trial to such subsequent ct. as the judge shall trial without the consent of the judge; & therefore where, after a cause has been adjourned by the judge, the parties by agreement amongst themselves further adjourn the trial without the sanction of the judge, he has jurisdiction to hear & dispose of the cause as if there had been no such further adjournment.

(2) A request to a county ct. judge, at the commencement of the trial, & before any specific question of law has been raised, that he should take a note of the evidence, as it was an important case & might go to the superior ct., is not a sufficient request within the meaning of 1875 Act, s. 6, & therefore a note which the judge afterwards took, & which he stated was an incomplete one, & not such as he would have taken if he had been requested to take a note of any specific question of law & of the evidence in relation thereto, is not a note taken under that sect. which the ct. will order

him to sign. (3) The right to appeal from an order of a Div. Ct., discharging a rule for an order on a county ct. judge to hear an action, is not taken away because 1856 Act, s. 44, which substitutes such rule for a mandamus to the county ct. judge, enacts that, where any superior ct. shall have refused such rule, no other superior ct. shall grant it.—MORGAN *v.* REES (1881), 6 Q. B. D. 508; 50 L. J. Q. B. 491; 44 L. T. 133; 29 W. R. 345, C. A. *Annotations:—*As to (2) Refd. Clarkson *v.* Musgrave (1882), 9 Q. B. D. 386; R. *v.* Kerr & Hives (1894), 70 L. T. 595.

537. Grounds for granting—Pendency of action in High Court involving same issue.]—Ord. 12, r. 16, provides that "... The ct. may, in its discretion ... make an order postponing or adjourning for good cause, the trial of any action or matter upon such terms, as to costs or otherwise, as may be just":—*Held*: the pendency in the High Ct. of an action involving practically the same issue as that raised in the county ct. action may be "good cause" within the above rule entitling the county ct. judge, in the exercise of his discretion, to postpone the trial of the action in his ct. till after the hearing of the High Ct. action.—HAMMOND BROTHERS & CHAMPNESS, LTD. *v.* JACKSON, [1914] 1 K. B. 241; 83 L. J. K. B. 380; 110 L. T. 110, D. C.

538. ——— Failure to give notice of statutory defence—Unless plaintiff not likely to be prejudiced by absence of notice.]—THOMAS *v.* GOWER RURAL COUNCIL, No. 472, *ante*.

SUB-SECT. 4.—WITNESSES.

See, generally, EVIDENCE.

Allowance to—Judgment debtor attending judgment summons.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1033, 1034, Nos. 8452, 8453.

Penalty for non-attendance—Failure of judgment debtor to attend judgment summons.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., p. 1034, No. 8454.

SUB-SECT. 5.—PROCEEDINGS IN COURT.

539. Speeches—Second speech claimed by defendant—Discretion of judge.]—DYMOCK *v.* WATKINS, No. 392, *ante*.

540. ——— Right to reply by plaintiff—Evidence called by defendant.]—Where deft. in an action in a county ct. calls evidence, pltf. has a right to reply.—CLACK *v.* CLACK, [1906] 1 K. B. 483; 75 L. J. K. B. 274; 94 L. T. 516; 54 W. R. 375; 22 T. L. R. 313; 50 Sol. Jo. 292, D. C.

541. Action against joint defendants—Power of court to dismiss one defendant at close of plaintiff's case—Facts showing reasonable inference that one if not both defendants liable.]—Pltfs. who were injured in a collision between a motor lorry, in which they were passengers, & a motor car, brought an action in the county ct. claiming damages, making the owners of both vehicles defts. under Ord. 3, r. 5. Pltfs.' evidence appeared to make it probable that the driver of the car rather than the driver of the lorry was to blame, but they could do no more than state what they observed just before the collision occurred. Their evidence did not affirmatively or conclusively show that the driver of the lorry was not to blame. At the close of pltfs.' case counsel for the owner of the lorry submitted that there was no evidence against him & the county ct. judge took this view & dismissed that deft. from the action. The case then proceeded against the other deft., whose witnesses threw all the blame on the driver of the lorry, &

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the county ct. judge found that the driver of the car was not negligent, & accordingly entered judgment for the second deft.:—*Held*: as a state of facts was proved by the pl'ts. from which the reasonable inference to be drawn was that, *prima facie*, one if not both of defts. was negligent, the county ct. judge should not have dismissed first deft., the owner of the lorry, from the action at the close of pl'ts.' case, but should have heard the case against both defts. before coming to a decision, & therefore there must be a new trial.—*HUMMERSTONE v. LEARY*, [1921] 2 K. B. 664; 90 L. J. K. B. 1148; 125 L. T. 669; 37 T. L. R. 711; 65 Sol. Jo. 606, D. C.

542. Counterclaim against co-plaintiffs—No evidence against one co-plaintiff—No power of judge to dismiss counterclaim without determining case against other co-plaintiff.]—*HALL v. FAIR-WEATHER* (1901), 18 T. L. R. 58, D. C.

See, generally, SET-OFF & COUNTERCLAIM.

543. Evidence of—Minute book kept by registrar—Or certified copy of entries therein.]—*DEWS v. RILEY* (1851), 11 C. B. 434; 2 L. M. & P. 544; 20 L. J. C. P. 264; 18 L. T. O. S. 155; 16 J. P. 39; 15 Jur. 1159; 138 E. R. 542; *sub nom.* *DEWES v. RILEY*, Cox, M. & H. 523.

*Annotations:—*Consd. *Saunders v. Swansea Finance Co. & Home* (1905), 21 T. L. R. 317. *Refd.* *Aspey v. Jones* (1884), 54 L. J. Q. B. 98. *Mentd.* *Mill v. Hawker* (1875), L. R. 10 Exch. 92; *Demer v. Cook* (1903), 88 L. T. 629.

544. ———.]—The clerk's book, or a certified copy of entries from such book, as pointed out by 1846 Act, s. 111, is the best, & therefore the only evidence of proceedings in a county ct.—*R. v. ROWLAND* (1858), 1 F. & F. 72.

545. ———.]—*R. v. ROBERTS*, No. 11, *ante*.

SUB-SECT. 6.—DUTY OF JUDGE TO TAKE NOTE.
See Part VIII., Sect. 9, sub-sect. 1, post.

SECT. 2.—JUDGMENT.

SUB-SECT. 1.—IN GENERAL.

546. What is a "judgment"—Verbal order to pay forthwith.]—Debtor summoned to a county ct. failed to appear, whereupon the judge verbally ordered that he pay the debt & costs forthwith. About five o'clock in the afternoon of the same day, the bailiff served the debtor with an order, under the seal of the ct., to pay the debt & costs to the clerk of the ct., at his office, forthwith, etc.; attendance from ten till four. Deft. having refused to pay, the bailiff took his goods in execution:—*Held*: the verbal order to pay was in effect a judgment, & therefore no service of the order was necessary before execution. *Semble*: where an order is made by the judge, & afterwards varied as to the time of payment, it must be drawn up & served before execution can issue.—*ELY v. MOULE* (1850), 5 Exch. 918; 1 L. M. & P. 799; Cox, M. & H. 408; 20 L. J. Ex. 29; 16 L. T. O. S. 239; 15 J. P. 676; 14 Jur. 1070; 155 E. R. 401.
*Annotation:—*Consd. *Robinson v. Gell* (1852), 12 C. B. 191.

547. ——— Judgment of deputy-judge.]—*RATHBONE v. MUNN*, No. 13, *ante*.

548. ——— Consent order.]—By Rivers Pollution Prevention Act, 1876 (c. 75), s. 3, it is made an offence to permit sewage to flow into a stream from a sewer constructed at the date of the passing of the Act without using the best practicable means to render the sewage harmless. By s. 20

the term stream is defined to include only such tidal waters as may be determined by the Local Govt. Board order. Jurisdiction is by the Act given to the county ct. to make an order restraining the further commission of the offence, & ordering the offenders to execute the necessary sewage works to render the sewage harmless & to inflict penalties for disobedience to such order. Proceedings having been taken in a county ct. under the Act against defts. for permitting sewage to flow into a certain river, & neglecting to use the best practicable means to render the sewage harmless, defts. consented to an order declaring them to have committed the alleged offence & ordering them to execute the necessary sewage works to prevent its continuance. At the date of that order defts. were under the belief that the part of the river into which the sewage flowed was non-tidal. Subsequently defts., having been summoned for penalties for disobedience of the order, sought to show that the part of the river into which the sewage flowed was tidal water, & that as there had been no order of the Local Govt. Board declaring it to be a stream, they had committed no offence:—*Held*: the order of the county ct. was equivalent to a judgment, & defts. were estopped from disputing that they had committed the alleged offence or from contending that the order of the ct. in so far as it applied to the *locus in quo* was without jurisdiction.

—*RIBBLE RIVER JOINT COMMITTEE v. CROSTON URBAN DISTRICT COUNCIL*, [1897] 1 Q. B. 251; 66 L. J. Q. B. 384; 45 W. R. 348, D. C.

549. ——— Written judgment inconsistent with prior verbal judgment.]—The question what constitutes the judgment of a county ct. judge, where, after having tried a case, he expresses his judicial opinion upon it at first verbally & afterwards in a different form in writing considered.—*HIGGINSON v. BLACKWELL COLLIERY CO., PITCHFORD v. SAME* (1914), 84 L. J. K. B. 1189; 112 L. T. 442; 31 T. L. R. 95, C. A.

*Annotations:—*Mentd. *Hill v. Beckett* (1914), 84 L. J. K. B. 458; *Hooley v. Butterley Colliery Co.* (1915), 84 L. J. K. B. 1969; *Churm v. Dalton Main Collieries*, [1916] 1 A. C. 612.

550. Date of judgment—Date of formal delivery—Not date when judgment read.]—*RATHBONE v. MUNN*, No. 13, *ante*.

551. Judgment does not carry interest—Judgments Act, 1838 (c. 110), s. 17.]—A county ct. judgment debt does not carry interest under Judgments Act, 1838 (c. 110), s. 17.—*R. v. ESSEX COUNTY COURT JUDGE* (1887), 18 Q. B. D. 704; 56 L. J. Q. B. 315; 57 L. T. 643; 51 J. P. 549; *sub nom.* *R. v. CHELMSFORD COUNTY COURT JUDGE*, 35 W. R. 511; 3 T. L. R. 578, C. A.

*Annotations:—*Refd. *Watson v. White*, [1896], 2 Q. B. 9. *Mentd.* *Boynton v. Ancholme Drainage & Navigation Comrs.*, [1921] 2 K. B. 213.

552. Order for giving up possession of premises—Against party holding under tenant—Not conclusive evidence of title in subsequent action—For mesne profits.]—A county ct. order for giving up possession of premises, made against a person holding under the tenant, under 1856 Act, s. 50, is not conclusive evidence of title in a subsequent action against him for mesne profits.—*CAMPBELL v. LOADER* (1865), 3 H. & C. 520; 5 New Rep. 285; 34 L. J. Ex. 50; 11 L. T. 608; 29 J. P. 103; 11 Jur. N. S. 286; 13 W. R. 348; 159 E. R. 634.

*Annotation:—*Consd. *Hodson v. Walker* (1872), L. R. 7 Exch. 55.

553. Accuracy of judgment—Cannot be impeached.]—The ct. will treat that which a county ct. judge certifies as his judgment as conclusive.—*HUDDLESTON v. FURNESS RY. CO.* (1899), 15 T. L. R. 238; 43 Sol. Jo. 295, C. A.

Appeals generally, *see Part VIII., post.*

Whether Estoppel as to Facts.

See 1888 Act, s. 93.

554. Whether conclusive—Personal earnings of bankrupt.]—The principles which underlie Bankruptcy Act, 1883 (c. 52), s. 53, with respect to the salary or income of a bkpt., are also applicable to his personal earnings. In each case it is a question of amount, & he will be allowed to retain only such a sum as is sufficient for the reasonable maintenance of himself & his family, & the residue will pass to his trustee in bkpcy.

An undischarged bkpt. took out letters patent & granted a licence to a co. to

work the patented invention as follows:—Two instalments of the royalty, i.e. £20 becoming payable were claimed by the trustee in bkpcy. as after-acquired property of the bkpt. The co. took out an interpleader summons in the High Ct., which was remitted to a county ct. for decision. The county ct. judge held that the £20 was in the nature of personal earnings and belonged to the bankrupt, & refused leave to appeal. Subsequent royalties became due, & the trustee applied to the Bkpcy. Ct. for a declaration that they vested in him as after-acquired property of the bkpt.:—*Held*: the judgment of the county ct. estopped the trustees from asserting that the royalties were not the personal earnings of the bkpt., but that £5 a week was a fitting sum for the reasonable maintenance of the bkpt. & his family, & the residue passed to the trustee in bkpcy. The solr. of the bkpt. had as against the trustee a first charge for his costs of creating the fund, i.e. his costs properly incurred in taking out & maintaining the letters patent & carrying through the arrangements with the co.

Semble: the royalties were not the personal earnings of the bkpt.—*Re GRAYDON, Ex p. OFFICIAL RECEIVER*, [1896] 1 Q. B. 417; 65 L. J. Q. B. 328; 74 L. T. 175; 44 W. R. 495; 12 T. L. R. 208; 40 Sol. Jo. 420; 3 Mans. 5.

Annotations:—*Reid. Mercer v. Vans Colina* (1897), 78 L. T. 21; *Re Roberts*, [1900] 1 Q. B. 122; *Re Hancock*, [1904] 1 K. B. 585; *Affleck v. Hammond*, [1912] 3 K. B. 162.

555. — Mistake as to facts.]—RIBBLE RIVER JOINT COMMITTEE v. CROSTON URBAN DISTRICT COUNCIL, No. 548, *ante*.

See, further, ESTOPPEL.

B. Whether Bar to Subsequent Action.

See 1888 Act, s. 93.

556. For cause of action raised as set-off—Set-off not heard owing to non-compliance with rules.]

—To a declaration in debt debt. pleaded, by way of estoppel, that he, debt., had sued pltf. in the county ct. for a debt, & pltf. had then attempted to establish, as a set-off, the claim for which he now sued, & that judgment was given against the now pltf. as to that set-off. Pltf. replied that he had not given any notice of his intention to rely on the set-off, in accordance with 1846 Act, s. 76, & r. 17, & that debt. did not consent to his setting off the debt:—*Held*: on demurrer, the replication was a good answer to the plea of estoppel, since it showed that there had been no decision in the county ct. by which pltf. was concluded.—*STANTON v. STYLES* (1850), 5 Exch. 578; 1 L. M. & P. 575; 19 L. J. Ex. 336; 14 J. P. 640; 155 E. R. 253.

557. — Action for amount awarded in excess of county court jurisdiction.]—Where in an action in a county ct. a debt. has relied upon a cause of action by way of counterclaim upon which he has obtained a verdict for an amount beyond the jurisdiction of the county ct., & judgment has been

respect of the balance in excess of pltf.'s claim, debt. is not estopped from afterwards bringing an action in the High Ct. upon the same cause of action. Debt. in the High Ct. is estopped by the verdict & judgment of the county ct. from denying the cause of action of pltf. in the High Ct., & the only question to be decided in the High Ct. is the amount of damages.—*WEBSTER v. ARMSTRONG* (1885), 54 L. J. Q. B. 236; 1 T. L. R. 213; 1 Cab. & El. 471.

558. In reference to same subject-matter—First judgment nullity.]—FEARON v. NORVALL, No. 202, *ante*.

cts. on a judgment of a county ct., & may be pleaded in bar to an action for the consideration on which it was founded.—*AUSTIN v. MILLS* (1853), 9 Exch. 288; 23 L. J. Ex. 40; 22 L. T. O. S. 171; 18 J. P. 24; 18 Jur. 16; 2 W. R. 107; 2 C. L. R. 411; 156 E. R. 123.

Annotations:—*Distd. Bennett v. Powell* (1855), 3 Drew. 326. *Consd. Re* *Freeman* (1887), 35 Ch. D. 704. *Reid. Moreton v. Holt* Savill v. Dalton, [1915] 3 K. B. 174.

560. — In court of concurrent jurisdiction.]

A judgment of a ct. of concurrent jurisdiction directly upon the point is conclusive between the same parties upon the same matter directly in question in another ct. When, therefore, a servant in husbandry, who had been discharged by her master before the proper time, sued him in the county ct. for wrongfully discharging her without reasonable cause, whereupon judgment was given for debt., & she afterwards at the expiration of her quarter took out a summons before justices to recover her quarter's wages, the same question arising:—*Held*: the decision in the county ct. was a bar to such a proceeding.—*ROUTLEDGE v. HISLOP* (1860), 2 E. & E. 549; 29 L. J. M. C. 90; 2 L. T. 53; 24 J. P. 148; 6 Jur. N. S. 398; 8 W. R. 363; 121 E. R. 206.

Annotations:—*Consd. Flitters v. Allfrey* (1874), L. R. 10 C. P. 29. *Distd. Dover v. Child* (1876), 34 L. T. 737.

561. — In High Court.]—A county ct. judgment precludes a party from raising in another ct. a material question determined against him by such judgment.

Pltf. was tenant to debt., & sued his landlord for trespass to the demised premises. The landlord pleaded that he entered the premises by virtue of a magistrate's warrant under the Small Tenements Recovery Act, 1838 (c. 74), for rent due as for a weekly tenancy. The tenant replied that the landlord had sued him for rent in respect of the same tenancy in the county ct., where it was decided that the tenancy was yearly & not weekly, & judgment was entered for the tenant. The landlord having rejoined *nul tiel* record, upon production of the record it appeared that the claim was for £1 9s. for rent of a cottage, & that judgment was for the tenant:—*Held*: the landlord was concluded by the county ct. judgment, & a rule to set aside a verdict entered for the tenant would be discharged.

Qu.: Whether the county ct. judgment could be pleaded as an estoppel.—*FLITTERS v. ALLFREY* (1874), L. R. 10 C. P. 29; 44 L. J. C. P. 73; 31 L. T. 878; 23 W. R. 442.

Annotations:—*Expld. Dover v. Child* (1876), 45 L. J. Q. B. 462. *Consd. Priestman v. Thomas* (1884), 53 L. J. P. 109.

562. — Nonsuit in county court.]—By Ord. 16, r. 17, any judgment of nonsuit, unless the judge otherwise directs, shall have the same effect as a judgment upon the merits for debt. Such rule authorises county ct. judges with such approval to frame rules & orders for regulating the

Sect. 2.—Judgment: Sub-sect. 2, B. & C.; sub-sects.

practice of the cts. & forms of proceedings therein :—*Held* : (1) unless Ord. 16, r. 17, was *ultra vires*, a judgment of nonsuit in a county ct. not appealed against nor set aside, was a bar to an action by pltf. for the same debt in the superior ct. (2) (BRAMWELL, L.J., *diss.*) r. 17 was not *ultra vires* but was covered by the authority given to the committee of county ct. judges by 1856 Act, s. 32.—POYSER v. MINORS (1881), 7 Q. B. D. 329; 50 L. J. Q. B. 555; 45 L. T. 33; 46 J. P. 84; 29 W. R. 773, C. A.

Annotation :—(Generally, *Mentd.* London v. Keen, [1916] 1 K. B. 994.

563. ———.]—In an action in a county ct. judgment was recovered for a sum of money & costs, but before the costs were taxed pltf. agreed on a representation of the poverty of deft. to accept a smaller sum than that for which judgment had been given & executed a deed releasing deft., from the judgment debt & costs. Subsequently pltf. carried in his bill of costs & applied to the county ct. judge for an order to tax upon the ground that the release had been obtained by misrepresentation. The judge after hearing evidence found that the execution of the deed had been obtained by misrepresentation & made an order that the costs should be taxed, & should be paid together with the balance remaining due under the judgment. Deft., in that action, thereupon brought the present action in the High Ct. for a declaration that he had been released from the judgment debt & costs & for an injunction to restrain further proceedings to enforce payment thereof :—*Held* : as the question raised in this action was identical with that decided by the county ct. judge upon the interlocutory application & had been decided by a ct. of competent jurisdiction the action ought to be stayed as frivolous & vexatious & an abuse of the process of the ct.—STEPHENSON v. GARNETT, [1898] 1 Q. B. 677; 67 L. J. Q. B. 447; 78 L. T. 371; 46 W. R. 410, C. A.

Annotations :—*Reid.* Lea v. Thursby (1904), 89 L. T. 744; Leicester v. Cherryman (1907), 96 L. T. 784.

564. ——— In Mayor's Court, London—Nonsuit in City of London Court.]—Pltf. suffered judgment of nonsuit in an action, brought by him in the City of London Ct., to recover damages from defts. for non-delivery of goods by them as carriers, & subsequently brought another action against defts. for the same cause in the Mayor's Ct., & a verdict passed for pltf. for the full amount of his damages. Upon a rule to set aside that verdict & to enter it for defts. on the ground that, on proof of the judgment of nonsuit in the City of London Ct., the judge of the Mayor's Ct. should have directed a verdict for defts. :—*Held* : by virtue of Ord. 16, r. 17, the judgment of nonsuit in the City of London Ct., in the absence of any direction by the judge of that ct. to the contrary, had the effect of a verdict for defts., & was a bar & an answer to the subsequent action for the same cause in the Mayor's Ct.—DAVIS v. GREAT EASTERN RY. CO. (1878), 39 L. T. 635, D. C.

565. For different cause of action—Subsequently arising out of same facts.]—Pltf. brought an action & recovered damages in the county ct. against deft. in respect of injuries caused to his cab by the negligence of deft.'s servant. Pltf. subsequently brought an action in the High Ct. to recover damages for personal injuries arising out of the same act of negligence but which did not develop until after the earlier action had been

brought :—*Held* : Pltf. was entitled to recover, inasmuch as the cause of action with regard to the cab arose at the time of the accident, whilst the cause of action with regard to the personal injuries to pltf., arose when he found that he had been seriously hurt, & consequently the causes of action were not the same but two distinct causes of action, & the judgment recovered in the county ct. was no bar to the subsequent action in the High Ct.—BRUNSDEN v. HUMPHREY (1884), 14 Q. B. D. 141; 53 L. J. Q. B. 476; 51 L. T. 529; 49 J. P. 4; 32 W. R. 944, C. A.

Annotations :—*Consd.* Serrao v. Noel (1885), 15 Q. B. D. 549. *Expld. & Distd.* Macdougall v. Knight (1890), 25 Q. B. D. 1. *Consd.* Mid. Ry. v. Martin (1893), 62 L. J. Q. B. 517; Wilson v. United Counties Bank, [1920] A. C. 102. *Reid.* Darley Main Colliery Co. v. Mitchell (1886), 11 App. Cas. 127; James v. Evans (1897), 77 L. T. 78; Furness, Withy v. Hall (1909), 25 T. L. R. 233; Isaacs v. Salbstein, [1916] 2 K. B. 139; Goldrei, Foucard v. Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180. *Mentd.* Edmonds v. Robinson (1885), 29 Ch. D. 170; London v. London Road Car Co. (1888), 4 T. L. R. 448; Rose v. Buckett (1901), 84 L. T. 670.

Nonsuit generally, see sub-sect. 4, *post*.

Whether action lies in High Court on county court judgment.]—See sub-sect. 8, *post*.

C. Alteration of Judgment.

566. After adjournment of court—In absence of parties.]—In a plaint in the county ct., defts. pleaded Stat. Limitations, but without giving the notice required by r. 19. Pltf. required an adjournment of the case, in order to answer the plea, which was granted & the case adjourned to a subsequent day. On that day, the case came on for hearing, & defts. obtained a judgment in their favour, which was entered by the clerk of the county ct. in the book kept for that purpose. Defts. then left the ct. Some days afterwards they received notice that the judge had rescinded his judgment, & that the case was adjourned for further hearing. They attended on the day named, & protested against any further hearing of the case. The judge, however, overruled their objection, & gave judgment for pltf., on the ground that the plea of Stat. Limitations, on the former occasion, had been improperly pleaded. On motion for a prohibition :—*Held* : the judge had no authority to rescind his former decision in the absence of defts.; he had therefore acted without jurisdiction, & a prohibition must go.

Semble : a judge of a county ct. may alter his judgment, after it has been pronounced & recorded in the book of the ct. kept for that purpose; if he do so at the same ct., & in the presence of the parties.—JONES v. JONES (1848), 5 Dow. & L. 628; Cox, M. & H. 92; 2 Saund. & C. 281; 17 L. J. Q. B. 170; 11 L. T. O. S. 109; 12 Jur. 397; 12 J. P. 296.

Annotations :—*Consd.* Metcalfe v. Brown (1852), 16 J. P. Jo. 790; Martin v. Mackonochie (1879), 49 L. J. Q. B. 9; Mowlem v. Dunne (1912), 106 L. T. 611. *Reid.* Irving v. Arkow (1870), L. R. 5 Q. B. 208.

After refusal of application for new trial—Validity of subsequent order for new trial.]—See Nos. 606, 607, 608, *post*.

567. With consent of parties.]—A county ct. judge cannot, except by consent or after a new trial, alter a judgment which he has formally given.—IRVING v. ASKEW (1870), L. R. 5 Q. B. 208; 39 L. J. Q. B. 118; 18 W. R. 467.

Annotations :—*Consd.* Re London Scottish Permanent Bldg. Soc. (1893), 63 L. J. Q. B. 112; Mowlem v. Dunne (1912), 106 L. T. 611. *Reid.* Sweetland v. Turkish Cigarette Co. (1899), 80 L. T. 472; Sanatorium v. Marshall, [1916] 2 K. B. 57; Astor v. Barrett, [1920] 3 K. B. 638.

568. ——— Judgment under mistake of facts.]—GILL v. VALETTA (1910), 45 L. Jo. 430.

569. By ordering new trial.]—IRVING v. ASKEW, No. 567, *ante*.

New trial generally, *see* Sect. 3, *post*.

570. As to costs included in judgment—After judgment subject to reference as to damages—& payment into court of sum sufficient to cover damage.]—By Jud. Act, 1873 (c. 66), s. 16, there shall be transferred to & vested in the High Ct. of Justice the jurisdiction which, at the commencement of the Act, was vested in or capable of being exercised by the High Ct. of Admlty.; & by s. 34 there shall be assigned to the Probate, Divorce & Admlty. Div. all causes & matters which would have been within the exclusive cognisance of the High Ct. of Admlty. By 1888 Act, s. 132, when the High Ct., or a judge thereof, shall have refused to grant a writ of prohibition to a ct. no other ct. or judge shall grant such writ or order; but nothing herein shall affect the right of appealing from the decision of the judge of the High Ct. to the High Ct. itself.

Pltf. issued a plaint, on the Admlty. side of a county ct., for damage by collision. Defts. denied liability; but at the trial judgment was given for pltf. with costs, subject to a reference to the registrar to assess damages. Defts. then paid into ct., by way of tender, a sum which was found by the registrar to be sufficient to cover the damage. The judge thereupon rescinded so much of his judgment as dealt with the costs, & made a decree condemning pltf. in the costs of the action & of the reference. Pltf. applied to a judge of the Admlty. Div. who was sitting in chambers, in vacation, exercising the jurisdiction of all the divisions of the High Ct., for a writ of prohibition in respect of so much of the decree as dealt with the costs of the action. The application was refused, & the judge did not desire any further argument. Pltf. appealed, & on objection to the jurisdiction:—*Held*: (1) by virtue of Judicature Act, 1873 (c. 66), a judge of the Admlty. Div. has all powers, as to prohibition, of a judge of the High Ct.; (2) as the judge did not require any further argument, the appeal, in an Admlty. cause, was direct to the Ct. of Appeal, notwithstanding 1888 Act, s. 132, which only applied to proceedings in the High Ct., & prevented an application to another judge of the High Ct., or to another Div. Ct. when the first *indoo* or Div. Ct., had refused to grant a writ;

tender, by way of defence to the action, could not properly be made after judgment determining the liability; & (4) the county ct. judge, having included an order as to costs in his judgment determining the liability, had no power to rescind that portion of it.—THE RECEPTEA, [1893] P. 255; 62 L. J. P. 118; 41 W. R. 561; 42 W. R. 73; *sub nom.* THE RECEPTEA, GORDON v. FRANCIS, 69 L. T. 252; 9 T. L. R. 535; 37 Sol. Jo. 580; 7 Asp. M. L. C. 359; 1 R. 644, C. A.

Annotations:—As to (1) *Folld. The Theresa* (1894), 11 R. 681. As to (4) *Consd. Re London Scottish Permanent Bldg. Soc.* (1893), 63 L. J. Q. B. 112; *Mowlem v. Dunne* (1912), 106 L. T. 611.

571. To avoid possible misunderstanding of ambiguous phrase.]—A county ct. judge is entitled to amend his judgment after it has been delivered in order to explain the sense in which he has used an ambiguous phrase which might be misunderstood.—LOWERY v. WALKER, [1911] A. C. 10; 80 L. J. K. B. 138; 103 L. T. 674; 27 T. L. R. 83; 55 Sol. Jo. 62, H. L.

Annotations:—*Reid. Mowlem v. Dunne*, [1912] 2 K. B. 136; *Tofts v. Pearl Life Assce.* (1913), 110 L. T. 190. *Mentd.* *Grand Trunk Ry. of Canada v. Barnett*, [1911] A. C. 361; *Clinton v. Lyons*, [1912] 3 K. B. 198; *Latham v. Johnson*, [1913] 1 K. B. 398; *Norman v. G. W. Ry.*, [1914] 2 K. B. 153; *Pritchard v. Torkington* (1914), 7 B. W. C. C. 719; *Wilson v. Barry Ry.* (1916), 116 L. T. 71; *Brackley v.*

Mid. Ry. (1916), 114 L. T. 1150; *Hayward v. Drury Lane Theatre & Moss' Empires*, [1917] 2 K. B. 899; *Hardy v. C. L. Ry.*, [1920] 3 K. B. 459.

572. To reduce verdict—By amount in excess of jurisdiction.]—The rule that there is no appeal upon any question of law not raised in the ct. below, & that an application should first be made to the judge for a new trial, only applies to points of law arising in the course of the case & not to misdirection in the summing up. A judge may be asked during the summing up to correct any misstatement of fact, but should not be interrupted on any question of law.

At a trial in the county ct. the jury returned a verdict for pltf. for £110. The judge reduced the amount of the verdict to £100, & entered judgment for pltf.:—*Held*: the judge was right in so doing.—CRESSWELL v. JONES (1912), 106 L. T. 797; 28 T. L. R. 395; 1 L. J. County Council Reporter, 28, D. C.

573. After order carried out—Registrar cannot set aside order—Although order premature.]—A registrar on an application by the pltf. for leave under Rules 1914 to levy distress for rent on the premises of the deft., issued a summons, which was posted to deft. on Feb. 11, & would have been delivered to him in the ordinary course of post on Feb. 12, but which was not in fact delivered to deft. until Feb. 13. This only gave deft. three clear days notice of the hearing of the summons, instead of four days to which he was entitled by above Rules, r. 12. At the hearing of the summons on Feb. 17 the registrar gave pltf. leave for short service of the summons & leave to issue the warrant of distress. On Mar. 25 the deft. gave notice that he would apply to the registrar on Mar. 30 to set aside his order of Feb. 17. The notice did not state any ground of objection. On Mar. 30 the registrar set aside his order of Feb. 17:—*Held*: (1) the hearing before the registrar on Feb. 17 was premature; but the registrar had no power to set aside his own order after the order had been carried out; (2) the summons could not be deemed to have been served in the ordinary course of post within Ord. 54, r. 2.

On an application for leave to appeal from the decision of the Div. Ct.:—*Held*: without deciding whether there was any irregularity, leave to appeal must be refused, as the application of Mar. 25 to set aside the order was not made within a reasonable time, & as the objection intended to be insisted upon was not stated in the notice as required by Ord. 54, r. 25.—LORDEN v. KEAN, [1916] W. N. 404, C. A.

To rectify mistake—Power to order new trial.]—*See* No. 626, *post*.

SUB-SECT. 3.—UNDER BILLS OF EXCHANGE ACT, 1855.

See BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI. pp. 467–471. As regards county courts the Act has been repealed by 1919 Act, s. 27, sched., & Ord. 7, rr. 29b–39.

SUB-SECT. 4.—NONSUIT.

See 1888 Act, s. 93.

574. Jurisdiction of judge to nonsuit—General rule.]—(1) The judge of a county ct. has power to nonsuit pltf. in all cases in which the judge of a superior ct. can do so.

(2) In an appeal from the county ct. as a general rule the successful party is entitled to costs.—

Sect. 2.—Judgment: Sub-sect. 4.]

ROBINSON v. LAWRENCE (1851), 7 Exch. 123; 2 L. M. & P. 673; 21 L. J. Ex. 36; 18 L. T. O. S. 156; 16 J. P. 105; 15 Jur. 1087; 155 E. R. 883.

Annotations:—As to (2) Consd. Hunt v. Wray (1851), 7 Exch. 125, n. Follid. Outhwaite v. Hudson (1852), 7 Exch. 380.

575. — Without plaintiff's consent.] — Deft., a brewer, let to pltf. a public-house, on the terms (among others) that pltf. should purchase of deft. all the malt liquor consumed on the premises: provided that, in case of any breach of that agreement, the plaintiff should forfeit, as liquidated damages, the sum of £50, secured by the promissory note of pltf. Deft. indorsed over the note for value; & pltf. having been compelled to pay it, entered a plaint in the county ct. against deft., & stated in the summons & particulars that "the cause of action was money paid for the use of deft. to the indorsees of the note, for which he never received from deft. any value or consideration." At the trial before a jury it appeared that, on pltf.'s taking possession of the premises in Oct., 1849, he commenced ordering beer from deft., & continued to do so until Feb., 1850. Pltf. proposed to prove that the beer supplied by deft. subsequently to Christmas, 1849, was unmarketable. This evidence was objected to, but received by the judge. Deft. submitted that there was no case for the jury, & that the pltf. must be nonsuited. Pltf. refused to be nonsuited; & the judge left it to the jury to say whether the liquor supplied by deft. was of a marketable quality; & they found a verdict for pltf. On appeal to this ct. under 1850 Act, the case, which was stated by the judge, set out his direction to the jury, though not necessary to render intelligible the points of law which he formally submitted for the opinion of the ct.:—*Held*: (1) the term "nonsuit" in the 1846 Act has the same meaning as in ordinary legal proceedings, & consequently the county ct. judge had no power to nonsuit pltf. against his will, but, in the absence of any case for the jury, should have directed a verdict for deft.; (2) the same rule of construction should be applied to the summons & particulars in the county cts. as in the superior cts.; and, therefore, in this case, the summons & particulars sufficiently described the cause of action, as deft. could not have been misled by them; & evidence as to the quality of the beer was admissible under them; (3) under 1850 Act the ct. of appeal is not confined to the precise questions submitted to them, but may decide upon the whole case as stated; & therefore, looking at the summing up in this case, it was erroneous; for the circumstance of deft. having on one or two occasions supplied pltf. with bad beer, did not authorise him to avoid the contract, but he should have returned the beer, & if better were not sent instead of it, he might, on the particular occasion, procure some elsewhere; & if deft. continued to send bad beer, he might sue him on the implied contract that he would supply beer reasonably fit to be drunk.—*STANCLIFFE v. CLARKE* (1852), 7 Exch. 439; *Saund. & M.* 13; 21 L. J. Ex. 129; 16 J. P. 425; 16 Jur. 430; 155 E. R. 1020.

Annotation.—Generally, Mentd. Kirby v. Williamson (1852), 19 L. T. O. S. 203.

576. — — —.] — Upon the trial of a plaint before a county ct. judge & a jury, after the completion of pltf.'s case, & during the hearing of deft.'s witnesses, the judge discharged the jury, & notwithstanding the repeated protests of pltf. & his attorney, the judge, without pltf.'s consent, directed a nonsuit to be entered. Upon a rule

obtained under 1856 Act, s. 43, calling upon the judge to proceed with the trial of the cause:—*Held*: the judge had acted judicially, & therefore the ct. had no power to afford pltf. any remedy upon this rule.—*KERSHAW v. CHANTLER* (1872), 26 L. T. 474.

577. — Title to land in question.] — *LAWFORD v. PARTRIDGE*, No. 678, *post*.

578. — After opening speech for plaintiff—Before plaintiff's evidence called.] — In this action where s. 1 of the Public Authorities Protection Act, 1893 (c. 61) was raised in defence, the county ct. judge gave effect to it by non-suiting pltf. at the conclusion of the opening speech for pltf. & before he had called his evidence, although this was without the consent of pltf., & although it appeared by the opening that there was an issue whether the act of deft. was done in pursuance of a public duty or out of malice:—*Held*: that there must be a new trial.—*CROSS v. RIX* (1912), 77 J. P. 84; 29 T. L. R. 85; 11 L. G. R. 151, D. C.

579. Right of plaintiff to be nonsuited — At latest moment before judgment given—Or verdict given.] — Pltf. in a county ct. has a right to elect to be nonsuited at the latest moment before the judge has pronounced his judgment, or, when there is a jury, before they have delivered their verdict.

As a general rule the successful party in an appeal from a county ct. is entitled to costs.—*OUTHWAITE v. HUDSON* (1852), 7 Exch. 380; 21 L. J. Ex. 151; 16 Jur. 430; 155 E. R. 995.

580. Grounds for nonsuit—General rule.] — At the hearing of an action or plaint in the county ct. to recover lands under 1846 Act, s. 50, deft. pleaded or offered as a defence, & proved, the pendency of an action of ejectment in the Ct. of Exch. for the same lands. The judge thereupon called on pltf. to give an undertaking to discontinue the action & to pay deft.'s costs incurred therein, & on pltf.'s giving such undertaking, notwithstanding deft.'s attorney objected to receive it, the judge disallowed the plea & ordered possession of the land to be given to pltf. Deft. appealed to the Ct. of Exch. & contended that the judge should have stayed proceedings, or have nonsuited pltf., or have given judgment for deft.:—*Held*: the judge of the county ct. was right in his decision, & in the way in which the matter came before him he could do no otherwise than he did.

It was discretionary with the judge to stay proceedings or not, & having exercised his discretion, it is not such a case as this ct. can review (*CHANNELL, B.*).

A judge of a county ct. can only direct a nonsuit when no satisfactory proof is given to him entitling either pltf. or deft. to recover (*BRAMWELL, B.*).—*BISSILL v. WILLIAMSON* (1861), 7 H. & N. 391; 8 Jur. N. S. 42; 10 W. R. 109; 158 E. R. 525; *sub nom. WILLIAMSON v. BISSILL*, 31 L. J. Ex. 131; *sub nom. BISSILL v. WILLIAMS*, 5 L. T. 321.

581. — — —.] — *WRIGHT v. WALLIS* (1887), 3 T. L. R. 779; 51 J. P. Jo. 473, D. C.

Annotations:—Refd. Kellard v. Rooke (1888), 57 L. J. Q. B. 599. Mentd. Wild v. Waygood, [1892] 1 Q. B. 783.

582. — No evidence to support plaintiff's case—Action on contract—No evidence of contract.] —

Where, on the trial of an action on contract, there is no evidence of the contract, yet the judge leaves the question of contract or no contract to the jury, it is misdirection, & the ct. will direct a nonsuit to be entered. *Semble*: in such cases the judge should nonsuit pltf. or direct a verdict for deft.—*YORK, NEWCASTLE & BERWICK RY. Co. v. CRISP* (1854), 14 C. B. 527; 23 L. J. C. P. 125; 23 L. T. O. S. 78; 18 J. P. 361; 18 Jur. 606; 2 W. R.

428; 139 E. R. 217; *sub nom.* CRISP v. YORK & NEWCASTLE RY. CO., 2 C. L. R. 1357.

Annotations:—*Reid*. Hughes v. G. W. Ry. (1854), 14 C. B. 637; Slim v. G. N. Ry. (1854), 14 C. B. 647; White v. G. W. Ry. (1857), 2 C. B. N. S. 7. *Mentd.* Brown v. Bristol & Exeter Ry. (1861), 4 L. T. 830; Peek v. North Staffordshire Ry. (1863), 10 H. L. Cas. 473; Lewis v. McKee (1868), L. R. 4 Exch. 58; Parker v. S. E. Ry. (1876), 1 C. P. D. 618.

583. — Action for goods supplied to infant—No evidence that goods were necessities.—

Where to a plea of infancy, in an action for goods supplied, *pltf.* replies that they were necessities, the question of "necessaries" or "not necessities" is one of fact, & therefore for the jury. But, like all other questions of fact, it should not be left to the jury by the judge, unless there is evidence on which they can reasonably find in the affirmative.

Pltf. sued *deft.*, a minor, for the price of a pair of jewelled solitaires worth £25, & of an antique goblet worth £15 15s., which *pltf.* knew, when he supplied it, was intended for a present. *Deft.* was the son of a baronet, with no independent establishment; & in the receipt of an allowance of £500 a year. The question whether these articles were necessities or not was left to the jury, who found that they were, & a verdict for *pltf.* for £40 15s. was accordingly entered:—

Held: there was no evidence of either article being a necessary, & a non-suit ought to have been directed.—*RYDER v. WOMBWELL* (1868), L. R. 4 Exch. 32; 38 L. J. Ex. 8; 19 L. T. 491; 17 W. R. 167, Ex. Ch.

Annotations:—*Consd.* Met. Ry. v. Jackson (1877), 3 App. Cas. 193; Hall v. Jupe (1880), 49 L. J. Q. B. 721. *Apld.*

In succ. of New Zealand, Inman, [1908] 2 K. B. 1; [1918] A. C. 626. *Reid*. Giblin v. McMullen (1868), L. R. 2 P. C. 317; Steward v. Young (1870), L. R. 5 C. P. 122; Dublin, Wicklow & Wexford Ry. v. Slattery (1878), 3 App. Cas. 1155. *Mentd.* Jenner v. Walker (1868), 19 L. T. 398; Gorer v. Readon (1869), 20 L. T. 40; Blackman v. L. B. & S. C. Ry. (1869), 17 W. R. 769; Cockle v. L. & S. E. Ry. (1870), L. R. 5 C. P. 457; Gee v. Met. Ry. (1873), L. R. 8 Q. B. 161; Company of African Merchants v. British & Foreign Marine Insee. (1873), L. R. 8 Exch. 154; Bridges v. North London Ry. (1874), L. R. 7 H. L. 213; Abbott v. Bates (1874), 43 L. J. C. P. 150; Hill v. Arbon (1876), 34 L. T. 125; Barnes v. Toye (1884), 13 Q. B. D. 410; Johnstone v. Marks (1887), 19 Q. B. D. 509; Finegan v. L. & N. W. Ry. (1889), 53 J. P. 663; Hewlings v. Graham (1901), 70 L. J. Ch. 568; Everett v. Griffiths, [1921] 1 A. C. 631.

584. — Action for damages for negligence—No evidence of negligence.—On the platform of a railway station there were two doors in close proximity to each other, the one, for necessary purposes, had painted over it the words "For gentlemen," the other had over it the words "Lamp-room." *Pltf.*, having occasion to go to the urinal, inquired of a stranger where he should find it, & having received direction, by mistake opened the door of the "lamp-room" & fell down some steps & was injured. In an action against the co.:—*Held*: in the absence of evidence that the place was more than ordinarily dangerous, the judge was justified in nonsuiting *pltf.*, on the ground that there was no evidence of negligence on the part of the co.—*TOOMEY v. LONDON, BRIGHTON & SOUTH COAST RY. CO.* (1857), 3 C. B. N. S. 146; 27 L. J. C. P. 39; 6 W. R. 44; 140 E. R. 694; *sub nom.* *TOONEY v. LONDON, BRIGHTON & SOUTH COAST RY. CO.*, 30 L. T. O. S. 135.

Annotations:—*Reid*. Cornman v. Eastern Counties Ry. (1859), 4 H. & N. 781; Cotton v. Wood (1860), 8 C. B. N. S. 568; Ryder v. Wombwell (1868), L. R. 4 Exch. 32; Gee v. Met. Ry. (1873), L. R. 8 Q. B. 161. *Mentd.* Nicholson v. L. & Y. Ry. (1865), 34 L. J. Ex. 84; Indermaur v. Dames (1866), L. R. 1 C. P. 274; Smith v. G. E. Ry. (1866), L. R. 2 C. P. 4; Crafter v. Met. Ry. (1866), Har. & Ruth. 164; Blackman v. L. B. & S. C. Ry. (1869), 17 W. R. 769;

Dublin, Wicklow & Wexford Ry. v. Slattery (1878), 3 App. Cas. 1155; Hall v. Jupe (1880), 49 L. J. Q. B. 721.

585. — Not release of claim—Refusal of judge to hear evidence as to circumstances of execution.—An action was brought in a county ct., in the names of A. & B., as exors. of C., in respect of a claim accruing to testatrix. B. executed a release the day before the trial. The counsel for *pltf.*, upon whom the release came by surprise, proposed to call B. & to examine him as to the circumstances under which he had executed the release, for the purpose of eliciting from him whether or not it had been fraudulently obtained, but without alleging the existence of fraud in fact. The judge refused to permit B. to be examined for that purpose, & *pltf.* were nonsuited:—*Held*: (1) the nonsuit must be set aside; (2) with costs.—*ROBINSON v. VERNON (LORD)* (1859), 7 C. B. N. S. 231; 29 L. J. C. P. 135; 1 L. T. 67; 23 J. P. 824; 6 Jur. N. S. 610; 8 W. R. 47; 141 E. R. 804.

Annotation:—*As to* (2) *Reid*. Schroder v. Ward (1863), 13 C. B. N. S. 410.

586. — Document inadmissible for want of stamp—Provided objection taken at earliest possible moment.—(1) The objection to the admissibility of a document in evidence for want of a stamp ought to be taken at the earliest possible moment. Where, therefore, *pltf.*, who were suing as exors., had put in evidence probate of the will of their testator, & the same had been read without objection:—*Held*: *deft.* could not afterwards, by giving extrinsic evidence of the value of the estate, object to the admissibility of the probate for want of a sufficient stamp, & a nonsuit founded on such objection must be set aside with costs.

(2) We must order *deft.* to pay the costs of the appeal, otherwise the redress thereby given would be fruitless (*per CUR.*).—*ROBINSON v. VERNON (LORD)* (1860), 7 C. B. N. S. 231, 235; 29 L. J. C. 310; 7 Jur. N. S. 146; 141 E. R. 804, 806.

Annotation:—*As to* (2) *Reid*. Schroder v. Ward (1863), 13 C. B. N. S. 410.

587. — Not where absence of jurisdiction not shown on face of plaint—But some evidence admitted which might have supported action not within jurisdiction.—*AUSTIN v. DOWLING*, No. 68, *ante*.

588. — No cause of action in particulars—Sufficiency of allegations in particulars—Action for deceit.—*Deft.* caused to be inserted in a public newspaper an advertisement for the letting by tender with immediate possession "all that farm," etc. *Pltf.*, believing in the *bona fides* of such advertisement, & desiring to become tenant of a place of the description advertised, was induced to take & did take trouble & incurred expense in going to & inspecting the property & in the employment of persons to inspect & value it for him, with a view to his becoming tenant thereof. *Deft.* knew at the time he caused the advertisement to be published that he had not power to let the farm, & in fact the farm was not to be let, & *deft.* caused the advertisement to be issued to serve some purpose of his own other than that appearing by the advertisement. Upon the above facts, disclosed by the particulars in a plaint in a county ct., the judge directed a nonsuit, holding that no cause of action was disclosed:—*Held*: the judge was wrong, & he ought to have heard the evidence.

If the particulars disclose no cause of action the judge would act rightly in nonsuiting *pltf.* (*BLACKBURN, J.*).—*RICHARDSON v. SILVESTER* (1873), L. R. 9 Q. B. 34; 43 L. J. Q. B. 1; 29 L. T. 395; 38 J. P. 628; 22 W. R. 74, D. C.

Annotation:—*Mentd.* Ajello v. Worsley, [1898] 1 Ch. 274.

589. — Action for negligence

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3: Sub-sect. 1, A.]

causing personal injuries.] — EVANS v. SOUTH LONDON TRAMWAYS Co. (1894), 10 T. L. R. 312, D. C.

590. — Not where evidence to go to jury—Action for damages for negligence—Personal injuries.]—In an action against defts. for negligence it was proved that pltf., being a passenger on defts.' railway, got up from his seat & put his hand on the bar which passed across the window of the carriage, with the intention of looking out to see the lights of the next station, & that the pressure caused the door to fly open, & pltf. fell out & was injured. There was no further evidence as to the condition of the door & its fastenings. The jury having found for pltf. leave being reserved to enter a nonsuit on the ground that there was no evidence of defts.' liability:—*Held*: that there was evidence, & the verdict ought to stand.—*GEE v. METROPOLITAN RY. Co. (1873), L. R. 8 Q. B. 161; 42 L. J. Q. B. 105; 28 L. T. 282; 21 W. R. 584, Ex. Ch.*

Annotations:—Mentd. Hogan v. S. E. Ry. (1873), 28 L. T. 271; Richards v. G. E. Ry. (1873), 28 L. T. 711; Robson v. N. E. Ry. (1875), L. R. 10 Q. B. 271; Benson v. Furness Ry. (1903), 88 L. T. 268.

591. — Loss of luggage.]—L. on his arrival at defts.' station handed his bag to a porter, at the same time telling him he was going to W. The porter took the luggage to the platform & was about to have it labelled when pltf. told him he would take it with him in the carriage. The porter then left suddenly, leaving the bag on the platform, & pltf. went to get his ticket. On his return the bag was found to be missing. At the trial in the county ct. pltf. was nonsuited:—*Held*: the nonsuit was wrong, & there was evidence to go to the jury that the bag was entrusted to the servant of defts. to go to W. as passenger's luggage.

Qu.: whether a successful applt. is entitled to his costs in all cases, or whether it is a matter of discretion with the ct. to grant them or not.—*LEACH v. SOUTH EASTERN RY. Co. (1876), 34 L. T. 134; 40 J. P. 485, D. C.*

Annotation:—Mentd. Bunch v. G. W. Ry. (1886), 17 Q. B. D. 215.

592. — Not where *prima facie* case proved by plaintiff—Ejectment.]—Pltf. in ejectment gave evidence of possession for thirteen years, & of acts of ownership by fencing & allowing other persons to use the land; also that deft. came on the land five or six years ago without permission:—*Held*: this was sufficient evidence to justify the refusal of a nonsuit. *Semble*: a nonsuit in a county ct., if applied for at the trial, may be moved under 1875 Act, without leave reserved.—*WHALE v. HITCHCOCK (1876), 34 L. T. 136.*

593. — Not where wrong defendant sued—Defendant entitled to judgment.]—Pltf. brought an action in the county ct. against defts., a body of persons who had organised a live-stock show, to recover damages for personal injuries sustained by her in consequence of an advertisement board outside the premises having been blown down upon her. From the evidence given on behalf of pltf., it appeared that defts. were not the parties really liable, & thereupon the county ct. judge nonsuited pltf., but deprived defts. of costs on the ground that they had not given every assistance to pltf. to enable her to determine who was the party liable:—*Held*: (1) as the evidence for pltf. showed that she never could have recovered against defts., the judge should have entered judgment for them instead of nonsuiting pltf.; (2) as the nonsuit could not stand, the ct. were entitled to give the judgment

which ought to have been given in the county ct., and to attach to it the proper consequences, namely, that defts. should have their costs.—*WESTGATE v. CROWE, [1908] 1 K. B. 24; 77 L. J. K. B. 10; 97 L. T. 769; 24 T. L. R. 14; 52 Sol. Jo. 13, D. C.*

Annotation:—As to (2) Reidd. Higgins v. Higgins, [1916] 1 K. B. 640.

594. Effect of nonsuit—Whether bar to subsequent action.]—POYSER v. MINORS, No. 562, ante.

595. — —.]—DAVIS v. GREAT EASTERN RY. Co., No. 564, ante.

See, now, County Court Rules, Ord. 22, r. 10.

596. Application to High Court for nonsuit—Whether leave necessary.]—WHALE v. HITCHCOCK, No. 592, ante.

Appeals generally, *see* Part VIII., *post*.

SUB-SECT. 5.—TIME FOR PAYMENT AND INSTALLMENTS.

597. Order for payment—Nature of—Not part of judgment.]—BYRNE v. KNIPE, No. 146, ante.

598. — Construction of — “Month.”] — SAUNDERS v. SWANSEA FINANCE Co., LTD. & HOME (1905), 21 T. L. R. 317, C. A.

See, generally, TIME.

599. Payment into court of part of judgment debt—Without consent of creditor—Validity.]—Certain creditors recovered a judgment against a debtor in the county ct. & it was ordered that the full amount of the judgment debt should be paid on a day specified. Before the day named in the judgment for payment of the debt the debtor paid into ct. a sum in part satisfaction thereof. The judgment creditors repudiated this payment & issued a bkptcy. notice requiring the debtor to pay the judgment debt in full without making any allowance for the payment into ct.:—*Held*: after the payment into ct. execution could not issue for the full amount of the judgment, but only for the balance after giving credit for the amount paid into ct., & consequently the bkptcy. notice was invalid.—*Re MILLER, Ex p. FURNITURE & FINE ARTS DEPOSITORIES, LTD., [1912] 3 K. B. 1; 81 L. J. K. B. 1180; 107 L. T. 417; 19 Mans. 354; sub nom. Re DEBTOR (No. 2 of 1912 BRENTFORD), Ex p. JUDGMENT CREDITORS, 56 Sol. Jo. 634, C. A.*

See, now, Ord. 23 & 12b.

Duty of registrar—As to preparation of notices of judgments or orders for payment of money.]—*See* No. 33, ante.

SUB-SECT. 6.—AGAINST EXECUTORS.

600. Necessity for suing on *devastavit*—To obtain judgment *de bonis propriis*.]—In an action commenced in the High Ct. in 1905 & transferred to the county ct. against one of two exors. of a testator who died in 1897 in respect of claims accruing due in 1903 & 1904 upon a guarantee given by testator pltf. alleged a *devastavit* to have been committed by deft., in wrongfully handing over assets of testator to a beneficiary under the will in 1898, more than six years before the commencement of the action, without making any provision for future liability under the guarantee. The county ct. judge having given judgment for pltf., adjudging that deft. had committed a *devastavit*, & having ordered execution against deft. *de bonis propriis*:—*Held*: the claim in respect of the *devastavit* was barred by Stat.

Limitations, & therefore the order for execution *de bonis propriis* was wrong.

The judgment is a judgment according to Form 238 of the rules, which by its title is expressed to be a "judgment against an exor. who has wasted assets." That is a judgment which can be given only in respect of a plaintiff coming within Ord. 30, rr. 3 & 4. The plaintiff in the present case was not of this character. It was a claim against defendant, as exor. simply, & did not allege that he had wasted assets, & the only judgment that could be given in respect of it, so far as the amount claimed is concerned, was a judgment *de bonis testatoris*, & *de bonis testatoris quando acciderint*. But I will assume in favour of plaintiffs that at the trial the plaintiff was amended either by changing it into a plaintiff alleging a *devastavit* according to Ord. 30, rr. 3 & 4, or by adding such a plaintiff. I do not think that this was in fact the case, & I am of opinion that defendant might rely on the incorrect form of the judgment as a sufficient ground for our increased costs, & inasmuch as the parties are allowing the appeal. But this would only lead to desirous that the substantial question should be decided on this appeal, I think it better to treat the case as though such an amendment had been made. The effect of Ord. 30, rr. 3 & 4, appears to me to be that, if a plaintiff in the county court wishes to obtain, as against an exor., relief on the ground that he has wasted the assets of testator he must sue upon a *devastavit* (FLETCHER MOULTON, L.J.).—LACONS v. WARMOLL, [1907] 2 K. B. 350; 76 L. J. K. B. 914; 97 L. T. 379; 23 T. L. R. 495, C. A.

Annotations:—*Reid*. *Re Blow*, St. Bartholomew's Hospital v. Cambden, [1914] 1 Ch. 233; *Re Richardson*, Pole v. Pattenden, [1919] 2 Ch. 50. *Mentd.* *Re Croyden*, Hincks v. Roberts (1911), 55 Sol. Jo. 632.

601. Judgment of assets *quando acciderint*—Assets coming to executor's hands subsequently.]—Deft. sued in a county court as an exor., pleaded *plene administravit*, & judgment was given for plaintiff, for the debt, to be levied of assets *quando acciderint*. Plaintiff afterwards took out a summons, suggesting a *devastavit*:—*Held*: no ground for a prohibition, although the summons was irregular, in not stating that the assets had come to defendant's hands after judgment.—ELLIS v. WATT (1849), 8 C. B. 614; Rob. L. & W. 147; Cox, M. & H. 317; 19 L. J. C. P. 113; 14 L. T. O. S. 155; 13 J. P. 748; 137 E. R. 648.

See, generally, EXECUTORS & ADMINISTRATORS.

SUB-SECT. 7.—REGISTRY OF JUDGMENTS.

Publication of extract from registry—Whether action for defamation lies.]—See LIBEL & SLANDER.

SUB-SECT. 8.—ENFORCEMENT.

602. Whether by action.]—An action of debt lies upon a judgment of a county court, & the declaration need not state that defendant resided within the jurisdiction of the county court, or was liable to be summoned to that court for the debt; it is enough to state that plaintiff levied his plaintiff in the county court for a cause of action arising within its jurisdiction.—WILLIAMS v. JONES (1845), 13 M. & W. 628; 2 Dow. & L. 680; 14 L. J. Ex. 145; 4 L. T. O. S. 318; 153 E. R. 262.

Annotations:—*Reid*. *Berkeley v. Elderkin* (1853), 22 L. J. Q. B. 281. *Mentd.* *East & West India Docks & Birmingham Junction Ry. v. Gattke* (1851), 3 Mac. & G. 155; *South Staffordshire Ry. v. Hall* (1851), 17 L. T. O. S. 2; *R. v. L. & N. W. Ry.* (1854), 3 E. & B. 443; *London Corpn. v. Cox* (1867), L. R. 2 H. L. 239; *Godard v. Gray* (1870), L. R. 6 Q. B. 139; *Schibsby v. Westenholz* (1870),

L. R. 6 Q. B. 155; *Rousillon v. Rousillon* (1880), 14 Ch. D. 351; *Abouloff v. Oppenheimer* (1882), 10 Q. B. D. 295; *Nouvion v. Freeman* (1889), 15 App. Cas. 1; *Robins v. Robins*, [1907] 2 K. B. 13; *Emanuel v. Symon*, [1908] 1 K. B. 302; *Harris v. Taylor*, [1915] 2 K. B. 580.

603. —.]—An action is not maintainable in a superior court upon a judgment in a county court established under 1846 Act.—BERKELEY v. ELDERKIN (1853), 1 E. & B. 805; 22 L. J. Q. B. 281; 21 L. T. O. S. 74; 17 J. P. 568; 17 Jur. 1153; 1 W. R. 305; 1 C. L. R. 416; 118 E. R. 638.

Annotations:—*Folld.* *Austin v. Mills* (1853), 9 Exch. 288. *Distd.* *Bennett v. Powell* (1855), 3 Drew. 326. *Consd.* *R. v. Essex County Court Judge* (1887), 18 Q. B. D. 704; *Savill v. Dalton*, [1915] 3 K. B. 174. *Reid.* *Moreton v. Holt* (1855), 10 Exch. 707; *Bailey v. Bailey* (1884), 13 Q. B. D. 855. *Mentd.* *Patrick v. Shedden* (1853), 22 L. J. Q. B. 283; *Carter v. Smith* (1855), 24 L. J. Q. B. 141; *Hutchinson v. Gillespie* (1856), 11 Exch. 798; *Edwards v. Coombe* (1872), L. R. 7 C. P. 519; *Re Henderson*, *Nouvion v. Freeman* (1887), 35 Ch. D. 704; *Norton v. Gregory* (1895), 73 L. T. 10.

604. —.]—AUSTIN v. MILLS, No. 559, ante.

—Suit in equity.]—See No. 21, ante.

See, now, 1888 Act, s. 63.

By execution.]—See Sect. 4, post.

Whether judgment bar to subsequent action.]—See sub-sect. 2, B., ante.

SECT. 3.—NEW TRIAL.

SUB-SECT. 1.—JURISDICTION OF COUNTY COURT.

A. Power to order New Trial.

See 1888 Act, s. 93.

605. With jury—First trial without jury—Costs of application ordered to be paid to & received by party opposing application—Waiver of right to object to order.]—On motion for a new trial on a plaintiff in the county court, which had been tried by the judge alone, the judge ordered that the second trial should be had before a jury, & that the costs of the application should be paid to the party opposing the application:—*Held*: whether the judge had power to make such order or not, the opposing party had, by accepting such costs, precluded himself from afterwards objecting to the order.—SPARROW v. REED (1848), 5 Dow. & L. 633; 2 Saund. & C. 240; 17 L. J. Q. B. 183; 11 L. T. O. S. 131; 12 Jur. 896; 12 J. P. Jo. 342.

606. After one refusal to grant new trial.]—A county court judge having once refused to grant a new trial under the power conferred on him by 1846 Act, s. 89, is *functus officio*, & cannot grant one afterwards, on changing his mind. Inferior courts have, generally speaking, no right to grant new trials without the aid of a statutory power to do so.—GREAT NORTHERN RY. CO. v. MOSSOP (1855), 17 C. B. 130; 25 L. J. C. P. 22; 2 Jur. N. S. 21; 4 W. R. 116; 139 E. R. 1018; *sub nom.* MOSSOP v. GREAT NORTHERN RY. CO., Saund. & M. 112; 26 L. T. O. S. 91; 19 J. P. 761.

Annotations:—*Distd.* *R. v. Greenwich County Court Judge* (1888), 60 L. T. 248. *Reid.* *Irving v. Askew* (1870), L. R. 5 Q. B. 208.

607. — What amounts to refusal.]—BARTON v. TITMARSH (1880), 49 L. J. Q. B. 573; 42 L. T. 610; 28 W. R. 821, C. A.

608. — Refusal but leave reserved to make fresh application.]—An erroneous decision as to the admissibility of evidence, or a decision without any evidence to support it, given by a county court judge in a matter in which he has jurisdiction, are not grounds for a prohibition.

In an action in a county court the jury gave a verdict for defendants. Plaintiffs' counsel thereupon applied to the judge for a new trial on the ground of surprise, & that the verdict was against the weight of

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evidence, but the application was refused. Pltfs.' counsel then said that he had reason to believe that there was a further ground for asking for a new trial, *viz.* misconduct on the part of the jury. The judge said that he could apply on that ground on the next ct. day. Upon the next ct. day the judge heard & granted an application for a new trial, on the ground of the total incapacity of one of the jurymen to attend to the case owing to bodily suffering. Upon a motion for a prohibition:—*Held*: although the judge had no jurisdiction to hear a second motion for a new trial after he had dismissed the first, he had jurisdiction to adjourn the first motion, & what had taken place after the verdict was in effect an adjournment & not a dismissal of the motion.—*R. v. GREENWICH COUNTY COURT JUDGE* (1888), 60 L. T. 248; 37 W. R. 132; 5 T. L. R. 74, C. A.

609. After judgment of High Court on special case—Questions raised by special case & on application for new trial dissimilar.]—A verdict having been found for pltf., the Q. B. Div. on a special case held that there was evidence to go to the jury. The county ct. judge subsequently ordered a new trial:—*Held*: as the points raised by the special case & on the application for a new trial were distinct, the ct. could not set aside the order for a new trial.—*BROOKS v. LONDON & NORTH-WESTERN RY. CO.* (1885), 1 T. L. R. 514, D. C.

610. After action struck out for want of jurisdiction.]—(1) An appeal lies without leave from the decision of a Div. Ct. upon an application for a prohibition to a county ct.

(2) A county ct. judge struck a case out under 1867 Act, s. 14, for want of jurisdiction, but subsequently, being of opinion that his decision as to jurisdiction was erroneous, ordered a new trial:—*Held*: he had power to order a new trial in such a case.—*LISTER v. WOOD* (1889), 23 Q. B. D. 220; 53 J. P. 773; 37 W. R. 738; 5 T. L. R. 475, C. A.
Annotations:—*As to* (1) *Reid*. The Recepta, [1893] P. 255; *Astor v. Barrett*, [1920] 3 K. B. 633.

611. In action heard by registrar.]—Where the registrar of a county ct. has, in the exercise of the jurisdiction given by 1888 Act, s. 92, heard & determined a disputed claim, the county ct. judge has power under s. 93 to order a new trial, if the registrar's decision was wrong in law.

Semble: No appeal lies to the High Ct. from the registrar with leave of the registrar.—*ROSIN v. RANK (JOSEPH), LTD.*, [1912] 2 K. B. 528; 81 L. J. K. B. 854; 106 L. T. 986; 28 T. L. R. 449; 56 Sol. Jo. 597, D. C.

Where notice of application for new trial insufficient.]—*See* Nos. 613, 614, *post*.

612. No power to enter judgment for applicant—On application for new trial.]—A county ct. judge has no jurisdiction, on an application for a new trial of an action tried in the county ct. to enter judgment for the applt.—*ROBINSON v. FAWCETT & FIRTH*, [1901] 2 K. B. 325; 70 L. J. K. B. 639; 84 L. T. 629, D. C.

Annotations:—*Mentd.* *Rigby v. Cox*, [1904] 2 K. B. 208; *Clarke v. West Ham Corpn.*, [1914] 2 K. B. 448; *Sana-torium v. Marshall*, [1916] 2 K. B. 57; *Astor v. Barrett*, [1920] 3 K. B. 633.

Appeal from refusal to order new trial.]—*See* Part VIII., Sect. 1, sub-sect. 1, H. (b), *post*.

B. Procedure on Application for New Trial.

613. Notice of application—Discretion to dispense with.]—R. 41 framed under 1849 Act, s. 12, requiring seven days' notice of an application for a new trial, is directory only; & the judge may, in

his discretion, dispense with regular notice, if satisfied that a sufficient case for so doing is made out, & may grant a new trial under the power given him by 1846 Act, s. 89.—*CARTER v. SMITH* (1855), 4 E. & B. 696; 24 L. J. Q. B. 141; 24 L. T. O. S. 254; 19 J. P. 436; 1 Jur. N. S. 279; 3 W. R. 235; 3 C. L. R. 848; 119 E. R. 257.

Annotation:—*Mentd.* *G. N. Ry. v. Mossop* (1855), 17 C. B. 130.

Remedy of party aggrieved by order—Application to set aside order not prohibition.]—Ord. 28, r. 1, provides that a person applying for a new trial in a county ct. shall give the opposite party seven clear days' notice in writing of his intention so to apply.

A notice was given by deft. to pltfs. by letter on Nov. 8, stating that he would apply on Nov. 12 for a new trial. Pltfs. refused to accept this notice as being too short, & did not attend at the hearing on the 12th. The fact that pltfs. objected to the notice was brought before the judge, who, however, made an order for a new trial. Pltfs. applied for a prohibition to restrain the judge from hearing the case on the new trial:—*Held*: a prohibition ought not to be granted, as the proper proceeding to have been adopted would have been to have made an application to the judge to set aside the order for a new trial as irregular.—*JONES' TRUSTEES v. GITTINS* (1884), 51 L. T. 599, D. C.

615. To what court application made—Second trial heard by consent in another court—Application for third trial must be made in second court.]—*COOKE v. SMITH* (1896), 12 T. L. R. 629, C. A.

—*Remitted action.*—*See* No. 393, *ante*.

616. Affidavit in support of application—Surprise.]—*GELDART v. BLEAZARD & SONS*, [1916] W. N. 417, D. C.

617. ——— Intention to call fresh evidence.]—A judgment in his favour is in the nature of a right vested in a litigant, & it is in the public interest that unsuccessful litigants should not be encouraged to make applications for new trials; therefore such an application should not be granted upon the ground that appct. was surprised, unless he can go further & show that the surprise may have led to an erroneous decision. When the application is based upon the appct.'s intention to call fresh evidence, the ct. should not accept a mere statement to that effect, but should require convincing proof that the evidence is available, & is of a responsible character; that it is not a mere denial of evidence given before, but is of so weighty a nature that its absence may have caused a miscarriage of justice; & that it could not with reasonable diligence have been called at the trial.

Appct. claimed compensation under Workmen's Compensation Act, 1906 (c. 58), for injury by accident. The employer pleaded that at the date of the accident appct. was not in his employment. At the hearing appct. was asked whether he had not been dismissed about three days before the accident, & he denied that that was so. The employer gave evidence of the dismissal, being corroborated in that respect by four other witnesses. The county ct. judge held that the employment was not proved. Appct. applied to the same judge for a new trial on the ground of surprise at the trial, in that he thought the defence pleaded implied that he had never been in the resp.'s employment, & also that he desired to call fresh evidence since obtained to rebut the evidence of dismissal. His counsel merely stated that two unnamed witnesses would be called, & thereupon the judge ordered a new trial. The employer appealed, & it was stated that the practice in the

County ct. was to accept such general statements on an application for a new trial:—*Held*: as to the question of surprise, there was no evidence of any miscarriage of justice, & further, in the High Ct. a new trial would not have been granted on a statement of the kind in question unsupported by any evidence whatsoever, & in the circumstances there ought to be no new trial.—*GUEST v. IBBOTSON* (1922), 91 L. J. K. B. 558; 126 L. T. 738; 38 T. L. R. 325; 66 Sol. Jo. 298, D. C.

Proceedings under Workmen's Compensation Acts generally, see MASTER & SERVANT.

C. Grounds for ordering New Trial.

See 1888 Act, s. 93.

618. General rule—Same grounds as High Court.]—The power to grant new trials conferred upon the judges of county cts. by 1888 Act, s. 93, is not an absolute power to be exercised upon any grounds which the judge may think fit, but subject to the same limitations as to the grounds on which a new trial may be granted as are imposed upon judges of the Supreme Ct.—*MURTAGH v. BARRY* (1890), 24 Q. B. D. 632; 59 L. J. Q. B. 388; 38 W. R. 526; 6 T. L. R. 300, D. C.

Annotations:—*Consd.* *Simpson v. Earlam* (1896), 40 Sol. Jo. 227. *Apprvd. & Foll.* *Dean v. Brown*, [1909] 2 K. B. 573. *Consd.* *Clarke v. West Ham Corpn.*, [1914] 2 K. B. 448. *Appl.* *Sanatorium v. Marshall*, [1916] 2 K. B. 57. *Refd.* *How v. L. & N. W. Ry.*, [1891] 2 Q. B. 496; *Astor v. Barrett*, [1920] 3 K. B. 633.

619. ———.]—The power given by 1888 Act, s. 93, to a county ct. judge, if he shall think just, to order a new trial to be had upon such terms as he shall think reasonable, is a judicial, not an arbitrary, discretion, & the judge is bound by the rules binding upon the High Ct.—*BROWN v. DEAN*, [1910] A. C. 373; 79 L. J. K. B. 690; 102 L. T. 661; *sub nom.* *DEAN v. BROWN*, 54 Sol. Jo. 442, H. L.

Annotations:—*Consd.* *Sanatorium v. Marshall*, [1916] 2 K. B. 57; *Hip Foong Hong v. Neotia*, [1918] A. C. 888; *Astor v. Barrett*, [1920] 3 K. B. 633. *Refd.* *Clarke v. West Ham Corpn.*, [1914] 2 K. B. 448; *Guest v. Ibbotson* (1922), 91 L. J. K. B. 558.

620. Verdict against weight of evidence—Agreement of parties to accept verdict of majority.]

—On the trial of an action in the county ct., there being a disagreement of the jury, the parties were asked by the judge if they would accept the verdict of the majority, & they consented to do so, but afterwards the unsuccessful party applied for, & obtained from the judge, a new trial, on the ground that the finding of the jury was against the weight of evidence & unreasonable:—*Held*: the county ct. judge had power to entertain the application for a new trial, notwithstanding the consent of the parties to accept the verdict of the majority of the jury, the judge being within his jurisdiction in holding that the consent of the parties to accept the verdict of the majority meant no more than that they agreed to treat that as equivalent to a unanimous verdict.—*GROOM v. SHUKER* (1893), 69 L. T. 293; 37 Sol. Jo. 584, D. C.

621. ——— Suspicion of bias on part of jury.]—In a county ct. action brought by a pupil in a public elementary school against an assistant mistress for damages for assault consisting in corporal punishment inflicted by the mistress on the pupil, the jury found a verdict for deft. But the county ct. judge granted a new trial on the grounds that there was a suspicion of bias on the part of the jury, & that a material finding of the jury was against the weight of evidence. On appeal to the Div. Ct. from the grant of a new trial by the county ct. judge it was held, on the facts, that there was no evidence to

justify the grant of a new trial on the first ground, & the case must be remitted to the county ct. for the learned judge to consider whether he would grant a new trial on the sole ground that the verdict was against the weight of evidence. On appeal to Ct. of Appeal:—*Held*: without considering the question as to the right of an assistant teacher to inflict corporal punishment, the decision of the Div. Ct. must be affirmed.—*MANSELL v. GRIFFIN*, [1908] 1 K. B. 947; 77 L. J. K. B. 676; 99 L. T. 132; 72 J. P. 179; 24 T. L. R. 431; 52 Sol. Jo. 376; 6 L. G. R. 548, C. A.

622. No evidence for jury—After ruling of evidence for jury.]—A county ct. judge who at the trial of an action with a jury has ruled that there is evidence for the jury & has entered judgment for the pltf. in accordance with the verdict, has no power to grant a new trial on the ground that there was no evidence for the jury.

With regard to the point that there was no evidence to go to the jury that is undoubtedly a question of law, & there is, therefore, a right of appeal from the decision of the county ct. judge on that point (*ATKIN, J.*).—*CLARKE v. WEST HAM CORPN.*, [1914] 2 K. B. 448; 83 L. J. K. B. 1306; 110 L. T. 1007; 78 J. P. 309; 30 T. L. R. 389; 58 Sol. Jo. 496; 12 L. G. R. 744, D. C.

Annotations:—*Consd.* *Astor v. Barrett*, [1920] 3 K. B. 633. *Refd.* *Sanatorium v. Marshall*, [1916] 2 K. B. 57.

623. Verdict before all evidence called—Misconduct of jury.]—An action was brought by pltf., who was the tenant to defts. of certain premises, for interfering with his water supply. The defence was that the shortage of water was not due to any defect in the supply, but to the waste of the water by pltf. Pltf.'s case having been closed, three witnesses were called for defts. to prove the defence alleged. The jury then interposed & said that they had heard enough evidence of that class, & asked that defts.' expert might be called. Thereupon defts.' counsel, thinking that the jury were in his favour, although he had six other witnesses to the facts in dispute in ct., called his expert & closed his case. The jury returned a verdict for pltf. The judge, upon the application of defts., granted a new trial upon the ground of misconduct on the part of the jury.—*Held*: the intimation of the jury having misled defts.' counsel & also the judge as to the view which they took of the case, there were materials upon which he was entitled to order a new trial upon the ground that the jury had misconducted themselves & had procured a miscarriage of justice, & as the exercise of his discretion in ordering a new trial was based upon proper materials, no appeal lay from his decision.—*BIGGS v. EVANS* (1912), 106 L. T. 796, D. C.

624. New evidence forthcoming—Available at trial.]—*SIMPSON v. EARLAM* (1896), 40 Sol. Jo. 227, D. C.

625. Mistake—As to effect of plaintiff's evidence.]—*SIMPSON v. EARLAM*, (1896), 40 Sol. Jo. 227, D. C.

626. ——— In law.]—By 1888 Act, s. 93, every judgment & order of the ct., except as in this Act provided, shall be final & conclusive between the parties. . . . The judge shall also in every case whatever have the power, if he shall think just, to order a new trial to be had upon such terms as he shall think reasonable.

A county ct. judge, in an action against joint tort-feasors tried without a jury, assessed the damages separately against defts. & gave judgment against them severally. Being subsequently convinced that he had made a mistake he ordered a new trial:—*Held*: he had jurisdiction to do this, inasmuch as the correction of the mistake did not

Sect. 3.—New trial: Sub-sect. 1, C.; sub-sect. 2.

involve reversing the judgment & entering judgment for debts.—*ASTOR v. BARRETT*, [1920] 3 K. B. 633; 70 L. J. K. B. 177; 124 L. T. 208; 36 T. L. R. 888; 64 Sol. Jo. 738, O. A.

627. ——— By registrar.]—*ROSIN v. RANK (JOSEPH)*, LTD., No. 611, *ante*.

628. Judge's misdirection of himself.]—1888 Act, s. 93, provides that every judgment of the ct. except as in the Act provided, shall be final & conclusive between the parties; & that the judge shall also in every case whatever have the power, if he shall think just, to order a new trial to be had upon such terms as he shall think reasonable.

In an action in the county ct., for damages for breach of warranty on the sale of a horse, the judge decided in favour of pl'ts. There was evidence that at the time of the sale the horse was suffering from a cold, & that it afterwards became broken-winded & useless to pl'ts. An application was made to the judge for a new trial on the ground that he had misdirected himself in drawing an erroneous inference that the cold from which the horse was suffering indicated broken-windedness, & he decided that he had so misdirected himself & ordered a new trial:—*Held*: the judge had jurisdiction to make an order.—*SANATORIUM, LTD. v. MARSHALL*, [1916] 2 K. B. 57; 85 L. J. K. B. 941; 114 L. T. 791; 32 T. L. R. 477; 60 Sol. Jo. 568, D. C.

Annotation:—*Refd. Astor v. Barrett*, [1920] 3 K. B. 633.

Surprise.]—*See* Nos. 616, 617, *ante*.

Intention to call fresh evidence.]—*See* No. 617, *ante*.

Appeal from refusal to order new trial.]—*See* Part VIII., Sect. 1, sub-sect. 1, H. (b), *post*.

SUB-SECT. 2.—JURISDICTION OF HIGH COURT.

See 1888 Act, s. 122.

629. Power to decide on whole case stated—Not limited to precise question submitted.]—*STANCLIFFE v. CLARKE*, No. 575, *ante*.

630. Grounds for ordering new trial—Evidence improperly rejected—No miscarriage of justice occasioned.]—Evidence had been improperly rejected by the county ct. judge, but the ct. on the hearing of the motion for a new trial were of opinion that no miscarriage of justice had been thereby occasioned:—*Held*: a new trial would be refused.—*SHAPCOTT v. CHAPPELL* (1883), 12 Q. B. D. 58; 53 L. J. Q. B. 77; 32 W. R. 183, D. C.

Annotations:—*Mentd. Mathews v. Ovey* (1884), 13 Q. B. D. 403; *Prichard v. Prichard* (1884), 54 L. J. Q. B. 30.

631. ——— Failure to decide whether right to sue waived by plaintiff.]—*JARROW BUILDING SOCIETY v. TRAVERS* (1889), 88 L. T. Jo. 48, D. C.

632. ——— *Surprise*.]—An application for a new trial on the ground of surprise must be made to the county ct. judge (*BRAY, J.*).—*TOFTS v. PEARL LIFE ASSURANCE CO., LTD.* (1913), 110 L. T. 190; 80 T. L. R. 212, D. C.; *affd.* on other grounds, [1915] 1 K. B. 189, O. A.

633. ——— One defendant dismissed from action—Before whole case heard—*Prima facie* case made out.]—*HUMMERSTONE v. LEARY*, No. 541, *ante*.

———.]—*See, generally, PRACTICE & PROCEDURE.*

On appeal from order of county court judge granting or refusing new trial.]—*See* Part VIII., Sect. 1, sub-sect. 1, H. (b), *post*.

In Admiralty causes.]—*See* ADMIRALTY, Vol. I., p. 231, No. 1569.

Appeals generally, *see* Part VIII., *post*.

SECT. 4.—EXECUTION.

SUB-SECT. 1.—IN GENERAL.

634. Against goods on default of payment under judgment or order—Whether service necessary—Verbal order to pay—Default of payment.]—*ELY v. MOULE*, No. 546, *ante*.

See, now, 1888 Act, s. 146.

635. ——— Order varying time of payment.]—*ELY v. MOULE*, No. 546, *ante*.

636. ——— Examination of debtor as to property—Married woman—Examination as to separate estate.]—Where a judgment or order has been obtained against a married woman for the recovery or payment of money an order may, under Ord. 25, r. 52, be made for her examination as to her separate estate.—*AYLESFORD (COUNTESS) v. GREAT WESTERN RY. CO.*, [1892] 2 Q. B. 626; 57 J. P. 70; 41 W. R. 42; 8 T. L. R. 786; 36 Sol. Jo. 714, D. C.

See, now, Ord. 25, r. 71.

637. Against shareholder of joint stock company.]—*TAYLOR v. CROWLAND GAS & COKE CO.*, No. 99, *ante*.

638. Against equitable chattel estate—Chancery suit in aid of judgment.]—*BENNETT v. POWELL*, No. 21, *ante*.

639. For what amount execution may be taken out—Judgment to pay money into court—Part of debt & costs paid out of court.]—Pl'tf. who has obtained judgment for debt & costs in the county ct., & has received from debt. out of ct. either the

of the debt, is entitled to a of execution for the residue of the debt & costs, or for the costs alone, as the case may be, although in form the judgment is to pay the money into ct., & the Ct. of Q. B. will grant a mandamus to the clerk of the county ct. commanding him to issue such writ of execution.

I wish it to be understood that it is our clear opinion that if the whole of the debt has been paid there may be execution for the costs, & if a part has been paid there may be execution for the residue & for the costs (*LORD CAMPBELL, C.J.*).—*R. v. SURREY COUNTY COURT CLERK* (1852), *Cox, M. & H.* 613; 21 L. J. Q. B. 310; 19 L. T. O. S. 136; 16 J. P. 664; 17 Jur. 179.

Annotation:—*Distd. Davies v. Fletcher* (1853), 1 C. L. R. 1025.

640. ——— Amount exceeding statutory limit.]—No *certiorari* lies to remove into a superior ct. interpleader proceedings in a county ct.

The officer of a county ct. who has seized goods in execution under process of that ct. is not required to retire from possession of them because an interpleader summons has been issued.

It is no ground for a prohibition to a county ct., that under process from that ct. to levy a sum within its jurisdiction, the officer has seized property to a greater amount.—*M'KELLAR v. SUMMERS* (1854), 23 L. T. O. S. 146; 2 C. L. R. 1284; *sub nom. Re MACKELLAR, Ex p. SUMMERS*, 18 J. P. 362; *sub nom. Re M'KILLAR v. SUMMERS, Ex p. SUMMERS*, 18 Jur. 522; *sub nom. MACKELLAR v. SUMMERS, Ex p. SUMMERS*, 2 W. R. 477.

641. ——— Cross-judgments.]—*Held*: (1) 1888 Act, s. 150 applied where there were cross-judgments in separate actions, & not merely where there were cross-judgments upon claim & counter-claim in the same action; (2) it applied where the party against whom judgment had been obtained for the larger sum had paid that sum into ct. so that no execution was taken out; (3) the party against whom judgment had been obtained for the larger sum was entitled to have deducted from the sum paid into ct. the smaller sum for

which he had obtained judgment, & the balance only between the larger & smaller sums should be paid out to the party who had obtained judgment for the larger sum, notwithstanding that the solr. for the party who had obtained judgment for the larger sum claimed a lien for his costs which exceeded in amount the sum paid into ct.—WARD *v.* HADDRILL, [1904] 1 K. B. 399; 73 L. J. K. B. 277; 90 L. T. 232; 52 W. R. 398; 48 Sol. Jo. 246, D. C.

SUB-SECT. 2.—EXECUTION AND EFFECT OF WARRANT.

642. From what time goods bound — Registrar also high bailiff—From time at which application for issue of writ made.]—Sale of Goods Act, 1893 (c. 71), s. 26, as applied to execution in county cts. must be construed as providing that the time from which a writ of execution, in a county ct. where the registrar is also high bailiff, binds the property in the goods of the execution debtor is the time at which application is made for the writ, & not the time at which the writ is delivered to the officer charged with the enforcement of it. *Qu.*: whether the same rule does not apply in a county ct. where the registrar is not also high bailiff.—MURGATROYD *v.* WRIGHT, [1907] 2 K. B. 333; 76 L. J. K. B. 747; 97 L. T. 108; 23 T. L. R. 517; 14 Mans. 201, D. C. *Annotation*:—*Consd.* Birstall Candle Co. *v.* Daniels, [1908] 2 K. B. 254.

643. — Warrant sent to another court—From time at which warrant issued by registrar of second court.]—Where a warrant of execution against the goods of a judgment debtor has been issued out of a county ct. & is sent by the high bailiff of that ct. under 1888 Act, s. 158, to the registrar of another county ct. for execution against the goods of the judgment debtor then within the jurisdiction of that other ct., the time from which the writ of execution binds the property in those goods of the judgment debtor under Sale of Goods Act, 1893 (c. 71), s. 26, is the time at which the warrant of execution is issued by the registrar of that other ct. to the high bailiff of that ct.—BIRSTALL CANDLE CO. *v.* DANIELS, [1908] 2 K. B. 254; 77 L. J. K. B. 590; 99 L. T. 109; 24 T. L. R. 572; 52 Sol. Jo. 458, D. C.

Compare No. 21, *ante*.

644. To what value goods may be seized—Contingent expenses—Execution for sum exceeding £20—Bankruptcy Act, 1890 (c. 71), s. 11 (2).]—Although a sheriff, or high bailiff of a county ct. when levying under a warrant of execution is entitled to seize sufficient goods to cover the contingent expenses of possession money, appraisement, & sale, for the purpose of determining whether the execution is “for a sum exceeding £20,” within the meaning of sect. 11 of the above Act, & whether, consequently, he is obliged to retain the proceeds of execution as therein directed, the judgment debt & poundage only can be taken into consideration, & not the expenses of possession money, appraisement, & sale, unless those expenses have been actually incurred.—WILLEY *v.* HUCKS, [1909] 1 K. B. 760; 78 L. J. K. B. 513; 100 L. T. 333; 53 Sol. Jo. 288; 16 Mans. 106, D. C.

See, further, BANKRUPTCY & INSOLVENCY, Vol. V., pp. 821–824.

Power of bailiff to break & enter.]—See EXECUTION.

645. Possession fees—Goods seized not goods of debtor—Notice by execution creditor admitting claim of third party.]—THOMAS *v.* PEEK, No. 22, *ante*.

646. — Ord. 27, r. 1—Validity of.]—THOMAS *v.* PEEK, No. 22, *ante*.

647. — Execution followed by distress on other goods—Claim for rent under 1888 Act, s. 160.]—Where the high bailiff of a county ct. seizes goods under a warrant of execution, & subsequently distrains on other goods of the judgment debtor to satisfy a claim for rent made by the landlord under 1888 Act, s. 160, the execution & distress are to be treated as separate proceedings, & the high bailiff is entitled to a separate set of possession fees in respect of each proceeding.—*Re* BROSTER, *Ex p.* PRUDDAH, [1897] 2 Q. B. 429; 66 L. J. Q. B. 766; 76 L. T. 692; 45 W. R. 576; 13 T. L. R. 437; 41 Sol. Jo. 545; 4 Mans. 212, D. C.

648. — Several warrants against same debtor—Different goods seized under each warrant.]—When the high bailiff of a county ct. levies execution on the goods of a judgment debtor under several warrants, & seizes the same goods to satisfy the warrants, he is only entitled to charge one possession fee. But if he seizes & appropriates different goods to satisfy each warrant, he is entitled to possession money under each warrant, although all the goods seized under the several warrants are on the same premises & possession under all the warrants is held simultaneously by one person only.—*Re* MORGAN, *Ex p.* BOARD OF TRADE, [1904] 1 K. B. 68; 72 L. J. K. B. 948; 89 L. T. 452; 52 W. R. 79; 20 T. L. R. 2; 47 Sol. Jo. 877; 10 Mans. 358.

Annotation:—*Consd.* Glasbrook *v.* David & Vaux, [1905] 1 K. B. 615.

SUB-SECT. 3.—REMOVAL OF JUDGMENT INTO HIGH COURT.

649. Former law.]—A judgment of the county ct. cannot be removed into the superior cts. for the purpose of issuing execution thereon.—MORETON *v.* HOLT (1855), 10 Exch. 707; 24 L. J. Ex. 169; 24 L. T. O. S. 261; 19 J. P. 151; 1 Jur. N. S. 215; 3 W. R. 207; 3 C. L. R. 348; 156 E. R. 624.

See, now, 1888, s. 151, & 1919 Act, s. 20.

650. To issue execution for costs.]—There is no power to order a judgment given in the county ct. to be removed into the High Ct. for the purpose of getting execution thereon.—SCONCE *v.* BLACKMAN (1886), 2 T. L. R. 421, D. C.

SUB-SECT. 4.—STAY OF.

651. Under 1888 Act, s. 153—“Other sufficient cause”—Mere inability to pay is not.]—A county ct. judge has power under 1888 Act, s. 153 to stay execution where it appears to him that debt. is unable “from sickness or other sufficient cause” to pay & discharge the debt or damages recovered against him:—*Held*: mere inability to pay owing to want of means was not a sufficient cause within the meaning of the sect. & no jurisdiction to stay execution on such a ground.—ATTENBOROUGH *v.* HENSCHEL, [1895] 1 Q. B. 833; 64 L. J. Q. B. 255; 72 L. T. 192; 59 J. P. 150; 43 W. R. 283; 39 Sol. Jo. 286; 15 R. 294, D. C.

Annotation:—*Consd.* Pearson *v.* Wilcock, [1906] 2 K. B. 440. *See, now*, 1919 Act, s. 23.

652. Under 1919 Act, s. 23—“Any cause”—Discretion must be exercised judicially.]—KELLY *v.* WHITE, PENN GASKELL *v.* ROBERTS, [1920] W. N. 220, D. C.

Annotation:—*Consd.* Upjohn *v.* Macfarlane, [1922] 2 Ch. 256.

Under Bankruptcy Act, 1888 (c. 52), s. 122.]—See BANKRUPTCY & INSOLVENCY, Vol. IV., p. 506, Nos. 4563, 4564.

Sect. 4.—Execution: Sub-sects. 4, 5, 6, 7, 8, 9, 10 & 11. Sect. 5.]

653. On judgment against executor—Administration action pending in High Court.]—Previously to the administration order in a creditor's action another creditor had obtained judgment in a county ct. against the debt. a sole extrix. The ct. refused to restrain the creditor from pursuing his remedy in the county ct. against the extrix. personally but ordered payment to the creditor by the receiver of the estate without prejudice to the question whether the extrix. should be allowed the payment.—*Re WOMERSLEY, ETHERIDGE v. WOMERSLEY* (1885), 29 Ch. D. 557; 54 L. J. Ch. 965; 53 L. T. 260; 33 W. R. 935.

Annotation:—Reid. Re Thomas, Sutton, Carden v. Thomas, [1912] 2 Ch. 348.

See, further, EXECUTORS & ADMINISTRATORS.

SUB-SECT. 5.—OUT OF JURISDICTION.

654. In district where debtor resident—Judgment recovered in City of London Court.]—*R. v. CROYDON COUNTY COURT REGISTRAR* (1894), 11 T. L. R. 19, D. C.

Annotation:—Consd. Felton v. Bower, [1900] 1 Q. B. 598.

655. Warrant sent for execution to another court—From what time goods bound.]—*BIRSTALL CANDLE CO. v. DANIELS*, No. 643, *ante*.

656. — Negligence of high bailiff—Jurisdiction of judge of home court to order high bailiff to pay damages.]—*R. v. SHROPSHIRE COUNTY COURT JUDGE*, No. 246, *ante*.

See 1888 Act, s. 158.

Land situated outside jurisdiction.]—*See* No. 142, *post*.

SUB-SECT. 6.—APPOINTMENT OF RECEIVER.

657. Power to appoint—Execution against equitable interests in land.]—Under Jud. Act, 1873 (c. 66), s. 89, a county ct. has power to appoint a receiver by way of execution against equitable interests in land.—*R. v. SELFE*, [1908] 2 K. B. 121; 77 L. J. K. B. 697; 98 L. T. 930; 24 T. L. R. 560, D. C.

658. Whether appointment properly made—Contingent interest in fund in absolute discretion of trustees—Order against trustees for payment.]—An order was made, in an action in a county ct., appointing a receiver to receive the interest of a sum of money in the hands of trustees, & ordering the trustees to pay a specific amount out of the interest to the receiver half-yearly until the judgment in the action should be satisfied. The trustees were trustees of a will, by which they were directed to set apart & invest the sum in question, & were authorised, at their absolute discretion, from time to time, & at such time or times as they should think proper, to pay or apply the whole or any part of the income to or for the benefit of the judgment debtor in such a manner in all respects as they should think proper. The trustees applied for a prohibition:—*Held*: as it depended on the discretion of the trustees whether anything should be paid to the judgment debtor, the receiver could not be entitled to receive the interest in their hands, & an order for payment could not be made against the trustees, who were strangers to the action, & therefore the county ct. judge had exceeded his jurisdiction, & the proper remedy was by prohibition.—*R. v. LINCOLNSHIRE COUNTY COURT JUDGE* (1887), 20 Q. B. D. 167; 57 L. J. Q. B. 136; 58 L. T. 54; 36 W. R. 174, D. C.

659. — Money to become payable under fire policy.]—*PEARCE v. JOHNS* (1897), 41 Sol. Jo. 661, C. A.

660. Costs of obtaining appointment—"Amount of debt & costs"—Does not include costs of obtaining interim injunction restraining property being dealt with.]—Ord. 13, r. 14 provides that where a receiver is appointed by way of equitable execution & "the amount of debt & costs" due to the applt. exceeds £50 & does not exceed £100, the total amount to be allowed for the costs of obtaining the appointment of the receiver shall not exceed 2½ *per cent.* of the amount of such debt & costs. In determining, for the purpose of taxation, "the amount of debt & costs":—*Held*: the costs incurred by applt. in obtaining the interim injunction ought not to be added to the amount of the judgment debt & costs.—*CARRINGTON v. DEANE*, [1917] 1 K. B. 717; 86 L. J. K. B. 743; 116 L. T. 561, D. C.

SUB-SECT. 7.—AGAINST PARTNERSHIP.

See, generally, EXECUTION; PARTNERSHIP.

661. Order charging partner's interest — Discretion of county ct. judge to make—After receiver appointed in High Court.]—*EDMONDSON v. HARRISON* (1896), 41 Sol. Jo. 128, D. C.

—*See, generally, PARTNERSHIP.*

Judgment summons—Power to issue against alleged partner—Judgment recovered in High Ct. against firm—Form of affidavit.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1032, 1033, Nos. 8438, 8448.

—*See, generally, BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1032–1034.*

SUB-SECT. 8.—PRIOR CLAIMS FOR RENT AND TAXES.

662. Claim for rent—Goods of stranger seized—Wrongful seizure.]—If the bailiff seizes, under a warrant of a county ct., goods belonging to a stranger, he cannot, under 1856 Act, s. 75, distrain such goods for the rent of the landlord; & if he does so, the true owner is entitled to have his goods back.—*BEARD v. KNIGHT* (1858), 8 E. & B. 865; 27 L. J. Q. B. 359; 4 Jur. N. S. 782; 6 W. R. 226; 120 E. R. 323.

Annotations:—Folld. Foulger v. Taylor (1860), 5 H. & N. 202. *Distd. Hughes v. Smallwood* (1890), 25 Q. B. D. 306.

663. — — —.]—Where the goods of a third person are seized under an execution from the county ct., the landlord of the execution debtor is not entitled to be paid arrears of rent under 1856 Act, s. 75.

Where the landlord appears upon the hearing of an interpleader summons in the county ct., he, as well as the execution creditor, & the claimant, has a right of appeal.—*FOULGER v. TAYLOR* (1860), 5 H. & N. 202; 1 L. T. 57, 481; 24 J. P. 167; 8 W. R. 279; 157 E. R. 1157; *sub nom. WILCOXON v. SEARBY, FOULGAR v. TAYLOR*, 29 L. J. Ex. 154.

Annotation:—Distd. Hughes v. Smallwood (1890), 25 Q. B. D. 306.

664. — — — Goods seized on premises of which debtor's wife was tenant.]—By 1881 Act, s. 160, when goods in a tenement for which rent is due are taken in execution under the warrant of a county ct., the landlord may claim the rent due to him by delivering a notice to the bailiff making the levy, & such bailiff shall, in making the levy, in addition thereto distrain for the rent so claimed.

Execution having issued upon a judgment in a county ct. against debt., goods belonging to him

were taken in execution in a house of which the wife of deft. was the lessee. The landlords gave to the bailiff making the levy a notice under s. 160 claiming arrears of rent due from the wife:—*Held*: as deft.'s goods were rightfully taken in execution, the claim of the landlords was good.—*HUGHES v. SMALLWOOD* (1890), 25 Q. B. D. 306; 59 L. J. Q. B. 503; 63 L. T. 198; 55 J. P. 182, D. C.

665. — By landlord after determination of lease—Under 8 Anne, c. 18, ss. 6 & 7.]—Deft. D. was tenant to his father E. of a farmhouse & land. He surrendered the premises on Mar. 25, 1912, on which date he was in arrear with his rent. After that date he continued to occupy the dwelling-house, but was no longer in occupation of the land. On July 9, 1912, certain goods in the house were seized in satisfaction of a judgment recovered against D. in the county ct. E. thereupon claimed that by virtue of 1888 Act, s. 160, & the above Act, ss. 6 & 7, he was entitled to payment of one year's arrears of the rent due on Mar. 25, 1912 out of the proceeds of the execution in priority to the rights of the execution creditor:—*Held*: the provisions of 1888 Act, s. 160 did not extend to sects. 6 & 7 of above Act, but were confined to sect. 1 of that statute, & did not apply in the present case, also sects. 6 & 7 of above Act did not apply in the case of a claim made by an execution creditor, but were restricted to cases of landlord & tenant.—*LEWIS v. DAVIES*, [1914] 2 K. B. 469; 83 L. J. K. B. 598; 110 L. T. 461; 30 T. L. R. 301, C. A.

Annotation:—*Mentd. Re British Salicylates*, [1919] 2 Ch. 155.

See, generally, DISTRESS.

— Right of high bailiff to separate sets of possession fees—On execution followed by distress.]—*See* No. 647, *ante*.

Arrears of taxes.]—*See* EXECUTION.

SUB-SECT. 9.—RECOVERY OF POSSESSION OF LAND.

See 1888 Act, ss. 138, 142.

666. Whether warrant of possession can be issued—Where land situated outside jurisdiction.]—*ELLIS v. PEACHEY*, No. 142, *ante*.

Execution out of jurisdiction generally, *see* sub-sect. 5, *ante*.

SUB-SECT. 10.—RECOVERY OF SPECIFIC CHATTELS.

667. Jurisdiction to order delivery—Without option of paying assessed value.]—In an action of detinue brought in the county ct., the county ct. judge has jurisdiction to make an order for the delivery by deft. of the specific chattel wrongfully detained, without giving him the option of paying its assessed value as an alternative.—*WINFIELD v. BOOTHROYD* (1886), 54 L. T. 574; 34 W. R. 501; 2 T. L. R. 472, D. C.

668. — After failure to obey order for delivery up or payment of value.]—Where in an action in a county ct. for the return of a chattel wrongfully detained the ct. gives judgment for pltf. & thereby orders deft. to return it or to pay its value within a specified time, in the event of deft. failing to comply with the order within the time limited, the ct. may under Ord. 25, r. 69, issue a warrant of delivery without giving deft. any further option of paying the value. The power to do so is not confined to a case in which the original order was for the return of the chattel

simpliciter without any option to deft. of retaining it upon payment of the value.—*BAILEY v. GILL*, [1919] 1 K. B. 41; 88 L. J. K. B. 591; 120 L. T. 26; 63 Sol. Jo. 41, D. C.

669. — Assessment of value of chattel not essential.]—A county ct. judge has jurisdiction under the Jud. Act, 1873, s. 89, & Ord. 25, r. 57, to make an order of committal against a deft. for wilful disobedience to an order for the delivery of a specific chattel, notwithstanding that a warrant of delivery containing a direction to the bailiff to distrain all the lands & chattels of deft. within the district of the county ct. had been issued to enforce the order, but had remained unexecuted.

It is not now necessary, by reason of Ord. 48, r. 1, for the value of a chattel to be first assessed, as a condition precedent to the making of an order by a county ct. judge for the delivery of a specific chattel.—*HYMAS v. OGDEN*, [1905] 1 K. B. 246; 74 L. J. K. B. 101; 91 L. T. 832; 53 W. R. 209; 21 T. L. R. 85; 49 Sol. Jo. 99, C. A.

670. Jurisdiction to commit—On wilful refusal to obey order for delivery—Although no distress under warrant of delivery.]—*HYMAS v. OGDEN*, No. 669, *ante*.

SUB-SECT. 11.—INTERPLEADER.

See INTERPLEADER.

SECT. 5.—ATTACHMENT OF DEBTS.

General law of attachment of debts.]—*See* EXECUTION.

671. Time for—Judgment payable on future date—Not before date for payment.]—By Ord. 26, r. 1, a person who has obtained a judgment or order for the recovery or payment of money may, upon lodging with the registrar of the ct. an affidavit stating that judgment has been recovered or an order made, & that it is still unsatisfied, & to what amount, & that any other person, called the garnishee, is indebted to the judgment debtor, enter a plaint to obtain payment to him of the amount of the debt due to the debtor, & thereupon a summons calling upon the garnishee to show cause why he should not pay the debt to the judgment creditor shall be issued:—*Held*: garnishee proceedings under the above-mentioned rule could not be commenced upon a county ct. judgment for payment of money before the time given by the judgment for payment of the money had expired.—*WHITE, SON & PHIL v. STENNINGS*, [1911] 2 K. B. 418; 80 L. J. K. B. 1124; 104 L. T. 876; 27 T. L. R. 395; 55 Sol. Jo. 441, C. A.

672. What debts attachable—Not money paid into court under judgment or order.]—The proceeds of a judgment paid into the county ct. are not attachable by means of a garnishee summons at the suit of a third person as a debt, due from the registrar of the ct. to the judgment-debtor.—*DOLPHIN v. LAYTON* (1879), 4 C. P. D. 130; 48 L. J. Q. B. 426; 43 J. P. 623; 27 W. R. 786.

Annotation:—*Mentd. Prout v. Gregory* (1889), 24 Q. B. D. 281.

— — — Right of judgment creditor to apply for payment out of court.]—*See* Ord. 26, r. 16.

673. — — — Meaning of “judgment or order.”]—The words “judgment or order” in Ord. 26, r. 16, mean a judgment or order obtained in the county ct. Therefore where A. has obtained judgment in the High Ct. against B. he is not entitled to an order to have paid out to him, in satisfaction of that judgment, money in the hands

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of the registrar of a county ct. as the result of proceedings in that ct. by B. against C. *Qu.*: whether the words "judgment or order" in Ord. 26, r. 16, do not refer to a judgment or order in the same county ct.—*LLEWELLYN v. ROWLAND, Ex p. WRIGHT & SON* (1907), 97 L. T. 433; 23 T. L. R. 589, D. C.

—.]—*See, now, Ord. 26, r. 16.*

—.]—*See, generally, EXECUTION.*

674. Effect of order—Attachment of all money due—Although exceeding judgment debt.]—The decision in *Rogers v. Whiteley*, [1892] A. C. 118, that a garnishee order in the ordinary form in the High Ct. attaches the whole of the money due from the garnishee to the judgment debtor, even although that amount exceeds the judgment debt, applies to a garnishee summons in the ordinary form in the county ct.—*YATES v. TERRY*, [1901] 1 K. B. 102; 70 L. J. Q. B. 24; 83 L. T. 415; 49 W. R. 112, D. C.; *reversd.* on other grounds, [1902] 1 K. B. 527, C. A.

675. Effect of payment by garnishee—Payment under protest to sheriff—Before summons returnable.]—Pltf. having recovered judgment against deft. for £18, & deft. having recovered judgment against B. for £44, pltf. obtained an order, attaching B.'s debt, together with a summons, calling on B. to show cause why he should not pay to pltf. £18 of the amount of the debt due to deft. Afterwards, & before the return of the summons, deft. taxed his costs as against B., & the same day

issued a *fi. fa.* under which the sheriff took possession of the goods of B. B. gave notice to the sheriff of the summons, & offered to pay the sheriff the debt due to deft., less the amount due to pltf. This the sheriff refused to accept, & insisted on being paid the whole amount for which execution was levied. Whereupon B. paid the whole amount under protest:—*Held*: B. having been compelled by process of law to pay the debt to the sheriff, could not be called upon to pay it a second time to pltf.—*TURNBULL v. ROBERTSON* (1878), 47 L. J. Q. B. 294; 38 L. T. 389; 42 J. P. 440; 26 W. R. 557, D. C.

Annotations:—*Mentd.* *Cronmire v. MacColla* (1893), 9 T. L. R. 549; *Robson v. Smith*, [1895] 2 Ch. 118.

676. — To judgment creditor—After notice of assignment of debt.]—Money in the hands of deft. was attached under a garnishee order to satisfy a judgment debt. The judgment debtor assigned to pltf. the balance of the amount in the hands of deft., & notice was given of the assignment. Subsequently a garnishee order was served on deft. with respect to another judgment debt. Deft. thereupon paid the amount of the first judgment debt into ct., & the balance of the money in his hands he paid into ct. under the second garnishee order. In an action by pltf. to recover the amount of the balance:—*Held*: when the first garnishee order had been satisfied by payment into ct., the assignment took effect as to the balance in the hands of deft., the money should have been paid to pltf., & he was entitled to recover the amount.—*YATES v. TERRY*, [1902] 1 K. B. 527; 71 L. J. K. B. 282; 86 L. T. 133; 50 W. R. 293; 18 T. L. R. 262, C. A.

Part VII.—Costs.

SECT. 1.—DISCRETION OF JUDGE.

SUB-SECT. 1.—IN GENERAL.

677. Duty to exercise—Action to recover possession of premises—Defence under Rent Restrictions Acts.]—Pltf. brought an action in the county ct. to recover possession of a house which she had purchased for her own occupation & of which notwithstanding notice to quit duly served on deft., the tenant, deft. refused to give pltf. possession. The county ct. judge refused to make an order for possession on the ground that upon the evidence he was not satisfied that alternative accommodation was available for deft. within Increase of Rent, etc. (Amendment) Act, 1919 (c. 90), s. 1 (1) (c), & made no order as to costs. A bill of costs was served upon pltf.'s solrs., being deft.'s costs in the county ct. indorsed with a two days' notice of taxation before the registrar. Correspondence followed, which resulted in the registrar sending to pltf.'s solrs. a note made by the county ct. judge the material part of which was "I made no specific order as to costs, but I did not intend to deprive deft. of any costs to which he might be entitled as the successful party." The costs were taxed & had since been paid:—*Held*: the registrar had rightly taxed the costs, inasmuch as they were the costs of an action within the meaning of 1888 Act, s. 113, & were not governed by Increase of Rent & Mortgage Interest (War Restrictions) Rules, 1916, r. 17 (1). They therefore followed the event, as the county ct. judge made no specific order as to them.

Where deft. relies on the Rent Restrictions Acts as a defence to an action for recovery of possession of premises, the judge should consider expressly

the question of costs, & not leave them to fall automatically on one party.—*BENSUSAN v. BUSTARD*, [1920] 3 K. B. 654; 89 L. J. K. B. 1117; 124 L. T. 278; 85 J. P. 15; 36 T. L. R. 811. *Ad Sol. Jo.* 669, D. C.

678. Limitations on—Action outside jurisdiction—No power to award costs to defendant.]—At the hearing of a plaint in trespass *quare clausum fregit* in a county ct. under 1846 Act, pltf. having concluded his case, deft. set up a title to the land, whereupon the judge, holding that he had no jurisdiction, nonsuited pltf., & made an order on him to pay deft.'s costs, including the expense of his counsel & attorney:—*Held*: the judge of the county ct., having no jurisdiction in the subject-matter, had no right to award costs.—*LAWFORD v. PARTRIDGE* (1857), 1 H. & N. 621; 26 L. J. Ex. 147; 28 L. T. O. S. 272; 21 J. P. 120; 3 Jur. N. S. 271; 5 W. R. 295; 156 E. R. 1350.

Annotation:—*Mentd.* *The Kate* (1864), Brown, & Lush. 218.

679. — Action transferred to High Court—Power to make order as to costs already incurred.]—After an order by a county ct. to transfer a cause to the Ct. of Ch., the jurisdiction of the county ct. is gone, & an order by it that pltf. should pay costs was discharged without prejudice to any order the Ct. of Ch. might make as to the costs.—*HARES v. LEA* (1870), L. R. 10 Eq. 683; 22 L. T. 776; 18 W. R. 1083.

680. — Power to award costs to third party.]—*BARBROOKE v. MOORE* (1889), 88 L. T. Jo. 155.

681. — Power to award costs against defendant—Action struck out under 1888 Act, s. 114.]—Where an action in a county ct. is struck

out for want of jurisdiction under 1888 Act, s. 114, the ct. may, if it shall think just, award costs against deft.—*WATSON v. PETTS* (No. 2), [1899] 1 Q. B. 430; 68 L. J. Q. B. 249; 80 L. T. 21; 15 T. L. R. 174, D. C.

682. — **No power to establish local practice—Restricting discretion.**—*R. v. MARYLEBONE COUNTY COURT JUDGE* (1890), 34 Sol. Jo. 459, D. C.

683. — **& inconsistent with County Court Rules.**—A county ct. judge cannot lay down a general practice that only the costs of such witnesses who have been called at the trial shall be allowed, & that if it be desired to have witnesses allowed who have not been called application is to be made to him, such practice being contrary to the provisions of Ord. 50, r. 16.—*THE CASHMERE* (1890), 15 P. D. 121; 59 L. J. P. 57; 62 L. T. 814; 38 W. R. 623; 6 Asp. M. L. C. 515, D. C.

Annotations :—*Reid. How v. L. & N. W. Ry.*, [1981] 2 Q. B. 496; *Neptune Steam Navigation Co. v. Solater & Procter*, *The Delano* (1894), 71 L. T. 544.

684. — **No power to alter former order as to costs.**—On Dec. 9 an order was made by a county ct. judge giving judgment for debts. with costs. On Dec. 22, upon the application of pltf., he reviewed his decision & made an order for no costs. Debts. appealed :—*Held* : (1) he had no power to review the former decision; (2) although debts. might have applied for a prohibition, it did not preclude them from bringing the case before the ct. by way of appeal.—*SWEETLAND v. TURKISH CIGARETTE Co.* (1899), 80 L. T. 472; 47 W. R. 511; 43 Sol. Jo. 417, D. C.

Annotations :—*Reid. Turner v. Kingsbury Collieries*, [1921] 3 K. B. 169. *Mentd. Smythe v. Wiles*, [1921] 2 K. B. 66.

685. — **No power to award fixed sum—Costs not taxed under 1888 Act, s. 118.**—A county ct. judge has no power under 1888 Act, s. 113, to award a party a fixed sum for costs which have not been taxed under sect. 118, nor to apportion between the parties costs of an action which have not been so taxed.—*GOLDING v. SMITH*, [1910] 1 K. B. 462; 79 L. J. K. B. 375; 102 L. T. 19, D. C.

686. — **Costs of new trial ordered by High Court to abide event.**—Pltf. having brought an action in the county ct. for personal injuries caused by debts.' negligence, debts. paid money into ct. with a denial of liability. A trial was had, but on appeal the Div. Ct. ordered a new trial, with costs of the first trial to abide the event. On the second trial pltf. recovered a verdict, but for no more than the amount paid into ct. :—*Held* : though debts. were entitled to the general costs of the action, the county ct. judge had a discretion to give pltf. his costs of the issue of negligence on which he had succeeded, & that discretion was not taken away by the order of the ct. that the costs should abide the event.—*DUNN v. SOUTH EASTERN & CHATHAM RY. Co.*, [1903] 1 K. B. 358; 72 L. J. K. B. 127; 88 L. T. 60; 51 W. R. 427; 19 T. L. R. 161; 47 Sol. Jo. 223, D. C.

687. **In actions against co-defendants—One defendant successful—Other defendant unsuccessful.**—In an action against co-defts. a county ct. judge held that pltf. was entitled to damages against the first deft. for trespass on the ground that they had no right of way, but not against deft. R. for breach of covenant, & ordered pltf. to pay R.'s costs &, on the authority of *Bullock v. London General Omnibus Co.*, [1907] 1 K. B. 264, ordered that pltf. should be at liberty to add R.'s costs to his own & recover both sets of costs from the unsuccessful debts. :—*Held* : the order as to costs was wrong, the principle of *Bullock v. London*

General Omnibus Co., *supra*, not applying to a case in which a second deft. was joined by pltf. under a misapprehension of his legal rights.—*POULTON v. MOORE* (1913), 83 L. J. K. B. 875; 109 L. T. 976; 30 T. L. R. 155, D. C.; *reversd.* on other grounds, [1915] 1 K. B. 400, C. A.

See, generally, PRACTICE & PROCEDURE.

In remitted actions.—*See* No. 404, *ante*.

In administration actions.—*See* No. 721, *post*.

In favour of unsuccessful party.—*See* Sub-sect. 2, *post*.

In workmen's compensation proceedings.—*See* MASTER & SERVANT.

688. **Action to recover possession of premises—Defence under Rent Restrictions Acts—Whether costs governed by 1888 Act, s. 113, or by Rent Restrictions Rules.**—*BENSUSAN v. BUSTARD*, No. 677, *ante*.

SUB-SECT. 2.—TO DEPRIVE SUCCESSFUL PARTY COSTS.

See, generally, PRACTICE & PROCEDURE.

689. **Plaintiff—Failure to settle action—Cheque as tender.**—*LOWE v. MADEN* (1910), 45 L. Jo. 238, D. C.

690. — **Plaintiff partly successful—No grounds for deciding that action should not have been brought—Payment of defendant's costs.**—*NEVILLE v. HODSON* (1914), 3 L. J. C. C. 7, D. C.

691. — **Dissatisfaction with evidence of plaintiff's witnesses.**—The fact that a judge in the county ct. is dissatisfied with the evidence of a witness called on behalf of pltf. in an action is no ground for depriving pltf. of costs to which they are entitled as the result of succeeding in the action.—*HUDSONS, LTD. v. DE HALPERT* (1913), 108, L. T. 416; 29 T. L. R. 257, D. C.

Annotation :—*Mentd. Ashburton v. Gray*, [1916] 2 K. B. 353.

692. **Defendant—Not guilty of misconduct—Payment of plaintiff's costs.**—A county ct. judge has no power to order a successful deft. in absence of misconduct on his part to pay the costs of pltf.—*ANDREW v. GROVE*, [1902] 1 K. B. 625; 71 L. J. K. B. 439; 86 L. T. 720; 50 W. R. 524; 18 T. L. R. 455; 46 Sol. Jo. 380, D. C.

693. — **Setting up Statute of Limitations.**—A county ct. judge has no jurisdiction to deprive a successful deft. of costs merely on the ground that he had succeeded on the defence of the above statute.—*ELMS v. HEDGES* (1906), 95 L. T. 145; 22 T. L. R. 574, D. C.

Annotations :—*Reid. Westgate v. Crowe*, [1908] 1 K. B. 24; *Dann v. Curzon* (1910), 104 L. T. 66.

694. — **Not affording information—To enable plaintiff to sue right party.**—*WESTGATE v. CROWE*, No. 593, *ante*.

695. — **Conduct of parties before & during action.**—A county ct. judge, in deciding whether to deprive a successful deft. of costs, is entitled to take into consideration the conduct of the parties both before & during the action.—*DANN v. CURZON* (1910), 104 L. T. 66; 27 T. L. R. 163; 55 Sol. Jo. 189, D. C.

In workmen's compensation proceedings.—*See* MASTER & SERVANT.

SUB-SECT. 3.—TO AWARD COSTS ON HIGHER SCALE.

696. **Claim exceeding £20—Less than £20 recovered.**—No appeal lies, under 1850 Act, s. 24, to the High Ct. from the decision of a county ct. on an interlocutory matter, such as the taxation of

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costs under 1856 Act, s. 34. An appeal on such a matter having been brought this ct. refused to hear the point argued on the ground, that they had no jurisdiction to decide such a point, but entertained the appeal so far as to dismiss it with costs.

When pltf. in a county ct. claims more but recovers less than £20, the costs ought to be taxed on the lower, & not on the higher scale.—**CARR v. STRINGER** (1858), E. B. & E. 123; 31 L. T. O. S. 96; 22 J. P. 271; 4 Jur. N. S. 439; 120 E. R. 454.

Annotations:—**Consd.** *Jonas v. Long* (1888), 20 Q. B. D. 564; *The Cashmere* (1890), 15 P. D. 121. **Refd.** *Stone v. Dean* (1858), 4 Jur. N. S. 534; *How v. L. & N. W. Ry.*, [1891] 2 Q. B. 496; *Pole v. Bright*, [1892] 9 Q. B. 603; *Gibson v. Kilner* (1893), 69 L. T. 310.

697. ———.]—KING v. CHARING CROSS No.

See, now, Ord. 53, r. 17.

698. ——— Whether more than £20 recovered.]—MAW v. BEST (1898), 42 Sol. Jo. 382, D. C.

699. Damages reduced on appeal below £20—& costs ordered to be allowed on lower scale.]—Where, on appeal from a judgment in the county ct., the amount of the damages is reduced to a sum below £20, the costs to be allowed on the lower scale, there is no power in the judge of the county ct. to interfere with that order by allowing costs on the higher scale.—**FINCH v. JOHNSON** (1886), 2 T. L. R. 507, D. C.

700. Under 1888 Act, s. 119—Limited to grounds specified in section.]—A county ct. judge has no power to order costs to be taxed on the £100 scale when there is a less amount claimed in the action, unless he certify that the action involved some novel or difficult point of law, or that the question litigated was of importance to some class or body of persons or of general or public interest, & if such an order be made a prohibition will be granted. The reservation of the powers, rights, and privileges of the judge of the City of London ct. in 1867 Act, s. 35, does not confer upon him any greater power over costs than that given to judges of county cts.—**HOWARD v. GRAVES** (1885), 52 L. T. 858; 1 T. L. R. 515, D. C.

701. ——— Whether question of character included.]—In awarding costs on the higher scale to a successful party under 1882 Act, s. 5, it is not sufficient for the judge to certify that the action involved a question of character.

A certificate under s. 5 should follow the language of the sect. (**STEPHEN, J.**).

Qu.: whether the ct. will inquire into the sufficiency of the grounds of a certificate so framed.—**R. v. CITY OF LONDON COURT JUDGE** (1886), 18 Q. B. D. 105; 56 L. J. Q. B. 79; 55 L. T. 736; 35 W. R. 123, D. C.

Annotation:—**Apld.** *Day v. Day* (1916), 85 L. J. K. B. 917.

702. ——— “Question of importance to class or body of persons”—Defence to claim for arrears of maintenance that wife had committed adultery.]—A wife sued her husband for £3 arrears of maintenance under a separation agreement, which contained a *dum casta* clause. The husband alleged that she had committed adultery. The county ct. judge found that she had not committed adultery & gave her costs, on Scale B, on the ground that the case was of importance to wives as a class or body of persons.—**Held:** the question whether a particular woman had committed adultery was not of importance to wives as a class or body of persons, & therefore the county ct. judge had no jurisdiction under 1888 Act, s. 119, to certify for costs on a scale higher than would be otherwise applicable.—**DAY v. DAY** (1916), 85 L. J. K. B.

917; 114 L. T. 697; 32 T. L. R. 332; 60 Sol. Jo. 354, D. C.

703. ——— Action discontinued.]—Where pltf. in a county ct. action gives notice of discontinuance under Ord. 9, r. 1, the judge, in awarding costs to deft. under that rule, has no power to direct them to be taxed on a scale higher than that ordinarily applicable to the sum claimed by pltf.—**FAWCETT v. HORSFIELD** (1908), 53 Sol. Jo. 61.

See, now, Ord. 53, r. 9 (2).

704. ——— Time for giving certificate—On “day on which it is given”—Certificate signed on subsequent day entered on minutes of day on which order made.]—Ord. 50, r. 8, provides that, where a judge certified under 1888 Act, s. 119, the certificate shall be entered at the end of the minutes of the ct. of the day on which it is given, & shall be signed by the judge.

In an action brought in the City of London ct., the judge made an order for costs on the higher scale, but omitted to give the certificate required by s. 119 of above Act on the same day. On a subsequent day he signed a certificate, which was entered at the end of the minutes of the ct. of the day on which he gave the order.—**Held:** he not prevented by the directions given in Ord. r. 8, from adopting this course.—**BADCOCK v. HUNT** (1889), 38 W. R. 255, D. C.

705. ——— Sufficiency of certificate—Certificate not following words of section.]—**R. v. CITY OF LONDON COURT JUDGE**, No. 701, *ante*.

706. Unliquidated demand—Recovery of than amount claimed—Ord. 53, r. 17.]—Ord. 53, r. 17, which provides that where the demand is unliquidated, & the pltf. recovers less than the amount claimed, the judge may if he thinks fit order that his costs be taxed on to the amount claimed, or any is not *ultra vires*, & it applies to the county ct. as well as to *actions* there.—**SERGEANT v. WATTS**, [1917] 2 K. B. 527, 86 L. J. K. B. 1337; 33 T. L. R. 499; 61 Sol. Jo. 612; *sub nom.* **SERGEANT v. WATTS**, 117 L. T. 374, D. C.

Action tried in High Court—Discretion of judge as to scale of costs.]—*See* PRACTICE & PROCEDURE.

SUB-SECT. 4.—AS TO PARTICULAR ITEMS.

707. Time for making application for special order—Omission to apply for order at trial Whether “good cause.”]—Ord. 53, r. 7, provides that the application for the allowance by the judge of certain items of costs therein specified, including amongst others counsel's fees in certain cases, shall be made at or immediately after the trial or hearing; & if not so made shall not afterwards be entertained, unless the judge for good cause otherwise orders.—**Held:** (1) the mere neglect or omission to ask for the allowance of these costs at or immediately after the trial is not “good cause” within the meaning of the rule; & if the successful party merely through forgetfulness omits to ask for such costs at the time, the judge has no jurisdiction afterwards to entertain an application for the allowance of such costs; (2) there is no power to make a subsequent application for the allowance of such costs under a general liberty to apply being given to the parties at the time of the trial.—**MORLEY v. BEVINGTON** (1905), 93 L. T. 768; 22 T. L. R. 28; 50 Sol. Jo. 27, D. C.

See, now, Ord. 53, r. 7.

SECT. 2.—WHERE NO SOLICITOR EMPLOYED.

Action for costs by unqualified representative.]—
See SOLICITORS.

SECT. 3.—WHERE SOLICITOR EMPLOYED.**SUB-SECT. 1.—COSTS BETWEEN PARTY AND PARTY.**

708. Of entering plaint—Particulars indorsed with lithographed signature.]—*R. v. COWPER*, No. 427, *ante*.

709. Of drawing & lodging particulars—Signed by solicitor's clerk.]—*FRANCE v. DUTTON*, No. 428, *ante*.

Particulars generally, *see* Part V., Sect. 3, sub-*ct.* 2, *ante*.

710. Of attendance at hearing of counterclaim—
*defendant on counterclaim below £10.]—*WOOD'S
Co. v. CLOKE (1896), 40 Sol. Jo.

as party—Registrar appearing in person as defendant.]—*TOLPUTT (H.) & Co., LTD. v. MOLE*, No. 58, *ante*.

SUB-SECT. 2.—COSTS BETWEEN SOLICITOR AND CLIENT.

See, now, 1888 Act, s. 118.

712. Limitation on costs & charges recoverable—Work done out of court—Previous to hearing.]—The clause of 1846 Act, s. 91, which limits the sum to be had or recovered by an attorney for appearing & acting in the county ct., applies to costs recoverable by the attorney from his client, as well as to costs taxed between party & party; & to everything done by an attorney in regard to a suit in that ct., whether before, at, or after the hearing. Costs above the limited amount are not recoverable against the client, though the attorney & he are parties to a prospective general agreement for allowance of such costs on proceedings to be had in the county ct. by the persons entering such compact.—*Re CLIPPERTON* (1848), 12 Q. B. 687; 12 J. P. Jo. 469; 116 E. R. 1028; *sub nom. Re GREEN, Ex p. CLIPPERTON*, Cox, M. & H. 136; 11 L. T. O. S. 352; 12 Jur. 1044.

*Annotations:—*Consd. *Keighley v. Goodman* (1850), 9 C. B. 338; *Re Toby* (1850), 12 Q. B. 694. *Refd. Verlander v. Eddolls* (1881), 51 L. J. Q. B. 55; *Re Emanuel* (1882), 9 Q. B. D. 408; *Druiff v. Joel, Emmanuel* (1882), 51 L. J. Q. B. 490.

713. ———.]—1846 Act, s. 91, which enacts that an attorney shall not have or recover more than 15s. for appearing or acting in the county ct., is confined to charges for business done in ct., & does not prevent the attorney from recovering beyond that amount for services out of the ct. in advising or getting up the case in which he appeared & acted.—*Re TOBY* (1850), 12 Q. B. 694; 1 L. M. & P. 426; Cox, M. & H. 324; Rob. L. & W. 361; 19 L. J. Q. B. 503; 15 L. T. O. S. 225; 14 Jur. 718; 116 E. R. 1030.

*Annotations:—*Consd. *Verlander v. Eddolls* (1881), 51 L. J. Q. B. 55. *Refd. Re Emanuel* (1882), 9 Q. B. D. 408; *Druiff v. Joel, Emmanuel* (1882), 51 L. J. Q. B. 490.

714. ——— No agreement in writing to pay such costs.]—The scale of costs & charges in actions in the county ct. under £20 framed in pursuance of 1875 Act, s. 8, does not prevent a solr. from recovering charges other than those specified in the scale for work done out of ct. before & after the commencement of an action, although there has been no agreement in writing for further costs under 1856 Act, s. 36.—*Re EMANUEL* (1882), 9 Q. B. D. 408; 30 W. R. 735; *sub nom. DRUIFF & Co. v. JOEL, EMMANUEL & Co.*, 51 L. J. Q. B. 490, D. C. *Re Dod, Longstaffe, Ex p. Lamond* 242.

715. ——— Work done outside conduct of action—Action under £10.]—The appendix to rules contains a scale of costs as between solr. & client where the amount recovered exceeds £2 & does not exceed £10, & provides that no other costs are to be allowed where the amount claimed does not exceed £10 unless the judge certifies under 1882 Act, s. 5. Pltf. having commenced an action in a county ct. for £10 consulted solrs. with reference to it, who, ~~after making various steps to investigate~~ the claim, recommended a settlement, which pltf. refused to accept. The solrs. then returned her papers to pltf., who proceeded with the action in person:—*Held*: upon the taxation of the solrs.' bill for the services rendered by them, it was a question for the master whether the solrs. had, in fact, acted in the conduct of the action, & if they appeared to have so acted they could recover no costs than those specified in the appendix.

467, *ante*.

716. ——— Claim exceeding but less than £10 recovered—Discretion to tax on scale appropriate to amount claimed.]—Where the sum claimed is over £10, but the sum recovered is under £10, costs as between party & party must be taxed on the lower scale; but the taxing officer may, as between solr. & client, allow a larger sum, so that it does not exceed the higher scale.—*Re LANGLOIS & BIDEN*, [1891] 1 Q. B. 349; 60 L. J. Q. B. 123; 63 L. T. 816; 39 W. R. 181; 7 T. L. R. 148, C. A.

*Annotation:—*Refd. *Re Briggs*, [1903] 2 K. B. 156.

— How far taxation under 1888 Act, s. 118, condition precedent to right to recover costs.]—*See* Nos. 735, 736, 738, *post*.

717. Costs of public authority—Public Authorities Protection Act, 1893 (c. 61), s. 1 (b).]—Where in an action in a county ct. against a public authority for an act or neglect in the execution of its public duty, a judgment is obtained by deft., the costs to be taxed as between solr. & client given by above Act, s. 1 (b), must be taxed on the scale then in force in the county ct., in accordance with 1888 Act, s. 118.—*TORY v. DORCHESTER CORPN.*, [1907] 1 K. B. 393; 76 L. J. K. B. 273; 96 L. T. 121; 71 J. P. 88; 51 Sol. Jo. 147; 5 L. G. R. 132, D. C.

718. In action for pound-breach—Costs “in & about” action—Limitation of Actions & Costs Act, 1842 (c. 97), s. 2.]—Pltfs. recovered judgment with costs in an action for pound-breach brought under 2 Will. & Mar. c. 5, s. 4, which provides that the person aggrieved shall recover treble damages & costs.

The registrar taxed the costs to which pltfs. were entitled as between solr. & client under the county ct. scale. Pltfs. applied to the judge for a review of that taxation. The judge held that the costs must be taxed under above Act, upon the basis that pltfs. were entitled to a full & reasonable indemnity as to costs, & that as the county ct. scale would not provide such an indemnity, the registrar was not bound thereby, but might look at the High Ct. scale as a guide in arriving at what would be a reasonable indemnity:—*Held*: so far as the indemnity given by above Act, s. 2, related to costs “in” the action, it was limited to the costs allowable by the scale applicable in the county ct., & such additional costs as the client might have agreed in writing to pay to his solr. under 1888 Act, s. 118; but so far as pltfs. were entitled to be indemnified against costs “about” the action under above Act, s. 2, they were entitled to costs reasonably incurred as a preliminary to

Sect. 3.—Where solicitor employed: Sub-sect. 2. Sects. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 & 15: l. 1.]

the action, as, *e.g.*, the cost of counsel's opinion.—*HOUSE PROPERTY CO. OF LONDON v. WHITEMAN*, [1913] 2 K. B. 382; 82 L. J. K. B. 887; 109 L. T. 43; 77 J. P. 319, D. C.

SECT. 4.—ACTIONS WHICH COULD HAVE BEEN COMMENCED IN COUNTY COURT.

See, now, 1919 Act, s. 11.

What is action "which could have been commenced in county court"—Within 1888 Act, s. 116.]—*See PRACTICE & PROCEDURE.*

—Effect of admitted set-off.]—*See Nos. 159, 161, ante.*

What is action "founded on contract."—*See PRACTICE & PROCEDURE.*

What is action "founded on tort."—*See No. 418, ante, & generally PRACTICE & PROCEDURE.*

SECT. 5.—REMITTED ACTIONS.

See Part IV., Sect. 8, ante.

SECT. 6.—ACTIONS TRANSFERRED TO HIGH COURT.

719. Order for transfer at hearing in county court—Judgment for plaintiff in High Court—Liability for defendant's costs of hearing in county court.]—Where pltf. commences a suit in the county ct., which at the hearing is transferred to the High Ct. of Justice because the subject-matter exceeds in amount £500, pltf., though he succeeds & obtains the general costs of the suit, must pay the costs of the hearing before the county ct.—*WARD v. WYLD* (1877), 5 Ch. D. 779; 37 L. T. 68; 25 W. R. 866.

—Action outside jurisdiction.]—*See No. 679, ante.*

See, further, PRACTICE & PROCEDURE.

SECT. 7.—EQUITABLE ACTIONS AND INJUNCTIONS.

720. Administration action—Whether plaintiff entitled to costs out of estate.]—In an administration suit instituted by legatees in the county ct. the costs were ordered to be paid by pltf.s.:—*Held*: the costs must be paid out of the general assets of the estate.—*COOPER v. BUSBRIDGE* (1867), 16 L. T. 5.

Annotation:—*Consd. Plumb v. Craker* (1885), 16 Q. B. D. 10.

721. — Discretion of judge.]—A county ct. judge is not bound by the rule in equity which prevailed before Jud. Act, 1873 (c. 66), that pltf. in an administration suit properly brought was entitled to his costs out of the estate. The judge has, by virtue of 1846 Act, s. 88, & 1865 Act, s. 21, an absolute discretion over such costs, & may therefore order pltf. to pay the costs of the action, & no appeal will lie against his order.—*PLUMB v. CRAKER* (1885), 16 Q. B. D. 40; 55 L. J. Q. B. 116; 55 L. T. 404; 2 T. L. R. 150, D. C.

Annotation:—*Refd. Pain v. Bowden* (1896), 45 W. R. 48.

722. Injunction—Main part of relief sought—Joined with claim for damages for trespass—Judgment for injunction & nominal damages.]—*KEATES v. WOODWARD*, No. 418, *ante.*

See, now, 1919 Act, s. 12.

723. — Joined with alternative & inconsistent claim—Plaintiff failing as to injunction—But getting judgment on other claim for less than £10.]—Ord. 53, r. 11, provides that in actions in which a perpetual injunction is claimed, whether the same is granted or not, the judge may order the costs to be taxed under col. A, B, or C, & in default of any such order they shall be taxed under col. B.

In an action in the county ct. in which a perpetual injunction was claimed there was added another claim which was alternative to & inconsistent with the claim for an injunction. Pltf. failed as to the injunction, but got judgment on the other branch of the claim for £4 4s. & costs. No application was made to the judge for an order directing under which scale the costs should be taxed, & on an application to review the taxation the judge held that under Ord. 53, r. 11, in default of any order, the costs must be taxed under col. B:—*Held*: the claim on which the pltf. had recovered judgment being entirely distinct from the claim for an injunction, the case was governed, not by r. 11, but by r. 1, of Ord. 53, & under r. 1 the costs must be taxed under the lower scale, that being the scale applicable to the amount recovered.—*CLINTON v. BENNETT*, [1908] 1 K. B. 109; 77 L. J. K. B. 52; 97 L. T. 789; 52 Sol. Jo. 46, D. C.

SECT. 8.—INTERPLEADER.

See INTERPLEADER.

SECT. 9.—AFTER PAYMENT INTO COURT.

724. With denial of liability—Plaintiff recovering no more than amount paid in.]—Where deft. in an action in the county ct. pays money into ct. with a denial of liability, & pltf. does not take the money out, but goes on with his action & recovers no more than the amount paid in, deft. is entitled to the costs of the action.

(2) The practice of the High Ct. is, by 1888 Act, s. 164, to be followed in county cts. where there is nothing to the contrary or inconsistent therewith in the rules.—*WOOD v. LEETHAM* (1892), 61 L. J. Q. B. 215, D. C.

Annotations:—*As to* (1) *Refd. Sweetland v. Turkish Cigarette Co.* (1899), 80 L. T. 472 *Dunn v. S. E. & C. Ry.* (1903), 72 L. J. K. B. 127.

725. — Plaintiff succeeding on same issues.]—*DUNN v. SOUTH EASTERN & CHATHAM RY. CO.*, No. 686, *ante.*

726. — Nothing paid in for costs.]—In an action in the county ct. defts. paid a sum of money into ct. in satisfaction of the claim, with a denial of liability, but paid in nothing in respect of costs. The judge found that pltf. was entitled only to the sum paid in, & accordingly gave judgment for defts., giving pltf. the costs up to the time of payment in, & the subsequent costs to defts.:—*Held*: the judge had discretion to make the order under 1888 Act, s. 113, & Ord. 9, r. 12, sub-r. 4, the costs in these circumstances not being "herein otherwise provided for" within the meaning of sect. 113.—*SYKES v. WESLEYAN & GENERAL ASSURANCE SOCIETY* (1907), 76 L. J. K. B. 626; 96 L. T. 782, D. C.

SECT. 10.—WHERE COUNTERCLAIM RAISED AND TRIED.

See No. 731, post, & generally SET-OFF & COUNTERCLAIM.

SECT. 11.—THIRD PARTIES.

727. Power of judge to give costs to—Action for damages for announcing sale without authority—Admission by third party that wrong instructions given—Plaintiff nonsuited for want of jurisdiction.—*BARBROOKE v. MOORE* (1889), 88 L. T. Jo. 155.

SECT. 12.—APPEALS.

See Part VIII., Sect. 1, sub-sect. 1, I., *post*.

See Part VI., Sect. 4, *ante*.

SECT. 14.—COUNSEL'S FEES AND ALLOWANCES OF WITNESSES.

See, generally, SOLICITORS.

728. Refreshers—Case adjourned for want of time.]—A county ct. has jurisdiction to allow refreshers to counsel when a case cannot be heard on the day fixed for hearing, & is adjourned for want of time.—*HEAP v. PEART*, [1891] 1 Q. B. 110; 39 W. R. 95, D. C.

729. Special allowance where no local Bar—Counsel present on more than one occasion.]—In a taxation of costs in a county ct. on the higher scale the special item, No. 86, which may be allowed by order of the judge to counsel where there is no local Bar in or within twenty miles of the ct. town can only be allowed once in the same case, although the counsel engaged may have been present in ct. on more than one occasion.—*ATKINSON v. CARLISLE CORPN.*, [1896] 1 Q. B. 393; 65 L. J. Q. B. 331; 40 Sol. Jo. 278, D. C.

730. Certificate for counsel's fees—Time of application for.]—*MORLEY v. BEVINGTON*, No. 707, *ante*.

See, now, Ord. 53, r. 7.

731. Where counterclaim tried—What brief fees allowed—Both parties successful.]—In an action in a county ct., defts. contested the claim & counterclaimed. Judgment was given for pltf. on the claim for £25 & costs, & for defts. on the counterclaim for £26 & costs. On taxation of the costs of the claim the registrar allowed a brief fee of three guineas, being the maximum fee according to the scale applicable to the amount recovered. No objection was taken by defts. to this allowance. On taxation of the costs of the counterclaim the registrar also allowed a brief fee of three guineas. An objection by pltf. that the scale only authorised the allowance of one brief fee & that the maximum fee having been allowed on the claim no brief fee could in the circumstances be allowed on the counterclaim was overruled by the county ct. judge. On appeal:—

Held: the fact that the maximum brief fee had been allowed in respect of the claim did not prevent the allowance of a brief fee for the counterclaim, but the fee must be apportioned between the defence & the counterclaim, & only that part which was referable to the counterclaim could be allowed.—*FOX v. CENTRAL SILKSTONE COLLIERIES, LTD.*, [1912] 2 K. B. 597; 81 L. J. K. B. 989; 107 L. T. 85; 56 Sol. Jo. 634, D. C.

Annotation:—*Reid*. *Bates v. Gordon Hotels* (1913), 82 L. J. K. B. 441.

See, further, SET-OFF & COUNTERCLAIM.

732. Where two counsel briefed.]—On the taxation of the costs of an action brought in the

county ct. under the extended jurisdiction conferred by 1903 Act, in which the successful party has been represented at the trial by two counsel there is no power to allow the fees of more than one counsel.

For the purpose of construing Ord. 22a, r. 27, we are entitled to look at Ord. 53, r. 45, & when one does so it becomes quite clear that an allowance for more than one counsel can only be made in the case of proceedings brought under Rivers Pollution Prevention Act, 1876 (c. 75), & Rivers Pollution Prevention Act, 1893 (c. 31) (*LUSH, J.*).—*BATES v. GORDON HOTELS, LTD.*, [1913] 1 K. B. 631; 82 L. J. K. B. 441; 108 L. T. 510; 29 T. L. R. 298; 57 Sol. Jo. 303, D. C.

, now, Ord. 53, r. 8 (3).

Witnesses not called at trial.]—*THE CASHMERE*, No. 683, *ante*.

734. Witness preparing plan—& attending trial.]—*HAYES v. BROWN*, No. 495, *ante*.

Doctor's qualifying fee—Medical examination before proceedings under Workmen's Compensation Act, 1906 (c. 58).]—See MASTER & SERVANT.

SECT. 15.—TAXATION AND REVIEW.

SUB-SECT. 1.—TAXATION.

735. Necessity for—To enable solicitor to recover costs—Costs in High Court before action remitted to county court—Change of solicitor after order to remit.]—A solr. commenced an action in the High Ct. for a client, & conducted it through certain stages. Ultimately, upon his client's instructions, he obtained an order under 1888 Act, s. 65, by which the action was remitted for trial to a county ct. He then ceased to act for his client. The action was conducted in the county ct. by another solr., & verdict & judgment were obtained for the full amount claimed:—*Held*: the solr.'s bill of costs up to the date of the order remitting the action to the county ct. did not fall within the provisions of 1888 Act, s. 118, as to taxation.—*BOYDELL v. MILLAR* (1891), 60 L. J. Q. B. 251; 64 L. T. 299; 39 W. R. 335, D. C.

Annotation:—*Consd.* *Cubison v. Mayo* [1896], 1 Q. B. 246.

736. ———.]—1888 Act, s. 118, which prevents the recovery by a solr. from his client of costs incurred in a county ct., unless they have been allowed on taxation, only relates to cases in which there is an application for taxation. Therefore the solr. may recover such costs without taxation, where there has been no application for it, & the client is no longer entitled to taxation.—*CUBISON v. MAYO*, [1896] 1 Q. B. 246; 65 L. J. Q. B. 267; 74 L. T. 65; 60 J. P. 212; 44 W. R. 473; 12 T. L. R. 183, C. A.

Annotation:—*Expld.* *Bell v. Girdlestone*, [1913] 2 K. B.

737. ———.]—No application by client taxation.]—*CUBISON v. MAYO*, No. 736, *ante*.

738. ———.]—Time within which application may be made unexpired.]—1888 Act, s. 118, which prevents a solr. recovering from his client costs incurred in a county ct., "unless they shall have been allowed on taxation," does not make taxation a condition precedent to the solr.'s right to sue for his costs, even if the time within which has not

BELL v. GIRDLESTONE, [1913] 2 K. B. 225; 82 L. J. K. B. 696; 108 L. T. 648, D. C.

739. ———.]—Before apportionment of costs between parties.]—*GOLDING v. SMITH*, No. 685, *ante*.

740. By whom—Claim exceeding £20—Administration action.]—By Solicitors Act, 1843

Sect. 15.—Taxation and review: Sub-sects. 1 & 2.
Sects. 16, 17 & 18. Part VIII. Sect. 1:

solr. & client in a county ct. action in which the claim exceeds £20 may be taxed in the High Ct. of Justice, & consequently the costs as between solr. & client in a county ct. administration action may be taxed in the Ch. Div.—*Re WORTH* (1881), 18 Ch. D. 521; 50 L. J. Ch. 262; 44 L. T. 462; 29 W. R. 371.

741. — Registrar appearing as defendant in person.]—*TOLPUTT (H.) & Co., LTD. v. MOLE*, No. 58, *ante*.

On what scale.]—See Sect. 3, sub-sect. 2, *ante*.

— In independent proceedings generally.]—See SOLICITORS.

742. In administration action—Estate insolvent.]—The costs of the administrator in an administration action in the county ct., are discretionary fees or allowances within the meaning of Ord. 50a, r. 20. Upon the taxation of such costs the registrar may take into account the fact that the estate is insolvent, & may disallow items which would be allowed in the case of a solvent estate.

In such a case the administrator's right to costs should be confined to such costs as are necessary for the protection of the estate (*WILLS, J.*).—*PAIN v. BOWDEN*, [1896] 2 Q. B. 301; 65 L. J. Q. B. 530; 75 L. T. 102; 45 W. R. 48; 40 Sol. Jo. 622, D. C.

— Claim exceeding £20—Taxation in Chancery Division of High Court.]—See No. 740, *ante*.

In proceedings under Workmen's Compensation Act.]—See MASTER & SERVANT.

SUB-SECT. 2.—REVIEW OF TAXATION.

743. In discretion of judge.]—Upon an application for a rule to compel a county ct. judge to review the taxation of costs in a plaint tried before him:—*Held*: the reviewal of taxation of costs was in the discretion of the judge, & the refusing by him to review was not the refusing to do an act relating to the duties of his office within the meaning of 1856 Act, s. 43, & therefore order refused.—*CLIFTON v. FURLEY* (1862), 7 H. & N. 783; 31 L. J. Ex. 170; 26 J. P. 409; 10 W. R. 358; 158 E. R. 685.

SECT. 16.—SET-OFF OF COSTS.

See, now, 1919 Act, s. 19.

744. Against costs in High Court.]—Costs incurred in the High Ct. cannot be set-off against costs obtained in the county ct., although the proceedings are between the same parties. Ord. 65, r. 14, does not apply to costs in independent proceedings.—*HASSELL v. STANLEY*, [1896] 1 Ch. 607; 65 L. J. Ch. 494; 74 L. T. 375; 44 W. R. 405; 40 Sol. Jo. 356.

*Annotations:—*Consd. *David v. Rees*, [1904] 2 K. B. 435. *Expld. Reid v. Cupper*, [1915] 2 K. B. 147.

745. —.]—The provisions of Ord. 65, r. 14, & Ord. 65, r. 27, sub-r. 21, with regard to set-off of costs between parties are confined to cases in which the judgments for costs sought to be set off against each other are in the same action or proceeding, & do not extend to cases in which the judgments for costs are in distinct & independent litigations.—*DAVID v. REES*, [1904] 2 K. B. 435; 73 L. J. K. B. 729; 91 L. T. 244; 52 W. R. 579; 20 T. L. R. 577; 48 Sol. Jo. 603, C. A.

*Annotations:—*Consd. *Bake v. French* [1907] 1 Ch. 428;

Reid v. Cupper, [1915] 2 K. B. 147. *Reid. Puddephatt v. Leith*, [1916] 2 Ch. 168.

In independent proceedings generally.]—See SOLICITORS.

In appeals to House of Lords.]—See PARLIAMENT.

In appeals to Judicial Committee of Privy Council.]—See COURTS.

SECT. 17.—RECOVERY OF COSTS.

746. By execution—Judgment for debts & costs—Debt alone paid—Refusal of registrar to issue execution.]—A debt was recovered by the judgment of a county ct. with costs. The debt alone having been paid, the clerk of the county ct. refused to issue execution for the costs:—*Held*: before coming to this ct. for a mandamus to the clerk, application should be made to the judge of the county ct. to order the clerk to issue such execution.—*Ex p. CHRISTCHURCH OVERSEERS* (1851), 2 L. M. & P. 660; *sub nom. R. v. SOUTHWARK COUNTY COURT CLERK*, 15 J. P. 836.

*Annotation:—*Expld. & Distd. *R. v. Southampton County Court Registrar & Smirk* (1892), 61 L. J. Q. B. 706.

747. By action—Whether action in High Court maintainable.]—An action cannot be maintained in the High Ct. upon an order of a county ct. for the payment of costs.—*FURBER v. TAYLOR*, [1900] 2 Q. B. 719; 69 L. J. Q. B. 898; 83 L. T. 308; 48 W. R. 689, C. A.

*Annotation:—*Consd. *Savill v. Dalton*, [1915] 3 K. B. 174.

Whether taxation by registrar condition precedent to.]—See Nos. 735, 736, 738, *ante*.

By unqualified representative.]—See SOLICITORS.

SECT. 18.—SECURITY FOR COSTS.

On appeal from county court.]—See Part VIII., Sect. 8, *post*.

748. On objection by defendant to jurisdiction—Security by bond—Duty of registrar.]—*YOUNG v. BROMPTON, ETC., WATERWORKS CO.*, No. 324, *ante*.

749. Infant suing by next friend—No undertaking by plaintiff to be answerable for costs—Stay of proceedings until undertaking signed.]—In a suit instituted on behalf of infants by their next friend in the county ct., the judge, in the absence of the necessary undertaking by pltf. to be answerable for costs, dismissed the plaint:—*Held*: the plaint ought to have been allowed to stand over until the requisite undertaking had been duly signed & annexed to it.—*WILLIAMS v. WILLIAMS* (1867), 16 L. T. 581.

See, now, Ord. 5, r. 16.

Remitted action—Plaintiff becoming bankrupt before writ lodged with registrar.]—See No. 386, *ante*.

750. Whether appeal lies from order for security under Ord. 12, r. 9.]—Where an action is commenced in a county ct. other than the county ct. within the district of which deft. resides or carries on his business, & the registrar, under Ord. 12, r. 9, has ordered pltf. to deposit a certain sum in ct., deft. having disclosed a good defence, no appeal lies from the decision of the registrar as to the amount of the sum to be so deposited.—*PORTER v. LONDON & MANCHESTER INSURANCE CO.*, [1909] 2 K. B. 30; 78 L. J. K. B. 673; 100 L. T. 848; 53 Sol. Jo. 842, D. C.

Appeals generally, see Part VIII., post.

Part VIII.—Appeals.

SECT. 1.—WHEN APPEAL LIES.

SUB-SECT. 1.—IN RESPECT OF WHAT PROCEEDINGS.

A. Actions of Contract and Tort.

See 1888 Act, s. 120.

751. Claim exceeding £20 — Judgment for smaller sum.]—An appeal lies from a county ct. if the claim be for a sum above £20, & not exceeding £50 though the verdict be for an amount under £20.—*DREESMAN v. HARRIS* (1854), 9 EXCH. 485; 18 J. P. 330; 156 E. R. 207; *sub nom. HARRIS & TAYLOR v. DREESMAN*, 23 L. J. Ex. 210; 22 L. T. O. S. 246; 18 J. P. 458; 2 C. L. R. 498.

Annotations:—*Mentd. Adams v. Royal Mail Steam-Packet Co.* (1858), 5 C. B. N. S. 492; *Ford v. Cotesworth* (1868), L. R. 4 Q. B. 127; *Postlethwaite v. Freeland* (1880), 5 App. Cas. 599; *Hick v. Rodocanachi*, [1891] 2 Q. B. 626; *Krell v. Henry*, [1903] 2 K. B. 740; *Jones v. Green*, [1904] 2 K. B. 275; *Ardan S.S. Co. v. Weir*, [1905] A. C. 501; *The Sheila* (1907), [1909] P. 31, n.

752. — Amount lawfully recoverable less than £20.]—No appeal lies from a county ct. though the claim be for above £20 & for unliquidated damages, if the nature of the cause of action be such that the judge cannot lawfully give damages to the amount of £20.—*MAYER v. BURGESS* (1855), 4 E. & B. 655; 24 L. J. Q. B. 67; 1 Jur. N. S. 473; 119 E. R. 241; *sub nom. GRAHAM v. BURGESS*, 24 L. T. O. S. 253; 19 J. P. Jo. 98.

753. — Power of plaintiff to abandon excess — So as to deprive defendant of right of appeal.]—Where, in an action in the county ct., the claim, as added up in pltf.'s particulars appears less than £20, but if rightly added up exceeds that sum, & the error is amended, pltf. cannot, by abandonment of the excess at the trial, deprive deft. of his right of appeal.—*NORTH v. HOLROYD* (1868), L. R. 3 Exch. 69; 37 L. J. Ex. 42; 17 L. T. 575; 32 J. P. 310.

Annotation:—*Reid. The Elizabeth* (1870), 39 L. J. Adm. 53.

754. Claim less than £20—Counterclaim exceeding £20.]—The absolute right of appeal given by 1888 Act, s. 120, in actions of contract & tort, where the debts or damage claimed exceeds £20, extends to cases where deft.'s counter-claim exceeds £20, although the claim of pltf. is below that amount.—*SMITH v. GILL*, [1896] 2 Q. B. 166; 65 L. J. Q. B. 556; 44 W. R. 574; 40 Sol. Jo. 584, D. C.

With claim for injunction.]—See Nos. 757, 758, *post*.

B. Actions of Ejectment and for Recovery of Possession.

See 1888 Act, s. 120.

755. Recovery of land—Yearly value less than £20.]—No appeal lies to the High Ct. without leave, from the decision of a judge of a county ct. in actions for the recovery of tenements, whether the parties be landlord & tenant or otherwise, or whether the title to such premises be in question or not, where the yearly rent or value thereof does not exceed £20.—*SHREWSBURY (EARL) v. GARFIELD* (1891), 60 L. J. Q. B. 765; 65 L. T. 748, D. C.

Annotation:—*Overd. Millett v. Ballard*, [1904] 2 K. B. 593.

756. Ejectment—Yearly value less than £20.]—In actions of ejectment, as distinguished from actions for the recovery by landlords of tene-

ments, tried in a county ct. there is a right of appeal to the High Ct. without the leave of the county ct. judge irrespective of the value or rental of the premises sought to be recovered.—*MILLETT v. BALLARD*, [1904] 2 K. B. 593; 73 L. J. K. B. 989; 91 L. T. 23; 52 W. R. 675; 20 T. L. R. 693; 48 Sol. Jo. 654, C. A.

C. Proceedings in which Injunction claimed.

See 1888 Act, s. 120.

757. With claim not exceeding £20.]—In an action for trespass in the county ct. pltf. claimed 40s. damages & an injunction. The judge having given judgment for pltf. for damages & an injunction:—*Held*: deft. might appeal against so much of the judgment as granted the injunction without first obtaining the leave of the judge notwithstanding the provisions of 1888 Act, s. 120.—*BRUNE v. JAMES*, [1898] 1 Q. B. 417; 67 L. J. Q. B. 283; 77 L. T. 802; 46 W. R. 257; 42 Sol. Jo. 2

758. — Claim for injunction withdrawn at trial.]—In an action for trespass in the county ct. pltf. claimed £20 damages for trespass & a mandatory injunction. At the trial the county ct. judge intimated that he thought there had been a trespass, but he did not wish to put deft. to the expense of a mandatory injunction if it could be avoided. Pltf. thereupon abandoned his claim to the injunction. The county ct. judge having given judgment for pltf. for £15 damages for the trespass:—*Held*: pltf., having claimed the injunction in addition to the £20 damages, might appeal from the judgment without first obtaining the leave of the county ct. judge notwithstanding the provisions of 1888 Act, s. 120.—*DIXON v. BROWN*, [1915] 2 K. B. 294; 84 L. J. K. B. 1248; 112 L. T. 1033, D. C.

D. Proceedings in Replevin.

See 1888 Act, s. 120.

759. Necessity for appraisement of value—Right to appeal disputed—Allegation that value of goods seized below £20.]—*Semle*: where, in an action of replevin, the right of appeal from the county ct. is disputed on the ground that the value of the goods seized does not exceed £20 there should be an appraisement with affidavit of value.—*SMITH v. ENRIGHT* (1893), 63 L. J. Q. B. 220; 69 L. T. 724, D. C.

E. Interpleader Proceedings.

See INTERPLEADER.

F. Admiralty Causes.

See ADMIRALTY, Vol. 1, pp. 230–233, Nos. 1557–1595.

G. Proceedings under Workmen's Compensation Acts.

See MASTER & SERVANT.

H. Interlocutory Proceedings.

(a) In General.

See, now, 1888 Act, s. 120.

760. General rule — Former law.]—*CARR v. STRINGER*, No. 696, *ante*.

761. — Present law.]—1888 Act gives a right of appeal to the High Ct. in all interlocutory matters, & the principle of the cases which have

Sect. 1.—When appeal lies: Sub-sect. 1, H. (a) & (b), I. & J.; sub-sect. 2, A. (a) & (b).]

decided that an appeal lies from the order of a county ct. judge granting or refusing to grant a new trial is equally applicable to the case of an appeal on a question of taxation.—*GILSON & SONS v. KILNER* (1893), 69 L. T. 310; 37 Sol. Jo. 497, D. C.

762. Order made under equitable jurisdiction.]—An appeal lies from an order made in an interlocutory proceeding, by a judge of a county ct., by virtue of the equitable jurisdiction conferred by 1865 Act.—*JONAS v. LONG* (1888), 20 Q. B. D. 564; 57 L. J. Q. B. 298; 58 L. T. 787; 52 J. P. 468; 36 W. R. 315; 4 T. L. R. 276, C. A.

*Annotations:—*Consd. *How v. L. & N. W. Ry.*, [1891] 2 Q. B. 496; *Gilson v. Kilner* (1893), 69 L. T. 310. *Reid. Vallentin v. Woodley* (1889), 5 T. L. R. 462; *Pole v. Bright*, [1892] 1 Q. B. 603.

763. Order of registrar to deposit sum in court—Under Ord. 12, r. 9.]—*PORTER v. LONDON & MANCHESTER INSURANCE CO.*, No. 750, *ante*.

(b) *Applications for New Trial.*

764. Former law—1867 Act, s. 13.]—A motion for a new trial before a county ct. judge is an interlocutory proceeding from which no appeal lies to the Div. Ct. Sect. 13 of the above Act only refers to appeals from orders in any action, not upon interlocutory proceedings.—*JACOBS v. DAWKES* (1887), 56 L. J. Q. B. 446; 56 L. T. 919; 35 W. R. 649, D. C.

*Annotation:—*Reid. *Pole v. Bright*, [1892] 1 Q. B. 603.

765. —.]—In an action tried in the county ct. an appeal will not lie against the decision of the county ct. judge on an application for a new trial so that the time within which the unsuccessful party in the county ct. may appeal to the Q. B. D. begins to run from the date of the judgment at the trial, & not from the date of the judge's decision on the application for a new trial.—*McHARDY v. LIPTROTT* (1887), 19 Q. B. D. 151; 56 L. J. Q. B. 459, D. C.

See, now, 1888 Act, s. 120.

766. On ground of verdict against weight of evidence.]—No appeal lies from the decision of a county ct. judge refusing to grant a new trial when applied for on the ground solely of the verdict being against the weight of evidence.—*WILTON v. LEEDS FORGE VALLEY CO.* (1884), 32 W. R. 461, D. C.

*Annotation:—*Consd. *How v. L. & N. W. Ry.*, [1891] 2 Q. B. 496.

767. —.]—*BRYANT v. NORTH METROPOLITAN TRAMWAYS CO.* (1890), 6 T. L. R. 396, D. C.

*Annotations:—*Consd. *Clarke v. West Ham Corp.*, [1914] 2 K. B. 448. *Mentd. Skeate v. Slaters*, [1914] 2 K. B. 429.

768. —.]—Whether the verdict was against the weight of evidence is a question of fact for the county ct. judge. If to the decision of that question he apply the rule of law stated in *Metropolitan Ry. Co. v. Wright*, (1886) 11 App. Cas. 152, there is no appeal from his decision.—*How v. LONDON & NORTH WESTERN RY. CO.*, [1892] 1 Q. B. 391; 61 L. J. Q. B. 368; 66 L. T. 398; 40 W. R. 292; 8 T. L. R. 313, C. A.

*Annotations:—*Consd. *Pole v. Bright*, [1892] 1 Q. B. 603. *Foll. Dovaston v. De La Bertauche* (1901), 17 T. L. R. 547. *Appl. Cole v. De Trafford*, [1917] 1 K. B. 911. *Reid. Mansell v. Griffin*, [1908] 1 K. B. 160; *Astor v. Barrett & Hulme*, [1920] 3 K. B. 13.

769. —.]—An appeal lies against the refusal of a county ct. judge to grant an application for a new trial for misdirection & that the verdict was against the weight of evidence, on the ground that his decision was wrong in point of law.—*POLE v. BRIGHT*, [1892] 1 Q. B. 603; 61 L. J. Q. B.

139; 65 L. T. 748; 40 W. R. 95; 8 T. L. R. 69; 36 Sol. Jo. 63, D. C.

*Annotation:—*Reid. *Dovaston v. De La Bertauche* (1901), 17 T. L. R. 547.

770. —.]—*DOVASTON v. DE LA BERTAUCHE* (1901), 17 T. L. R. 547; 45 Sol. Jo. 555, C. A.

771. On ground of misdirection of jury—On point of law.]—*DINGOR v. MATHEWS* (1889), 65 L. T. 748, n., D. C.

*Annotations:—*Consd. *How v. L. & N. W. Ry.*, [1891] 2 Q. B. 496. *Foll. Pole v. Bright*, [1892] 1 Q. B. 603.

772. —.]—In an action in the county ct. pltf. obtained judgment. Deft. subsequently moved before the county ct. judge for a new trial on the ground of misdirection & that the verdict was against the weight of evidence. This the judge refused. Deft. appealed to the Div. Ct., where the preliminary objection was taken that no appeal lies from the refusal of a county ct. judge to allow a new trial:—*Held: under 1888 Act, s. 120*, there was a right of appeal from the refusal of a county ct. judge to allow a new trial.—*POLE v. BRIGHT*, [1892] 1 Q. B. 603; 61 L. J. Q. B. 139; 65 L. T. 748; 40 W. R. 95; 8 T. L. R. 69; 36 Sol. Jo. 63, D. C.

*Annotation:—*Consd. *Dovaston v. De La Bertauche* (1901), 17 T. L. R. 547.

773. —.]—Objection not taken at hearing.]—*HANDLEY v. LONDON, EDINBURGH, & GLASGOW ASSURANCE CO.*, No. 795, *post*.

774. On ground of misconduct of jury.]—*BIGGS v. EVANS*, No. 623, *ante*.

775. On ground of no evidence to go to jury.]—*CLARKE v. WEST HAM CORPN.*, No. 622, *ante*.

776. On ground of excessive damages.]—No appeal lies from the decision of a county ct. judge granting a new trial on the ground that the damages awarded by a jury were excessive, if it appears that the judge applied the right rule of law in considering whether a new trial should be granted.—*COLE v. DE TRAFFORD*, [1917] 1 K. B. 911; 86 L. J. K. B. 764; 117 L. T. 224; 33 T. L. R. 249; 61 Sol. Jo. 354, D. C.

I. Orders as to Costs.

777. Taxation of costs—Former law.]—*CARR v. STRINGER*, No. 696, *ante*.

See, now, 1888 Act, s. 120.

778. —.]—*GILSON & SONS v. KILNER*, No. 761, *ante*.

779. —.]—No exercise of discretion by judge.]—*MAW v. BEST* (1898), 42 Sol. Jo. 382, D. C.

780. Order to pay costs—By official receiver.]—The principle laid down in *In re Silver Valley Mines* (1882), 21 Ch. D. 381, that an official liquidator ordered to pay costs personally may appeal against such an order, extends to the case of an official receiver ordered to pay costs personally by a county ct. judge, & enables him to appeal against such an order to the Div. Ct.—*Re RAYNES PARK GOLF CLUB, Ex p. OFFICIAL RECEIVER*, [1899] 1 Q. B. 961; 68 L. J. Q. B. 529; 47 W. R. 496; 43 Sol. Jo. 383; 6 Mans. 316, D. C.

*Annotations:—*Dbtd. *Re Tweddle*, [1910] 2 K. B. 697. *Reid. Re Williams, Ex p. Official Receiver* (1913), 82 L. J. K. B. 459.

781. Order giving or depriving party of costs—Made upon reasons insufficient in law.]—*WESTGATE v. CROWE*, No. 593, *ante*.

782. Certificate for costs on higher scale—Judge acting without jurisdiction.]—*DAY v. DAY*, No. 702, *ante*.

J. Other Proceedings.

783. Garnishee order.]—There is no appeal from a garnishee order under the rules, for it is not a decision in an "action" or "cause," within

the meaning of the county ct. Acts.—**MASON v. WIRRAL HIGHWAY BOARD** (1879), 4 Q. B. D. 459; 48 L. J. Q. B. 679; 27 W. R. 676, D. C.

See, now, 1888 Act, s. 120.

784. Contempt of court—Refusal to commit.]—**VALLENTIN v. WOODLEY** (1889), 5 T. L. R. 462, D. C.

785. — Order imposing fine—Assault on court bailiff.]—**LEWIS v. OWEN**, No. 54, ante.

Refusal to set aside award.]—See **ARBITRATION**, Vol. II., pp. 561, 633, Nos. 1985, 2605.

Refusal to make order in bankruptcy—On ground of want of jurisdiction.]—See **BANKRUPTCY & INSOLVENCY**, Vol. IV., p. 525, No. 4805.

786. Under Rivers Pollution Prevention Act, 1876 (c. 75), s. 11—Appeal by notice of motion.]—Defts. erected water-closets on their premises, the drains from which they connected with two small natural water-courses, which had become sewers, & were, therefore, vested in pltfs., a local board. Through these sewers the sewage from the water-closets flowed by natural gravitation into a larger stream. Defts. were entitled as against pltfs. to connect the drains from their water-closets with these sewers under the Public Health Act, 1875, s. 21; but pltfs. had not sanctioned their so doing. Pltfs. under above Act, applied to a county ct. for & obtained an order to restrain defts. from causing the sewage to flow into the stream. On appeal against this order, it appeared to the ct. that, upon the facts of the case, pltfs. were themselves in default in not having made any provision for dealing with the sewage in these sewers, as required by the Public Health Act, 1875:—

Held: an appeal was correctly brought by way of motion.

An appeal from a county ct. on the merits under above Act, s. 11, is, by 1888 Act, s. 124, brought within the operation of s. 120 of that Act (**BOWEN & A. L. SMITH, L.JJ.**).—**KIRKHEATON DISTRICT LOCAL BOARD v. AINLEY, SONS & Co.**, [1892] 2 Q. B. 274; 61 L. J. Q. B. 812; 67 L. T. 209; 57 J. P. 36; 41 W. R. 99; 8 T. L. R. 663; 36 Sol. Jo. 608, C. A.

Annotations:—**Mentd.** **Ferrand v. Hallas Land & Bldg. Co.**, [1893] 2 Q. B. 135; **Fordom v. Parsons**, [1894] 2 Q. B. 780; **Yorkshire West Riding Council v. Holmfirth Urban S. A.**, [1894] 2 Q. B. 842; **Wycombe Union v. Parsons** (1894), 71 L. T. 428; **Re Derbyshire County Council & Derby Corpn.**, [1896] 2 Q. B. 297; **Peebles v. Oswaldtwistle U. D. C.**, [1897] 1 Q. B. 384; **A.-G. v. Scott**, [1905] 2 K. B. 160; **Staffordshire County Council v. ...** on R. D. C. (1907), 96 L. T. 328; **Butterworth v. West Riding of Yorkshire Rivers Board**, [1909] A. C. 45; **Waltham Holy Cross U. D. C. v. Lee Conservancy Board** (1910), 103 L. T. 192; **Rochford R. D. C. v. Port of London Authority**, [1914] 2 K. B. 916; **West Riding of Yorkshire Rivers Board v. Linthwaite U. C.**, [1914] 2 K. B. 13.

SUB-SECT. 2.—ON QUESTIONS OF LAW, EQUITY OR FACT.

A. Questions of Law.

(a) In General.

See 1888 Act, s. 120.

787. What is.]—If the matter is one of discretion, the question how, upon facts which are determined & not in dispute, the discretion in such a case ought to be exercised, is a question of law as to which there is an appeal, although, no doubt, the Ct. will never interfere, unless they can see clearly that in point of principle the discretion has been wrongly exercised (**LORD ESHER, M.R.**).—**KIRKHEATON DISTRICT LOCAL BOARD v. AINLEY, SONS & Co.**, No. 786, ante.

Application to set aside award.]—See **ARBITRATION**, Vol. II., p. 48, No. 260.

Admiralty appeals.]—See **ADMIRALTY**, Vol. I., p. 231, Nos. 1560, 1561.

(b) Necessity for raising Point at Trial.

788. Necessity for—General rule.]—It is a condition precedent to the right to appeal under 1875 Act, s. 6, that the question of law upon which it is desired to appeal should have been raised before the county ct. judge at the trial.

At the trial of an action in the county ct. the judge took a note of the evidence, & gave defts. leave to move on one point, no other question of law being raised:—**Held:** on the appeal defts. could not be heard on a point of law which had not been raised before the county ct. judge at the trial.—**CLARKSON v. MUSGRAVE** (1882), 9 Q. B. D. 386; 51 L. J. Q. B. 525; 31 W. R. 47, D. C.

Annotations:—**Consd.** **Smith v. Baker**, [1891] A. C. 325; **Wohlgemuth v. Coste** (1899), 68 L. J. Q. B. 373; **Taylor v. National Amalgamated Approved Soc.**, [1914] 2 K. B. 352. **Refd.** **Smith v. G. W. Ry.** (1920), 37 T. L. R. 117.

789. — — —.]—Under 1888 Act, s. 120, & the following clauses, there is no right of appeal from a county ct. except upon a question of law raised & submitted to the county ct. judge at the trial.—**SMITH v. BAKER & SONS**, [1891] A. C. 325; 60 L. J. Q. B. 683; 65 L. T. 467; 55 J. P. 660; 40 W. R. 392; 7 T. L. R. 679, H. L.

Annotations:—**Consd.** **Willetts v. Watt** (1892), 61 L. J. Q. B. 540; **Thomas v. Great Western Colliery Co.** (1894), 10 T. L. R. 244; **Wohlgemuth v. Coste**, [1899] 1 Q. B. 501; **Darlow v. Singleton** (1901), 86 L. T. 529, n.; **Nathan v. Rouse** (1904), 2 L. G. R. 1304. **Appld.** **Hase v. London General Omnibus Co.** (1907), 23 T. L. R. 616. **Distd.** **Cresswell v. Jones & Andrews**, **Johnson v. Refuge Asso.** (1912), 1 L. J. C. C. 28. **Expld.** **Taylor v. National Amalgamated Approved Soc.**, [1914] 2 K. B. 352; **Waller v. Thomas**, [1921] 1 K. B. 541. **Consd.** **Kimpson v. Markham**, [1921] 2 K. B. 157. **Refd.** **Utzon v. Nicol** (1893), 63 L. J. Q. B. 289; **Neptune Steam Navigation Co. v. Selater & Proctor**, **The Delano** (1894), 71 L. T. 544; **L. & N. W. Ry. v. Donellan**, **L. & N. W. Ry. v. Billington** (1898), 78 L. T. 575; **Darlow v. Shuttleworth**, [1902] 1 K. B. 721; **Stephen v. International Sleeping Car Co.** (1903), 47 Sol. Jo. 692; **Barry v. Minturn**, [1913] A. C. 584; **Sales Agency v. Elite Theatres**, [1917] 2 K. B. 164; **Gonsky v. Durrell**, [1918] 2 K. B. 71; **Smith v. G. W. Ry.** (1920), 37 T. L. R. 117; **Moriarty v. Regent's Garage & Engineering Co.**, [1921] 2 K. B. 766; **Nelson Murdoch v. Wood** (1922), 126 L. T. 745. **Mentd.** **Greenhalgh v. Cwmaman Coal Co.** (1891), 8 T. L. R. 31; **Brannigan v. Robinson**, [1892] 1 Q. B. 344; **Wild v. Waygood** (1892), 66 L. T. 309; **Stanton v. Scrutton** (1893), 62 L. J. Q. B. 405; **Pyner v. Bullard**, **King** (1897), 14 T. L. R. 57; **Williams v. Birmingham Battery & Metal Co.**, [1899] 2 Q. B. 338; **Lloyd v. Woolland** (1902), 19 T. L. R. 32; **Smerkinich v. Newport Corpn.** (1912), 76 J. P. 454; **Norman v. G. W. Ry.**, [1914] 2 K. B. 153; **Canadian Pacific Ry. v. Fréchette**, [1915] A. C. 871; **Cole v. De Trafford**, [1918] 2 K. B. 533; **Monaghan v. Rhodes**, [1920] 1 K. B. 487; **Abbott v. Isham** (1920), 90 L. J. K. B. 309; **Baker v. James**, [1921] 2 K. B. 674.

790. — — —.]—It is a condition precedent to the right of appeal to the High Ct. from the judgment of a county ct. judge, under 1888 Act, s. 120, that the question of law relied on in support of the appeal shall be raised at the trial, but a request to the judge to make a note is not a condition precedent, & therefore if the notes of the judge are not produced, the ct. has jurisdiction, under R. S. C., Ord. 59, r. 8, if satisfied that the question of law was raised at the trial, to hear the appeal upon other evidence, though a request to make a note has not been made.—**WOHLGEMUTH v. COSTE**, [1899] 1 Q. B. 501; 68 L. J. Q. B. 373; 80 L. T. 529, D. C.

Annotation:—**Consd.** **Abrahams v. Dimmock**, [1915] 1 K. B. 662.

791. — — —.]—It is to be borne in mind that there is no appeal from a county ct. upon a question of fact, & as regards any question of law the only point that can be raised on appeal is a point of law which has been raised before the county ct. judge. The raising of the point

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of law at the trial is a condition precedent to an appeal from the decision in the county ct. (BUCKLEY, L.J.).—METROPOLITAN WATER BOARD *v.* JOHNSON & Co., [1913] 3 K. B. 900; 82 L. J. K. B. 1164; 109 L. T. 88; 77 J. P. 384; 29 T. L. R. 603; 11 L. G. R. 1106; 57 Sol. Jo. 625, C. A.

Annotation:—Mentd. Poulton *v.* Moore (1913), 109 L. T. 976.

792. ——— Ouster of jurisdiction by public Act.]—The rule that there is no appeal from a county ct. except upon a point of law taken in that ct. applies even when the ground of appeal is that the jurisdiction of the county ct. in the matter in question has been ousted by a public stat.

Pltf. claimed to be a member of deft. society & as such entitled to payments under a contract of insurance with the society, who denied that pltf. was a member. Pltf. brought an action in the county ct. Defts. gave notice of a special defence of National Insurance Act, 1911 (c. 55), s. 67, insisting that the county ct. had no jurisdiction in the matter. The county ct. judge gave judgment for pltf. holding that sect. 67 of the Act applied only to disputes between the society & one who was admittedly a member thereof. National Insurance Act, 1913 (c. 37), s. 27, was not brought to the attention of the county ct. judge. Defts. appealed on the ground that the jurisdiction of the county ct. was ousted by

not having been taken in the county ct. could not be raised on appeal, and the decision of *Smith v. Baker*, No. 789, *ante*, applied, even though the point under appeal was one touching the jurisdiction of the county ct.—TAYLOR *v.* NATIONAL AMALGAMATED APPROVED SOCIETY, [1914] 2 K. B. 352; 83 L. J. K. B. 1020; 110 L. T. 696; 78 J. P. 254; 12 L. G. R. 525, D. C.

Annotation:—Distd. Simpson *v.* Crowle, [1921] 3 K. B. 243.

793. ———.]—The questions whether the interest is excessive or whether the transaction is harsh & unconscionable within Moneylenders Act, 1900 (c. 51), p. 1 (1) are not questions for a jury but are for the judge.

While the jury were being sworn in an action in a county ct. by a money-lender to recover the money lent, the county ct. judge raised the point that the above questions were for him to decide & not for the jury. The point was discussed before him & he eventually left the questions to the jury:—*Held*: the point of law was raised at the trial within the meaning of 1888 Act, s. 120, so as to render an appeal competent.

It is not a condition precedent, under 1888 Act, s. 120, to a right of appeal from a county ct. that a request shall have been made to the county ct. judge to make a note of the point of law raised & of the evidence relating thereto, nor is it a condition precedent, if the judge has not made a note, that he should give a certificate to that effect. Where in such a case the judge has not made a note the ct. may, under R. S. C., Ord. 59, r. 8, determine the appeal upon such materials as it deems sufficient.—ABRAHAMS *v.* DIMMOCK, [1915] 1 K. B. 662; 84 L. J. K. B. 802; 112 L. T. 386; 31 T. L. R. 87; 59 Sol. Jo. 188; 78 J. P. Jo. 592, C. A.

Annotations:—Consd. Kimpson *v.* Merham, [1921] 2 K. B. 157. *Refd.* Simmons *v.* Crossley, [1922] 2 K. B. 95.

794. ——— By taking objection at trial—Non-direction of jury.]—The rule that no appeal lies

from a county ct. except upon a point of law taken at the trial applies to the case of an omission by the judge in his summing up to give the jury proper & necessary directions as to the law. The party desirous of appealing on the ground of such non-direction must take the objection at the time so as to give the judge an opportunity of correcting his direction.—CLIFFORD *v.* THAMES IRONWORKS & SHIPBUILDING Co., [1898] 1 Q. B. 314; 67 L. J. Q. B. 244; 78 L. T. 164; 46 W. R. 222; 42 Sol. Jo. 117, D. C.

Annotation:—Consd. Handley *v.* London, Edinburgh & Glasgow Assco., [1902] 1 K. B. 350.

795. ——— Misdirection of jury.]—Although a party who appeals directly to the High Ct. against the judgment of a county ct. judge on the ground of misdirection is not entitled to be heard unless he took the objection to the judge's direction at the time of the trial, it is otherwise if he first applies to the county ct. judge for a new trial on the ground of misdirection, & then upon being refused appeals to the High Ct. against such refusal. It is enough that the objection to the direction is taken for the first time upon the application for a new trial to the county ct. judge.—HANDLEY *v.* LONDON, EDINBURGH & GLASGOW ASSURANCE Co., [1902] 1 K. B. 350; 71 L. J. K. B. 39, D. C.

Annotation:—Refd. Cresswell *v.* Jones & Andrews (1912), 1 L. J. C. C. 28.

796. ———.]—CRESSWELL *v.* JONES, No. 572, *ante*.

797. S. P. JOHNSON *v.* REFUGE ASSURANCE
L. J. C. C

nonsuit.]—A husband & wife separated in 1863, & the wife went back to her mother's house resuming her maiden name. In 1881 she died, & letters of administration to her estate were taken out by the exors. of her father's will as if she had been a spinster, although it appeared that one of them knew she was a married woman. In 1888 the husband first became aware of his wife's death, & after making inquiries, he instituted a suit in the county ct. for the revocation of the grant. The county ct. judge directed a nonsuit on the ground that no such fraud had been shown as to justify him in revoking the letters of administration:—*Held*: (1) the county ct. judge was wrong in holding that fraud must be shown to justify him in revoking the grant of administration; (2) his decision was upon a point of law within the meaning of Court of Probate Act, 1857 (c. 77), s. 58, so that the Probate Div. had jurisdiction to entertain an appeal; (3) the point of law was sufficiently raised at the hearing by the pleadings & the nonsuit to comply with 1888 Act, s. 120, & the ct. would revoke the letters of administration & make a new grant to the husband.—COPELAND *v.* SIMISTER, [1893] P. 16; 62 L. J. P. 38; 68 L. T. 257; 41 W. R. 269; 1 R. 469, D. C.

799. ——— Point raised by judge before jury sworn—Point discussed & case left to jury.]
ABRAHAMS *v.* DIMMOCK, No. 793, *ante*.

800. ——— Reference to ruling in previous case—Not disputed in later case.]—A county ct. judge taking his seat in ct. announced that he had, at a recent sitting of the ct., been asked to determine the meaning of the words in Increased Rent & Mortgage Interest (Restrictions) Act, 1920 (c. 17), s. 5 (1) (d), & that he had held them to mean that the ct. must be satisfied of the existence of alternative accommodation at the time when the notice to determine the tenancy was given. On the following day the solr. appearing for deft.

before the same judge in an action in which the meaning of these words was material did not dispute the judge's previous ruling:—*Held*: the point had been raised & determined by the county ct. judge, & it was therefore open to deft. to appeal from this ruling.—*KIMPSON v. MARKHAM*, [1921] 2 K. B. 157; 90 L. J. K. B. 393; 124 L. T. 790; 37 T. L. R. 342; 19 L. G. R. 346, D. C.

—By taking objection at trial.]—See Nos. 572, 794, 795, 797, *ante*.

801. Time for—On application for new trial—Appeal from refusal to grant new trial.]—*HANDLEY v. LONDON, EDINBURGH & GLASGOW ASSURANCE CO.*, No. 795, *ante*.

(c) *What points may be considered on Appeal.*

802. Point not raised in county court—Appellant cannot rely on.]—Upon an appeal from a county ct. under 1850 Act, s. 14, the parties are bound by the case as it is stated for the opinion of the ct. & cannot travel out of it. On such appeal only such objections can be raised as were taken at the trial in the county ct.—*WATSON v. AMBERGATE, NOTTINGHAM, ETC. RY. CO.* (1851), Cox, M. & H. 495; 15 Jur. 448.

Annotations:—*Mentd.* Wilby v. West Cornwall Ry. (1858), 4 Jur. N. S. 284; Simpson v. L. & N. W. Ry. (1876), 1 Q. B. D. 274; Sapwell v. Bass, [1910] 2 K. B. 486; Chaplin v. Hicks, [1911] 2 K. B. 786.

803. ———.]—*Semble*: on an appeal from a county ct. the ct. will not entertain an objection as a ground of appeal which has not been taken in the ct. below.—*YORKE v. SMITH* (1851), 21 L. J. Q. B. 53; *sub nom.* SMITH v. YORKE, 16 Jur. 63.

804. ———.]—*Semble*: on appeal from the county ct. to the superior cts. the ct. & the parties are bound by the objections taken below & appearing on the case & cannot enter upon others.—*BATHER v. DAY* (1863), 32 L. J. Ex. 171; 8 L. T. 205.

805. ———.]—W. was lessee in possession of freehold premises belonging to E.'s wife for a term of ten years. On the expiration of the term W., who continued in possession, verbally agreed with E.'s wife for a new lease for thirty years. W. then verbally agreed to grant to L. an underlease of the new term at an increased rent. L. entered & expended money on improvements. E. having refused to grant the lease to W., W. filed a plaint against E. alone in the county ct. for specific performance of his agreement with E.'s wife. The objection that E.'s wife was not made a party to the plaint was not taken in the ct. below, & the only question submitted by the county ct. judge for the opinion of the appeal ct. was whether the expenditure by L. entitled W. to specific performance:—*Held*: the point not submitted by the county ct. judge could not be argued on appeal.—*WILLIAMS v. EVANS* (1875), L. R. 19 Eq. 547; 44 L. J. Ch. 319; 32 L. T. 359; 23 W. R. 466.

806. ———.]—R., as agent for his father-in-law, contracted with pltf. that they should build for him two houses for a fixed sum, to be paid as the work proceeded by instalments. The last instalment became due, & R. refused to pay. Pltf. brought their action to recover £50 in the county ct. against the administratrix of the undisclosed principal, & called evidence to prove that R. acted only as agent. No objection was taken by deft. that such evidence was inadmissible, & judgment was entered for pltf. On appeal from the Div. Ct. to the Ct. of Appeal:—*Held*: objection not having been taken to the evidence in the county ct. it was not open to deft. to appeal

on that point against the judgment of the county ct. judge who had admitted the evidence.—*FORMBY BROTHERS v. FORMBY* (1910), 102 L. T. 116; 54 Sol. Jo. 269, C. A.

807. ———.]—*CLARKSON v. MUSGRAVE*, No. 788, *ante*.

808. ———.]—In an action for wrongfully distraining a tool of pltf.'s trade in contravention of Law of Distress Amendment Act, 1888 (c. 21), s. 4, the onus lies upon pltf. to prove that £5 worth of wearing apparel, bedding, & tools & implements of his trade was not left by the distrainer upon the premises as required by 1888 Act, s. 147. The common law protection cannot be relied upon in an action framed only on the stat.

A further point was sought to be raised here, namely, that the £5 value specified in 1888 Act, s. 147, is to be read distributively, that is to say, that the exception extends to wearing apparel & bedding of the value of £5 & to tools & implements of trade of the value of £5. If it had been desired to raise that point here it ought to have been taken in the county ct. The point was not taken in the county ct., & therefore we cannot entertain it (*PICKFORD, L.J.*).—*GONSKY v. DURRELL*, [1918] 2 K. B. 71; 87 L. J. K. B. 836; 119 L. T. 174; *sub nom.* GOUSKY v. DURRELL, 62 Sol. Jo. 622, C. A.

809. ———.]—Pltf. let a piano under a hire-purchase agreement whereby the hirer had an option to purchase it by payment of a certain number of quarterly instalments, but was to remain a bailee only until the last of the instalments should be paid, the hirer having the right at any time to terminate the agreement by returning the piano to pltf. The hirer paid several of the instalments, but before they were fully paid sold the piano to deft. In an action of detinue & conversion in the county ct. deft. paid into ct. the amount of the remaining unpaid instalments. The county ct. judge decided that deft. had acquired the rights of the hirer under the agreement before anything had been done to terminate it, no instalment being then in arrear, that the measure of damages was the amount of the unpaid instalments, & that pltf. were not entitled to recover the piano or its full value, but only the amount paid into ct. On appeal from the Div. Ct. reversing the decision of the county ct. judge:—*Held*: the judgment of the county ct. judge was right.

It must be remembered that the appeal given by 1888 Act, s. 120, is an appeal on a question of law, & it was not open to the Div. Ct. to take a different view of the facts from that taken by the county ct. judge & to find that the sale was fraudulent & amounted to a repudiation of the hire-purchase agreement. The ground of the decision by the Div. Ct., namely that the sale was fraudulent & amounted to a repudiation of the agreement & put an end to the interest of the vendor, was not open to that Ct. upon the finding of the county ct. judge (*SWINFEN EADY, M.R.*).—*WHITELEY v. HILT*, [1918] 2 K. B. 808, 115; 78 L. J. K. B. 1058; 119 L. T. 632; 34 T. L. R. 592; 62 Sol. Jo. 717, C. A.

Annotation:—*Reid.* Nelson Murdoch v. Wood (1922), 136 L. T. 745.

—In Nov. 1919 pltf. agreed with an agent for an intended co. to sell his business to that co., the payment to be partly in cash & the balance in debenture stock of the co. The agreement contained a clause providing that the vendor should be, & act as, one of the directors of the co., & that his fees for so acting

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should be £150 *per annum*. The articles of deft. co. when formed, provided that the remuneration of the directors should be at the rate of £150 *per annum*, & such further sum if any as should be voted to them by the co. in general meeting, & that such remuneration should be divided amongst the directors as they should determine, or failing co. on incorporation adopted the agreement & pltf. received the debentures, which contained a condition entitling the co. to pay them off at the expiration of six months. In Dec. 1919 pltf. was duly appointed a director to hold office so long as he held a certain amount of debentures in the co. Disputes having arisen between pltf. & the co., pltf. agreed to accept payment of all money due to him upon his debentures, & on May 14, 1920, the debentures were paid off, & thereupon he ceased to be a director. In an action by pltf. to recover a proportionate part of the £150 as his fees for the period from Dec. 1919 to May 1920, when he acted as director, the deputy county ct. judge gave judgment for defts., deciding that pltf. was not entitled to remuneration for a broken part of a year. The Div. Ct. reversed the decision of the deputy county ct. judge. On appeal:—*Held*: the question of the applicability of Apportionment Act, 1870 (c. 35), not having been raised in the county ct., could not be raised on appeal.—*MORIARTY v. REGENT'S GARAGE CO.*, [1921] 2 K. B. 766; 90 L. J. K. B. 783; 125 L. T. 560; 37 T. L. R. 531; 65 Sol. Jo. 474, C. A.

811. ———.]—In Nov. 1919 C. hired a piano from pltf., who were piano manufacturers, on the terms of a hire-purchase agreement. In June 1920 C. sold the piano to deft., who had no knowledge of the hire-purchase agreement & believed that C. was the owner of the piano. Up to that date, the hirer had paid all the instalments as they became due. In Oct. 1920, C. borrowed the piano from deft. on the pretext that he was entertaining a social party, & it was delivered to C.'s house. About a fortnight later deft. was told by C. that he only had the piano under the terms of the hire-purchase agreement, & that he had returned the piano to the owners. He also promised deft. that he would return to him the £55 which had been paid for the piano. C. sold the piano to some one else, & in Dec. 1920 he left the country without paying deft. He had paid all the instalments that had become due up to that time, but there was still a balance of £12 to be paid to complete the purchase price. On Jan. 15, 1921, pltf. gave deft. notice that the piano was their property & required him to return it or to pay the balance due. On his refusal they claimed damages for conversion & obtained judgment in the county ct. for £55. On appeal from the Div. Ct. reversing the decision of the county ct. judge:—*Held*: as the Div. Ct. had reversed the decision of the county ct. judge on grounds which had not been raised below, which they had no jurisdiction to do, the judgment of the county ct. must be restored.—*NELSON MURDOCH & CO. v. WOOD* (1922), 126 L. T. 745; 38 T. L. R. 393; 66 Sol. Jo. 367, C. A.

812. ——— Respondent can rely on.]—The ct. of Q. B. will uphold the decision of the county ct. judge where it can be supported on points other than those on which he decided, though such other points were not taken in the ct. below.—*CHAPMAN v. KNIGHT* (1880), 5 C. P. D. 308; 49

L. J. Q. B. 425; 42 L. T. 538; 44 J. P. 491; 28 W. R. 919, D. C.

Annotations:—*Mentl. Swire v. Cookson* (1888), 48 L. T. 877; *Walrond v. Goldmann* (1885), 16 Q. B. D. 121; *Bright v. Rogers*, [1917] 1 K. B. 917; *Waller v. Thomas*, [1921] 1 K. B. 541.

813. ———.]—*SIMPSON v. CROWLE*, No. 213, *ante*.

814. ——— Raised in Divisional Court—Appellant cannot rely on—In Court of Appeal.]—There being no appeal under 1888 Act upon any question of law which has not been raised in the ct. below questions that have not been so raised but which have been argued in the Div. Ct. are not permitted to be argued in the Ct. of Appeal.—*SALES AGENCY, LTD. v. ELITE THEATRES*, [1917] 2 K. B. 164; 86 L. J. K. B. 1060; 117 L. T. 6; [1917] H. B. R. 163, C. A.

Annotation:—*Reid. Gonsky v. Durrell*, [1918] 2 K. B. 71.

815. Point raised in county court—Appellant cannot rely on—Leave to appeal from Divisional Court limited to another point.]—In an appeal from a county ct. to a Div. Ct., leave to appeal on one point having been given by the Div. Ct., the Ct. of Appeal confined the argument to the point as to which leave to appeal had been given, & refused to allow the applt. to go into another point which had been raised in the county ct. & in the Div. Ct.—*JONES v. BIERNSTEIN*, [1900] 1 Q. B. 100; 81 L. T. 553; 48 W. R. 232; 16 T. L. R. 30, C. A.

B. Questions of Equity.

816. Whether questions of fact.]—The question whether certain conversations amount in equity to a contract between the parties to them is not a mere question of fact, but is one the decision of which by a county ct. judge may be made the subject of an appeal.

In such a case the judge should, with the case on the appeal, send up all the evidence adduced at the hearing before him.—*WILLIAMS v. WILLIAMS* (1868), 37 L. J. Ch. 854; 18 L. T. 785.

817. Misapplication of principles to facts.]—Notes compiled by the judge of a county ct. after the trial from evidence wholly on affidavits were, being in ct., received in the Ct. of Appeal from inferior courts, although no request to take notes had been made to the judge during the trial.

To give ground for an appeal from a county ct. in equity cases there must be a misapplication by the judge of the principles of equity to the facts which he finds.—*HILL v. PERSSÉ* (1877), 25 W. R. 275, D. C.

C. Questions of Fact.

818. General rule.]—In an action for negligent driving it appeared that whilst deft. was quietly driving his cart down hill the horse began to kick, & broke both shafts of the cart, & tilted it, whereby the driver & contents were thrown out, after which the horse ran away with the cart & came in collision with pltf.'s gig & injured it. The judge was of opinion that the breaking of the shafts showed a defect in the cart, which raised a presumption of negligence in the owner that had not been satisfactorily rebutted, & gave judgment for pltf. On appeal:—*Held*: (1) the judgment was right; (2) if upon the whole facts given in evidence by both parties the judge could legitimately come to the conclusion to which he did his decision was not reviewable, & he was not bound to nonsuit because the evidence for pltf. alone would not sustain the action.—*TEMPLEMAN v. HAYDON* (1852), 12 C. B. 507; 19 L. T. O. S. 218; 16 J. P. 537; 138 E. R. 1005.

Annotation:—*As to (2) Reid. Moffat v. Bateman* (1869), 6 Moo. P. C. C. N. S. 369.

819. —.]—*R. v. SPOONER, SHREEVE v. CHARLESWORTH*, No. 506, *ante*.

820. —.]—The granting or refusing a rule calling upon a judge of a county ct. to settle & sign a case on appeal, under 1856 Act, s. 43, is discretionary, & the ct. is justified in refusing a rule where it plainly appears that no question of law can arise thereon.—*SHARROCK v. LONDON & NORTH WESTERN RY. CO.* (1875), 1 C. P. D. 70; 33 L. T. 341; 24 W. R. 346, O. A.

Annotations:—*Consd. Cousins v. Lombard Bank* (1876), 1 Ex. D. 404. *Distd. Clarke v. Roche* (1877), 36 L. T. 727. *Refd. Rhodes v. Liverpool Commercial Investment Co.* (1879), 4 C. P. D. 425. *Mentd. Wright v. L. & N. W. Ry.* (1876), 1 Q. B. D. 252.

821. —.]—A county ct. judge decided, in an action against a railway co. for the loss of machine-made lace which had not been declared, in accordance with the provisions of Carriers Act, 1830 (c. 68), that the co. were protected by the Act as the lace consisted wholly of silk, & the provisions of Carriers Act Amendment Act, 1865 (c. 94), were not applicable. On appeal:—*Held*: the ct. would not alter his decision.

Inasmuch as the judge of the ct. below finds as a fact that this article was silk in a manufactured state & that it is not to be put into the class of lace we must give judgment for defts. (*HAWKINS, J.*).—*TAYLOR v. MIDLAND RY. CO.* (1877), 41 J. P. 504.

822. —.]—Pltf. was a passenger on the top of one of defts.' omnibuses. In consequence of the road along which the omnibus usually travelled being closed, the driver of the omnibus had to pass through side streets, & in turning the corner of one of the side streets the omnibus was driven close to the kerb, so that the top of the omnibus, owing to the camber of the road, projected over the foot pavement. A street lamp stood at the corner with a small iron arm projecting from it, but not sufficiently far to extend over the roadway. While the omnibus was being driven round the corner the iron arm struck pltf. on the chest & injured him. There was no traffic which prevented the omnibus from being driven further away from the kerb. In an action in the county ct. to recover damages for negligence, the judge found that the driver did not see the projecting arm, & that he was not guilty of negligence in not having seen it & in having driven close to the kerb, & he gave judgment for defts.:—*Held*: there was evidence to support the finding of the county ct. judge, which was a finding of fact, & therefore the ct. could not interfere.—*HASE v. LONDON GENERAL OMNIBUS CO., LTD.* (1907), 23 T. L. R. 616, D. C.

Annotation:—*Mentd. Walton v. Vanguard Motor Bus Co., Gibbons v. Vanguard Motor Bus Co.* (1908), 72 J. P. 505.

823. —.]—Deft., a fish salesman, was consulted by a fellow salesman in reference to an injury to the latter's thumb, into which a fish-bone had penetrated, with the result that a blister formed on the spot. Deft. bathed the thumb, & applied to it a plaster composed of various ingredients compounded according to a recipe handed down in his family. For this deft. charged two guineas. In an action against him by pltf. to recover the penalty of £20, under Apothecaries Act, 1815 (c. 194), s. 20, for having acted or practised as an apothecary without having a certificate, the county ct. judge decided in favour of deft. on the ground that what he had done amounted to acting, not as an apothecary, but as a surgeon in a minor surgical case:—*Held*: the question was one of fact for the county ct. judge, & as he had arrived at the conclusion that deft. had not acted or practised as an apothecary, the appeal from his

decision must be dismissed.—*APOTHECARIES' SOCIETY v. GREGORY* (1908), 25 T. L. R. 37, D. C.

824. —.]—*METROPOLITAN WATER BOARD v. JOHNSON & CO.*, No. 791, *ante*.

825. Trial without jury.]—A. was clerk to B. under an agreement for a salary of £140 a year, determinable by three months' notice or payment of three months' salary. B. dismissed A. without notice, under circumstances which a county ct. judge decided not to be a legal justification for such dismissal, & afterwards sued him for money had & received. Upon an appeal under 1850 Act, s. 14:—*Held*: A. was entitled to set off in that action the amount of the three months' salary, & the decision of the county ct. judge upon the facts could not be reviewed. *Semble*: the convenient construction of sect. 14 would be that no appeal lies in any case where the county ct. judge performs the functions of a jury.—*EAST ANGLIAN RYS. CO. v. LYTHGOE* (1851), 10 C. B. 726; 2 L. M. & P. 221; Cox, M. & H. 380; 20 L. J. C. P. 84; 16 L. T. O. S. 487; 15 Jur. 400; 138 E. R. 287.

Annotations:—*Consd. Cawley v. Furnell* (1851), 12 C. B. 291. *Refd. Cuthbertson v. Parsons* (1852), 12 C. B. 304; *Mid. Ry. v. Bromley* (1856), 17 C. B. 372.

826. —.]—The Ct. of Appeal from inferior cts. has no power under 1875 Act, s. 6, to review the decision of the judge of a county ct. sitting without a jury upon a question of fact arising in a suit brought within its jurisdiction as a ct. of common law.—*COUSINS v. LOMBARD DEPOSIT BANK* (1876), 1 Ex. D. 404; 45 L. J. Q. B. 573; 35 L. T. 484; 25 W. R. 116.

Annotations:—*Consd. Rhodes v. Liverpool Commercial Investment Co.* (1879), 4 C. P. D. 425; *Pierpont v. Cartwright* (1880), 5 C. P. D. 139.

827. Whether evidence of loss.]—Defts., theatrical agents, obtained an engagement for pltf. at a music hall, negligently misrepresenting to her the amount of the weekly takings upon which her remuneration was based. The county ct. judge awarded pltf., *inter alia*, a sum of £20 as damages. Defts. appealed to the Div. Ct., contending that that sum had been awarded for loss of profits & not for loss of time, & was bad in law. The Div. Ct. dismissed the appeal:—*Held*: there was evidence upon which the county ct. judge could award pltf. the £20 for her loss of time, & the appeal would be dismissed.—*JOHNSTON v. BRAHAM & CAMPBELL, LTD.*, [1917] 1 K. B. 586; 86 L. J. K. B. 613; 116 L. T. 188; 61 Sol. Jo. 233, C. A.

828. No evidence to support finding.]—Where a county ct. judge, in stating a case for the opinion of this ct. under 1850 Act, s. 14, sets out evidence which shows a total absence of foundation for the conclusion at which he has arrived, the ct. will reverse his decision.—*BRITISH INDUSTRY LIFE ASSURANCE CO. v. WARD* (1856), 17 C. B. 644; 20 J. P. 391; 139 E. R. 1229.

Annotation:—*Mentd. Card v. Carr* (1856), 1 C. B. N. S. 197.

829. —.]—On a trial in the county ct., pltf. having closed his case, it was submitted by the advocate on the part of defts. that there was no evidence to go to the jury. The judge deciding that there was, evidence was offered on the part of defts., & a verdict was ultimately found for pltf.:—*Held*: defts. did not by calling witnesses preclude themselves from appealing on the ground that the judge had ruled erroneously.—*GREAT WESTERN RY. CO. v. RIMELL* (1856), 18 C. B. 575; 1 Saund. & M. 157; 27 L. J. O. P. 201; 27 L. T. O. S. 262; 139 E. R. 1495; *sub nom.* *GREAT NORTHERN RY. CO. v. RIMELL*, 20 J. P. 679.

Annotations:—*Consd. Groves v. Cheltenham & East Bldg. Soc.*, [1913] 2 K. B. 100. *Refd.*

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Smith v. Mid. Ry. (1918), 88 L. J. K. B. 868; Smith v. G. W. Ry., [1921] 2 K. B. 237. Mentd. Metcalfe v. L. B. & S. C. Ry. (1858), 4 C. B. N. S. 307; Vaughton v. L. & N. W. Ry. (1874), 30 L. T. 119; Shaw v. G. W. Ry., [1894] 1 Q. B. 373.

830. ——.]—At the close of pltf.'s case in an action brought in a county ct. it was objected upon behalf of defts. that there was no case for them to answer. The county ct. judge overruled the objection. Evidence was then called on their behalf, & the county ct. judge gave judgment for pltf. Upon appeal to a Div. Ct. :—

Held: if the Div. Ct. thought that upon the whole of the evidence given in the county ct. the county ct. judge was justified in coming to the conclusion he did, it ought not to overrule his decision, even if he was wrong in not nonsuiting at the conclusion of the pltf.'s case, but as there was in this case no evidence upon which the county ct. judge could give judgment for pltf. the appeal would be allowed.—*GROVES v. CHELTENHAM & EAST GLOUCESTERSHIRE BUILDING SOCIETY*, [1913] 2 K. B. 100; 82 L. J. K. B. 664; 108 L. T. 846, D. C.

Annotation:—Reid. Gascoigne v. Gascoigne (1917), 87 L. J. K. B. 333.

831. ——.]—Pltf. was walking along a highway under a sun blind outside deft.'s shop, when two men jumped up from the pavement to one of the iron supports, which was seven feet six inches from the ground, & mischievously pulled the blind down on deft., with the result that he was injured. The blind was properly constructed & in a good state of repair. There was evidence that accidents of the kind had happened on other occasions to blinds of similar construction, the cause in each case being that some person jumped up to the iron support of the blind & pulled it down. The county ct. judge gave judgment for pltf. with £50 damages, & his decision was affirmed by the Div. Ct. On appeal :—*Held:* there was no evidence

was not therefore entitled to damages.—

There is not a particle of evidence that in the circumstances of the present case anybody would ever think of guarding against the pulling down of a blind by the wrongful act of two grown men. I think it would be going further than any of the decisions, & would be wrong in principle to hold that this shopkeeper is liable for the consequences of the falling of this blind on to pltf. (*LORD COZENS-HARDY, M.R.*).—*WHEELER v. MORRIS* (1915), 84 L. J. K. B. 1435; 113 L. T. 644, C. A.

Annotations:—Consd. Ruoff v. Long, [1916] 1 K. B. 148.

832. ——.]—Defts.' servants momentarily left stationary but unattended in a highway a steam motor lorry. In order to start the lorry it was necessary to withdraw a hand-pin from the gear lever & then to move that & two other levers. Two soldiers seeing the lorry mounted it. One tried but failed to set it in motion. The other succeeded in starting it backwards so that it ran into pltf.'s shop front & did damage for which the action was brought. The county ct. judge gave judgment for pltf. on appeal to the Div. Ct. :—*Held:* (1) there was in the circumstances no evidence of negligence in leaving the lorry unattended; (2) assuming that there was negligence there was no evidence that it caused the damage.

This ct. ought to hold, even if we take the finding of the county ct. judge as a finding of fact, that it cannot stand if there is in our view no evidence to

support it (*AVORY, J.*).—*RUOFF v. LONG & Co.*, [1916] 1 K. B. 148; 85 L. J. K. B. 364; 114 L. T. 186; 80 J. P. 158; 32 T. L. R. 82; 60 Sol. Jo. 323, D. C.

Admiralty appeals.]—See ADMIRALTY, Vol. I., p. 231, Nos. 1562–1569.

D. Questions of mixed Law and Fact.

833. Decision based on erroneous view of law.]

—An appeal will lie against the decision of a county ct. judge, under 1850 Act, s. 14, though the question presented to the ct. of appeal be a mixed question of law & fact—provided the ct. can clearly see, that, in coming to the conclusion he did, the judge of the county ct. must have taken an erroneous view of the law.—*CAWLEY v. FURNEILL* (1851), 12 C. B. 291; *Cox, M. & H.* 514; 20 L. J. C. P. 197; 17 L. T. O. S. 201; 15 J. P. 499; 15 Jur. 908; 138 E. R. 915.

Annotation:—Reid. Cuthbertson v. Parsons (1852), 12 C. B. 304.

834. ——.]—By a local Act, which appointed comrs. for the harbour of N., it was provided that it should be lawful for the comrs. for the time being to build or provide steam-tugs for towing vessels into & out of the harbour, & that any person requiring the assistance of a towing vessel should pay to the comrs. such reasonable compensation as the comrs. should fix. Between the comrs. & the owners of certain steam-tugs which had theretofore plied in the harbour, without being under the control of the comrs., an arrangement was entered into, under which the owners bound themselves to work their boats at reduced charges, the comrs. in consideration thereof binding themselves to pay an annual sum to the owners of the boats by way of compensation for the reduction. By consent of the owners of the steam-tugs, the latter were placed under the control & superintendence of the harbour master, whose authority by the Act extended generally to the control of the vessels in the harbour. Pltf.'s vessel having

them, the judge holding that they were responsible for the misconduct of the captain of the steam-tug :

—*Held:* on appeal, the judgment must be reversed; because on no inferences of fact that could fairly be drawn from the case, could the judgment in the county ct. be based, without error in law.—*CUTHBERTSON v. PARSONS* (1852), 12 C. B. 304; 21 L. J. C. P. 165; 19 L. T. O. S. 297; 16 J. P. 474; 16 Jur. 860; 138 E. R. 921.

Annotation:—Reid. G. W. Ry. v. Goodman (1852), 16 Jur. 862.

835. ——. **Trial without jury.]**—Where a county ct. judge decides a case without a jury an appeal lies, if it appears upon the case stated on appeal that he decided according to an erroneous view of the law, notwithstanding there is evidence which would support his finding.—*ROBINS v. TODD* (1858), 6 W. R. 466.

SUB-SECT. 3.—ALTERNATIVE REMEDY AVAILABLE.

836. Prohibition.]—BARKER v. PALMER, No. 433, *ante*.

837. ——.]—*SWEETLAND v. TURKISH CIGAR-ETTE Co.*, No. 684, *ante*.

— **When available.]—See Part IX., Sect. 2, sub-sect. 1, post.**

SUB-SECT. 4.—OTHER CASES.

838. Jurisdiction by agreement of parties—Amount of claim over £50.]—No appeal lies under 1850 Act, from the decision of a judge of a county ct., in a case where the amount of the claim exceeds £50, but where jurisdiction is given to him by the agreement of the parties.—*GROVES v. JANSSENS* (1854), 9 Exch. 481; 23 L. J. Ex. 91; 18 J. P. 185; 156 E. R. 206; *sub nom.* *JANSSENS v. GROVES*, 22 L. T. O. S. 244; 2 W. R. 192; 2 O. L. R. 558.

839. Judgment entered pro formâ—To expedite appeal.]—A Div. Ct. has no jurisdiction to hear a motion to set aside a judgment entered by a county ct. judge *pro formâ* in order to expedite an appeal, such entry of judgment not being a determination or direction of a county ct. within the meaning of 1850 Act, s. 14.—*CHAPMAN & SONS v. WITHERS & Co.* (1887), 58 L. T. 24; 4 T. L. R. 132, D. C.

840. No judgment delivered—Parties left to move for judgment.]—Where a county ct. judge left the parties to an action to move for judgment, & they came before the Q. B. Div. on cross motions, the ct. dismissed the case on the ground that there was no judgment from which an appeal could be brought.—*ROBERTS v. AIZLEWOOD* (1889), 5 T. L. R. 181, D. C.

841. Whether document sufficiently stamped—Or admissible in evidence.]—An appeal to the High Ct. does not lie from the ruling of a county ct. judge that a document tendered in evidence at the trial of an action before him is sufficiently stamped & admissible.—*MANDER v. RIDGWAY*, [1898] 1 Q. B. 501; 67 L. J. Q. B. 335; 78 L. T. 118; 46 W. R. 366; 14 T. L. R. 230; 42 Sol. Jo. 291, D. C.
Annotation:—Reid. Lowe v. Dorling (1905), 93 L. T. 398.

842. ———.]—An appeal does not lie from the admission in evidence by a county ct. judge of an unstamped document without exacting any penalty under Stamp Act, 1891 (c. 39).—*LOWE v. DORLING & SON*, [1905] 2 K. B. 501; 74 L. J. K. B. 794; 93 L. T. 398; 54 W. R. 28; *sub nom.* *LUCY v. DORLING*, 21 T. L. R. 616; 49 Sol. Jo. 582, D. C.; *affd.* on other grounds, [1906] 2 K. B. 772, C. A.

Annotation:—Reid. Shenstone v. Freeman, [1910] 2 K. B. 84.

SECT. 2.—LEAVE TO APPEAL.

See 1888 Act, s. 120.

843. Power to impose terms—Payment of costs in any event.]—A county ct. judge having given a debt. leave to appeal, but subject to a condition that he should pay pltf.'s costs of the appeal in any event, & should also, in case the appeal were unsuccessful, pay the costs of the trial upon the higher scale, the Div. Ct. held that it had no power to interfere with the discretion vested in him by 1867 Act, s. 13.—*GOODES v. CLUFF* (1884), 13 Q. B. D. 694, D. C.

Annotation:—Reid. Barker v. Phillips (1919), 122 L. T. 122.

.]—The administrator of a man

the society in the county ct. for £10, the funeral benefit to which the members were entitled under the rules of the society. The society put in the defence that, as the subscriptions payable according to the rules of the society were in arrear, the policy had lapsed, & the society were not liable:—*Held*: (1) this was a good defence, & the society were not seeking thereby to enforce the lapse of a policy to which Courts (Emergency Powers) Act, 1914 (c. 78), s. 1 (1), applied; (2) the county ct. judge had power to annex, as a condition of appeal,

the sum claimed being below £20, that the society should pay the costs of the action, & of the appeal in any event.—*BARKER v. PHILLIPS* (1919), 89 L. J. K. B. 51; 122 L. T. 122; 36 T. L. R. 33; 64 Sol. Jo. 83, D. C.

845. ——— Appeal restricted to one point.]—*JONES v. BIERNSTEIN*, No. 815, *ante*.

846. Death of judge—Before application for leave.]—1888 Act, s. 120, provides that there shall be no appeal in any action of contract or tort . . . where the debt or damage claimed does not exceed £20 . . . unless the judge shall think it reasonable & proper that such appeal should be allowed & shall grant leave to appeal.

In an action tried in the county ct. pltf. claimed the sum of £9 from defts. The judge gave judgment for defts. No application was made by pltf. for leave to appeal, & before the time within which such leave might be applied for the judge died. On appeal to the Div. Ct.:—*Held*: the ct. had no jurisdiction to hear the appeal.—*FELL v. LANCA-SHIRE & YORKSHIRE RY. Co.* (1907), 96 L. T. 785, D. C.

847. In formâ pauperis.]—The rule of practice forbidding proceedings in *formâ pauperis* on the Crown side of the Q. B. Div. only applies to litigation between the Crown & a subject & not to appeals from county cts., although the latter are entered in the Crown paper.—*CLEMENTS v. LONDON & NORTH WESTERN RY. Co.*, [1894] 2 Q. B. 482; 63 L. J. Q. B. 837; 70 L. T. 896; 58 J. P. 818; 42 W. R. 663; 10 T. L. R. 539; 38 Sol. Jo. 562; 9 R. 641, C. A.

Annotations:—Reid. Biggs v. Dagnall, [1895] 1 Q. B. 207.
Mentd. Roberts v. Gray, [1913] 1 K. B. 520.

Actions in formâ pauperis.]—See Part V., Sect. 12, *ante*.

Bankruptcy appeals.]—See BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 526-529.

SECT. 3.—CONDITIONS PRECEDENT TO APPEAL.

Whether raising question of law at trial

Sect. 1, sub-sect. 2, A. (b), *ante*.

Whether request to take note condition

dent.]—See Nos. 790, 793, *ante*; Nos. 901, 902, 903, *post*.

No note taken—Whether certificate that no note taken condition precedent.]—See No. 793, *ante*; No. 923, *post*.

SECT. 4.—TO WHAT COURT APPEAL LIES.

SUB-SECT. 1.—APPEALS FROM REGISTRAR.

848. Sitting as registrar—To judge of his court.]—An appeal from the registrar of a county ct. sitting as registrar, must be before the judge of his ct. in the first instance.—*Re SIDNEY, Ex p. SIDNEY* (1871), 24 L. T. 143.

849. Order to deposit sum in court—Under Ord. 12, r. 9.]—*PORTER v. LONDON INSURANCE Co.*, No. 750, *ante*.

850. Whether to High Court—With leave of registrar.]—*ROSIN v. RANK (JOSEPH), LTD.*, No. 611, *ante*.

As to taxation of costs.]—See Nos. 761, 779, *ante*.

SUB-SECT. 2.—APPEALS FROM JUDGE.

See R. S. C., Ord. 59, r. 4.

Sitting in Bankruptcy.]—See 1914 Act, s. 108 (2); Order dated Aug. 15, 1921 ([1921] W. N. Part II.,

Sect. 4.—To what court appeal lies: Sub-sects. 2 & 3. Sect. 5: Sub-sects. 1, 2 & 3. Sect. 6: Sub-sects. 1 & 2.]

p. 362); **BANKRUPTCY & INSOLVENCY**, Vol. IV., pp. 524, 525.

Order under Workmen's Compensation Act, 1906 (c. 58), s. 11—For detention of ship.]—See ADMIRALTY, Vol. I., p. 230, No. 1558.

Admiralty cause.]—See ADMIRALTY, Vol. I., pp. 230, 231.

851. Administration action—To Probate Division.]—COPELAND v. SIMISTER, No. 798, *ante*.

SUB-SECT. 3.—APPEALS FROM DIVISIONAL COURT.

852. With special leave—Judicature Act, 1873 (c. 66), s. 45.]—An appeal lies to the Ct. of Appeal from the decision of a Div. Ct., if special leave to appeal is given under Jud. Act, 1873 (c. 66), s. 45, upon a case stated by a county ct. judge under 1850 Act, s. 14, notwithstanding Appellate Jurisdiction Act, 1876 (c. 59), s. 20.—CRUSH v. TURNER (1878), 3 Ex. D. 303; 47 L. J. Q. B. 639; 38 L. T. 595; 43 J. P. 4; 26 W. R. 673, C. A.; *affd.* on other grounds, *sub nom.* TURNER v. CRUSH (1879), 4 App. Cas. 221, H. L.

Annotations:—Apprvd. Thomas v. Kelly (1888), 13 App. Cas. 506. *Reid.* Hall v. L. B. & S. C. Ry. (1886), 17 Q. B. D. 230.

853. — Interpleader proceedings.]—Interpleader proceedings were transferred under Jud. Act, 1884 (c. 61), s. 17, from the Q. B. Div. to a county ct. On appeal from the judgment of the county ct. the Q. B. Div. affirmed that judgment, but gave leave to appeal to the Ct. of Appeal:—*Held*: the Ct. of Appeal had jurisdiction under Jud. Act, 1873 (c. 66), s. 45, to hear the appeal that jurisdiction not having been taken away by Appellate Jurisdiction Act, 1876 (c. 59), s. 20.—THOMAS v. KELLY (1888), 13 App. Cas. 506; 58 L. J. Q. B. 66; 60 L. T. 114; 37 W. R. 353; 4 T. L. R. 683, H. L.

Annotations:—Mentd. Bouchette v. Attenborough Consolidated Credit & Mortgage Corp'n. (1887), 3 T. L. R. 813; Talby v. Official Receiver (1888), 13 App. Cas. 523; Hadden, Best v. Oppenheim, London & Westminster Discount Co., Claimants (1889), 60 L. T. 962; Parsons v. Brand, Coulson v. Dickson (1890), 25 Q. B. D. 110; Bird v. Davey, [1891] 1 Q. B. 29; *Re* Heseltine, Woodward v. Heseltine, [1891] 1 Ch. 464; Heseltine v. Simmons, [1892] 2 Q. B. 547; *Re* Tweedale, *Ex p.* Tweedale, [1892] 2 Q. B. 218; Seed v. Bradley, [1894] 1 Q. B. 319; Peace v. Brookes, [1895] 2 Q. B. 451; Sims v. Trollope (1896), 75 L. T. 351; De Braam v. Ford, [1900] 1 Ch. 142; Lysons v. Knowles, Stuart v. Nixon & Bruce, [1901] A. C. 79; Saunders v. White, [1902] 1 K. B. 472; Coates v. Moore, [1903] 2 K. B. 140; Mourmand v. Le Clair, Provincial Union Bank, Claimants (1903), 51 W. R. 589; Ball v. Hunt, [1912] A. C. 496; Ryan v. Oceanic Steam Navigation Co., O'Connell v. Same, Scanlon v. Same, O'Brien v. Same, [1914] 3 K. B. 731; Brandon Hill v. Lane, [1915] 1 K. B. 250; Burchell v. Thompson, [1920] 2 K. B. 80.

Interpleader generally, see INTERPLEADER.

854. — Remitted action.]—BOWLES v. DRAKE, No. 367, *ante*.

855. Against refusal to give leave—Judicature Act, 1893 (c. 66), s. 45.]—The Ct. of Appeal has no jurisdiction to hear an appeal under above Act, s. 19, against the refusal of a Div. Ct., under sect. 45, to grant leave to appeal from their decision on a judgment of a county ct.—KAY v. BRIGGS (1889), 22 Q. B. D. 343; 58 L. J. Q. B. 182; 60 L. T. 775; 37 W. R. 291; 5 T. L. R. 256, C. A.

Annotations:—Consd. Lane v. Esdaile, [1891] A. C. 210; Hawkins v. G. W. Ry. (1895), 14 R. 360. *Reid.* *Re* Housing of the Working Classes Act, 1890, *Ex p.* Stevenson (1892), 61 L. J. Q. B. 492.

856. —.]—HAWKINS v. GREAT WESTERN Ry. Co. (1895), 14 R. 860, C. A.

857. —.]—The Ct. of Appeal has jurisdiction under above Act, s. 1 (5), notwithstanding

the provisions of Jud. Act, 1873 (c. 66), s. 45, to grant leave to appeal from the decision of a Div. Ct. on a judgment of a county ct. where the Div. Ct. has refused to grant leave to appeal.—**GODMAN v. MOSES** (1900), 69 L. J. Q. B. 823; 83 L. T. 46; 48 W. R. 689; 16 T. L. R. 534, C. A.

858. —.]—The words in all cases where there is a right of appeal to the High Ct. from any ct., in above Act, s. 1 (5), include cases in which leave to appeal has been given by a county ct. judge, & the Ct. of Appeal has jurisdiction in such cases to give leave to appeal from the Div. Ct., notwithstanding that leave has been refused by the Div. Ct.—MOORE, NETTLEFOLD & Co. v. SINGER MANUFACTURING Co.**, [1904] 1 K. B. 820; 73 L. J. K. B. 457; 90 L. T. 469; 68 J. P. 369; 52 W. R. 385; 20 T. L. R. 366; 48 Sol. Jo. 328, C. A.**

Annotation:—Mentd. Plaswood Collieries Co. v. Partridge, Jones, [1912] 2 K. B. 345.

SECT. 5.—MODE OF APPEAL.

SUB-SECT. 1.—IN GENERAL.

See 1888 Act, s. 120; R. S. C., Ord. 59, r. 10 & generally **PRACTICE & PROCEDURE**.

859. By notice of motion—General rule.]—All appeals from county cts. to the Q. B. Div. of the High Ct. must since R. S. C., 1885, Ord. 59, r. 10, be by notice of motion, notwithstanding 1850 Act, ss. 14, 15, which gave an appeal by special case.

Defts. having put themselves out of time by wilfully proceeding under the wrong practice, an extension of time, for serving notice of motion was refused.—**R. v. KETTLE** (1886), 17 Q. B. D. 761; 55 L. J. Q. B. 470; *sub nom.* **BROWN v. DORSE**, 34 W. R. 776, D. C.

Annotations:—Consd. Wilkinson v. Jagger (1887), 20 Q. B. D. 423; Cusack v. L. & N. W. Ry., [1891] 1 Q. B. 347. *Reid.* Darlow v. Shuttleworth, [1902] 1 K. B. 721.

860. — Action in which leave to appeal given.]—The power of appealing by motion under 1875 Act, s. 6, applies to all actions where leave to appeal may be given, as well as to actions where such leave is unnecessary.—TURNER v. GREAT WESTERN Ry. Co. (1877), 2 Q. B. D. 125; 46 L. J. Q. B. 226; 35 L. T. 809, D. C.

861. — Action in which appeal on merits given by special statute.]—KIRKHEATON DISTRICT LOCAL BOARD v. AINLEY, SONS & Co., No. 786, *ante*.

862. Necessity for drawing up of order appealed from—Appeal from refusal to make order.]—Before notice of appeal can be given, an order must be drawn up to which the appeal can attach, though the appeal be from a refusal to make an order asked for by applt.—*Ex p.* SYKES (1871), 19 W. R. 563.

SUB-SECT. 2.—CONTENTS OF NOTICE OF APPEAL.

See R. S. C., Ord. 59, r. 10, & generally **PRACTICE & PROCEDURE**.

863. Must state grounds of appeal.]—Every notice of motion by way of appeal ought to state the grounds on which it is contended that the order appealed from is erroneous.

In the hearing of an appeal from an order made in the county ct. the preliminary objection was taken that no grounds of appeal were stated in the notice of appeal as was required by a reg. issued by the ct. on Feb. 18, 1890:—*Held*: although the objection could not be allowed so as to entitle resp. to have the appeal dismissed, yet the grounds of appeal ought to be stated in the notice as prescribed by the reg.; & if in any case the grounds

of appeal were not given & resp. was taken by surprise, the hearing of the appeal would be postponed on such terms as to costs as might appear to be right under the circumstances.—*Re SMITH, Ex p. DENBIGH (EARL)* (1892), 9 T. L. R. 72; 9 Morr. 316, D. C.

864. — **Cross-appeal.**]—*WILLIAMS v. TAPE-RELL* (1892), 8 T. L. R. 241, D. C.

In bankruptcy appeals.]—*See BANKRUPTCY & INSOLVENCY*, Vol. IV., p. 532, No. 4883.

SUB-SECT. 3.—SERVICE OF NOTICE OF APPEAL.

R. S. C., Ord. 59, r. 12.

865. **Who may be served**—**Not London agent of country solicitor.**]—*Semble*: in the case of an appeal from a county ct. where the solr. to resp. carries on business in the country, service of the notice of motion upon the London agent of the solr. is not sufficient service to satisfy Ord. 59, 1 Q. B. 97; 63 L. T. 812; 39 W. R. 224, D. C.

Remitted action—**Name of country solicitor alone indorsed on particulars.**]—In an action commenced in the High Ct. the writ gave the name of a firm of London solrs. as agents for pltf.'s solr., & their address for service of all notices in proceedings of the said action. The action was remitted to a county ct. Upon the particulars lodged with the registrar, a copy of which was duly forwarded to deft.'s solrs., pltf.'s solr.'s name & address were alone given for the service of any notices. Judgment had been delivered in favour of pltf., & on the last day on which notice of appeal could be delivered notice of such appeal was left upon the agents of pltf.'s solr., as described in the original writ in the High Ct. action:—*Held*: the service was bad, inasmuch as notice of appeal had not been served on pltf. through his solr., whose address for service was the only one given in the county ct. proceedings.—*MALLEY v. SHEPLEY* (1892), 62 L. J. Q. B. 31; 68 L. T. 295; 41 W. R. 63, 302; 9 T. L. R. 41; 37 Sol. Jo. 29; 5 R. 78, D. C.

867. — — — — —.]—In the case of an appeal from a county ct. where the solr. to resp. carries on business in the country, service of the notice of motion upon the London agent of the solr. is not sufficient service to satisfy Ord. 59, r. 12.—*JACKSON v. MARGRETT* (1893), 68, L. T. 91; 41 W. R. 267; 37 Sol. Jo. 195; 5 R. 181, D. C.

— **In bankruptcy appeals.**]—*See BANKRUPTCY & INSOLVENCY*, Vol. IV., p. 531, Nos. 4867–4869.

Within what time.]—*See Sect. 6, sub-sect. 1, et.*

SECT. 6.—TIME FOR APPEAL.

SUB-SECT. 1.—IN GENERAL.

See R. S. C., Ord. 59, r. 12.

868. **From what date time to be reckoned**—**From date of trial**—**Or from date of refusal of application for new trial.**]—Upon the trial of an action in the county ct., with a jury, the judge, upon a special finding of the jury, directed the verdict to be entered for deft.; but upon the application of pltf.'s attorney he reserved leave for pltf. to move to enter a verdict for pltf. or for a new trial, & notice of the application was afterwards given, pursuant to r. 128:—*Held*: pltf.'s right of appeal was to be reckoned from the day the motion was refused, & not from the day of trial.—*FOSTER*

v. GREEN (1861), 6 H. & N. 793; 30 L. J. Ex. 263; 25 J. P. 664; 158 E. R. 326.

Annotations:—*Distd. Hemming v. Blanton* (1873), 42 L. J. C. P. 158. *Consd. Morris v. Lowe* (1885), 34 W. R. 45. *Distd. McHardy v. Liptrott* (1887), 19 Q. B. D. 151.

869. — — — — —.]—Where an application for a new trial was made to a county ct. judge within two days of the original trial, & he took a fortnight to consider & then refused to grant a new trial, & a rule nisi for a new trial was obtained from the High Ct. within two days of such refusal:—*Held*: such rule was obtained out of time, as the eight days for appealing began to run from the day of the original trial, & not from the refusal of the county ct. judge.—*MORRIS & SONS v. LOWE & Co.* (1885), 34 W. R. 45, D. C.

Annotations:—*Foldd. McHardy v. Liptrott* (1887), 19 Q. B. D. 151; *Jacobs v. Dawkes* (1887), 56 L. T. 919.

870. — — — — —.]—*McHARDY v. LIPTROTT*, No. 765, *ante*.

871. — — — — — **Or from date of refusal to set aside nonsuit.**]—*Semble*: notice of appeal against the determination of the judge in a plaint in the county ct. is in time where a nonsuit was entered at the trial, & an application to set aside the nonsuit afterwards refused, if it be given within ten days after the refusal to set aside the nonsuit.—*HEMMING v. BLANTON* (1873), 42 L. J. C. P. 158; 21 W. R. 636.

872. — **Judgment post-dated.**]—In order to enable pltf. to appeal within the eight days prescribed by 1875 Act, s. 6, the county ct. judge allowed his judgment, delivered on Apr. 18, to be treated as delivered a fortnight later, namely, on May 2, & such judgment was accordingly entered & dated May 2. Pltf. having appealed within eight days of May 2:—*Held*: such appeal was not brought within eight days of the ruling, order, direction or decision of the judge, as prescribed by 1875 Act, s. 6.—*WILBERFORCE v. SOWTON* (1878), 48 L. J. Q. B. 28; 39 L. T. 474, D. C.

873. — **From date of verdict**—**Or from date of delivery of judgment.**]—When the finding of a jury in a county ct. is complained of, the 21 days within which an appeal may be entered is to be calculated from the time when the verdict was given, although the judgment upon it was not given until a subsequent date.—*RAWNSLEY v. LANCASHIRE & YORKSHIRE RY. Co.* (1887), 35 W. R. 771, D. C.

— **Proceedings under Workmen's Compensation Act, 1906 (c. 58).**]—*See MASTER & SERVANT*.

874. **Time of filing not appearing on face of notice**—**Necessity for evidence that notice sent to registrar "forthwith."**]—Unless the notice of appeal appears on the face of it to have been filed within 21 days, it is incumbent upon an applt. to be prepared with evidence to show that the notice was sent off to the registrar of the county ct. "forthwith."—*Re DARBYSHIRE, Ex p. HILL* (1883), 53 L. J. Ch. 247.

Time for service of notice—**In admiralty appeals.**]—*See ADMIRALTY*, Vol. I., p. 233, No. 1585.

— **In bankruptcy appeals.**]—*See BANKRUPTCY & INSOLVENCY*, Vol. IV., pp. 531, 532, Nos. 4870–4880.

Bankruptcy appeals generally.]—*See BANKRUPTCY & INSOLVENCY*, Vol. IV., pp. 529–531, 533, Nos. 4840–4866, 4886–4888.

SUB-SECT. 2.—EXTENSION OF.

See, generally, PRACTICE & PROCEDURE; R. S. C., Ord. 58, r. 15.

Sect. 6.—Time for appeal: Sub-sect. 2. Sects. 7 & 8.]

875. By consent of parties—Waiver.]—Parties to an appeal from a county ct. may waive the limit of 30 days from the determination or direction intended to be appealed from, prescribed by 1865 Act, s. 18, & their consent to the signature of the case for appeal by the county ct. judge is sufficient evidence of such waiver.—**WARD v. RAW** (1872), L. R. 15 Eq. 83; 27 L. T. 601; 21 W. R. 116.

876. By court—Under 1875 Act, s. 6.]—No leave of the ct. or of a judge will avail to extend the time for moving by way of appeal against a decision of a county ct. beyond the eight days limited by 1875 Act, s. 6, Ord. 57, r. 6, under Jud. Act, 1875 (c. 77), applying only to the Superior Cts.—**TENNANT v. RAWLINGS** (1879), 4 C. P. D. 133; 27 W. R. 682.

Annotation:—*Reid*. **Button v. Woolwich Bldg. Soc.** (1879), 49 L. J. Q. B. 249.

See, now, R. S. C., Ord. 59, r. 16.

877. Grounds for granting—Not where wrong

878. — Mistake or slip—Discretion of court.]—The ct. has a discretion to extend the time for appealing from a final judgment in a county ct. when the delay has arisen through a mistake or slip, which will be exercised according to the circumstances of each case.—**CUSACK v. LONDON & NORTH WESTERN RY. CO.**, [1891] 1 Q. B. 347; 60 L. J. Q. B. 208; 64 L. T. 45; 55 J. P. 341; 39 W. R. 244; 7 T. L. R. 229, C. A.

Annotations:—*Mentd.* **R. v. Nicholson**, **R. v. Greenhalgh**, *Ex p. Bamber* (1899), 81 L. T. 257; *Re Coles & Raven-shear*, [1907] 1 K. B. 1.

— Admiralty appeals.]—*See* ADMIRALTY, Vol. I., p. 232, Nos. 1580-1582.

— Bankruptcy appeals.]—*See* BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 530, 531.

Proceedings under Workmen's Compensation Act, 1906 (c. 58).]—*See* MASTER & SERVANT.

SECT. 7.—APPEAL AS STAY OF PROCEEDINGS.

See R. S. C., Ord. 59, r. 14.

879. Not unless security given for amount of "money affected by judgment"—Costs included.]—By R. S. C., Ord. 59, r. 14, an appeal from an inferior ct. is not to operate as a stay of proceedings unless the inferior ct. so orders, or unless within ten days after the decision a deposit is made of or security given to the satisfaction of the inferior ct. for a sum to be fixed by that ct., not exceeding the amount of the money or the value of the property affected by the judgment:—*Held*: the "money affected by the judgment" includes costs, & therefore a county ct. judge has jurisdiction to order a debt. against whom judgment for a sum of money & costs has been given, & who desires to appeal, to deposit in ct. or give security for a sum for costs in addition to the amount for which judgment has been given as a condition precedent to the appeal operating as a stay of proceedings.—**GRIMSHAW, BAXTER & ELLIOTT, LTD. v. PARKER**, [1910] 2 K. B. 161; 79 L. J. K. B. 780; 102 L. T. 825, D. C.

Security for costs generally.]—*See* Sect. 8, *post*.

SECT. 8.—SECURITY FOR COSTS.

See, generally, PRACTICE & PROCEDURE.

880. Whether condition precedent to appeal—Under 1850 Act, s. 14.]—The above Act, giving an

appeal from the county ct., makes it a condition precedent that security for costs should be given within ten days after the determination complained of.—**STONE v. DEAN** (1858), E. B. & E. 504; 2 Saund. & M. 232; 27 L. J. Q. B. 319; 31 L. T. O. S. 179; 4 Jur. N. S. 534; 6 W. R. 602; 120 E. R. 597.

Annotations:—*Distd.* **Waterton v. Baker** (1868), 9 B. & S. 23; **Parkgate Iron Co. v. Coates** (1870), 39 L. J. C. P. 317. *Consd.* **Francis v. Dowdeswell** (1874), L. R. 9 C. P. 423; **Blenkairne v. Statter** (1874), 31 L. T. 413. *Reid*. **The Forest Queen** (1870), 40 L. J. Adm. 17.

881. — — —.]—The provision in the above sect. as to notice of appeal & security for costs by a party appealing from a county ct. is not a condition precedent to the superior ct. having jurisdiction to hear the appeal, but is a matter of procedure entirely for the benefit of resp. which may be waived by him.—**PARK GATE IRON CO., LTD. v. COATES** (1870), L. R. 5 C. P. 634; 39 L. J. C. P. 317; 22 L. T. 658; *sub nom.* **COATES v. PARKGATE IRON CO.**, 18 W. R. 928.

Annotations:—*Expld.* **Francis v. Dowdeswell** (1874), L. R. 9

882. — — —.]—A strict compliance with 1850 Act, s. 14, will be enforced, unless it has been waived by the conduct of resp., or the default has been occasioned by no act of applt.

Judgment having been given in a county ct. against B. on Aug. 7, notice of appeal was duly given. On Aug. 14 the costs were taxed. At that time, as was stated on affidavit, upon inquiry by debt.'s attorney's clerk, he was informed by the registrar, that it only remained for the money to be paid into ct., whereupon the taxed costs & the damages were accordingly paid into ct. On Aug. 19 the registrar wrote to debt.'s attorney, calling his attention to the fact that no deposit had been made to secure the costs of the appeal; whereupon a correspondence ensued, in which pltf.'s attorney called the registrar's attention to the intimation he had given to his clerk at the time of the taxation of the costs, & at the same time sending the cheque of debt. for £50 to answer such costs of appeal. This, the registrar refused to accept as being too late. Upon application to the county ct. judge to sign the case he refused to do so on the ground that security for costs had not been given in due time. Upon an application to this ct. for a rule calling upon the county ct. judge to sign such case:—*Held*: the neglect to give security for costs within the fourteen days was fatal, & the rule was refused.—**BLENKAIRNE v. STATTER** (1874), 31 L. T. 413.

See, now, R. S. C., Ord. 58, r. 15; Ord. 59, rr. 17, 18.

883. Grounds for ordering—Appellant unable to pay taxed costs—Appeal from refusal of order in nature of mandamus—County court judge respondent.]—A county ct. judge refused an application by defts. to sign a case on appeal from his decision. Defts., on application to a div. ct. of appeal, obtained a rule nisi calling upon the county ct. judge to show cause why he should not sign a case. Cause having been shown the rule was discharged with costs. Defts. gave notice of appeal, whereupon resps., including the county ct. judge, moved that defts. might be ordered to give security for costs:—*Held*: the taxed costs already occasioned not having been paid, & the statement that applts. were not capable of making such payment not having been contradicted, the appeal must be stayed until the payment into ct. of a deposit of £20 as security for costs.—**CLARKE v. ROCHE** (1877), 46 L. J. Ch. 372; 36 L. T. 78; 25 W. R. 309, C. A.

884. — Infant suing by next friend—

friend insolvent.]—Pltf., an infant, brought an action in the county ct., & sued by his next friend. Judgment was given for defts. with costs, but they were unable to obtain payment owing to the next friend's insolvency. Pltf. appealed from the judgment. On an application by defts. for an order that the next friend should give security for the costs of the appeal:—*Held*: by R. S. C., Ord. 59, r. 17, which applies the provisions of Ord. 58, r. 15, to appeals from county cts., there was power to make an order, & as the next friend was insolvent, & was prosecuting the appeal for the benefit of another person, she must give security.—*SWAIN v. FOLLOWS* (1887), 18 Q. B. D. 585; 56 L. J. Q. B. 310; 56 L. T. 335; 35 W. R. 408, D. C.

Annotations:—*Folld. Wilcox v. Wallis Crown Cork & Syphon Co.* (1914), 58 Sol. Jo. 381. *Refd. Masling v. Motor Hiring Co.* (Manchester), [1919] 2 K. B. 538.

885. — Next friend unable to pay costs.]—An infant pltf. by her next friend brought an action in the county ct. under the Employers' Liability Act, 1880 (c. 42), when judgment was given for defts. Pltf. by her next friend gave notice of appeal, & defts. applied to the Div. Ct. for an order for security of costs, giving evidence on affidavit that the next friend would be unable, if unsuccessful, to pay defts. costs. Counsel for pltf. contended that the ct. should look into the merits, & if they thought there were reasonable grounds for the appeal, should not order security:—*Held*: without examining into the merits, an order should be made for security of costs.—*WILCOX v. WALLIS CROWN CORK & SYPHON CO., LTD.* (1914), 58 Sol. Jo. 381; 78 J. P. Jo. 124, D. C.

886. — Not where unconditional leave to appeal given.]—The ct. will not, as a rule, require security for the costs of an appeal from the county ct. where leave to appeal has been unconditionally given by the judge of the county ct.—*Ex p. SOCIETY OF APOTHECARIES* (1890), 38 W. R. 478, D. C.

887. — Appellant suing in formâ pauperis.]—A party who has sued or defended in formâ pauperis in the ct. below is entitled to appeal as a pauper without either giving security for costs or obtaining special leave so to appeal.—*BIGGS v. DAGNALL*, [1895] 1 Q. B. 207; 64 L. J. Q. B. 221; 15 R. 252, D. C.

Annotation:—*Mentd. Smith v. Smith & Rutherford*, [1920] P. 206.

888. — Not where appellant with no visible means of paying costs—If reasonable ground for appeal.]—If it appears to the ct. that there is reasonable ground for the appeal, the ct. will not order applt. to give the security for the costs of the appeal merely on the ground that he has no visible means of paying resp.'s costs should the appeal fail.—*PRITCHETT v. POOLE* (1897), 76 L. T. 472, D. C.

Annotation:—*Consd. Wilcox v. Wallis Crown Cork & Syphon Co.* (1914), 58 Sol. Jo. 381.

889. — Appellant insolvent.]—*SHAW v. LUTMAN* (1897), 42 Sol. Jo. 34, D. C.

890. — Appellant having disposed of his goods.]—The High Ct. will order security to be given for the costs of an appeal from the county ct. where it appears that applt. has disposed of his goods for the purpose of avoiding payment of resp.'s costs.—*MOORE v. PINNICK* (1901), 70 L. J. K. B. 471, D. C.

891. Time of giving sureties — Sureties disqualified—Fresh sureties substituted after expiry of time.]—Upon an appeal against the decision of a county ct., applt. gave security by two sureties in due time. Afterwards he found that as they were practising attorneys, they were disqualified, whereupon he applied to the county ct. judge to

be permitted to substitute fresh sureties, which was granted, & they were accordingly put in, but after the time limited by the rule for so doing:—*Held*: the proceedings were regular.—*POWER v. STRINGER* (1858), 31 L. T. O. S. 81; 22 J. P. Jo. 287.

892. Deposit of sum required—Written memorandum of conditions on which money deposited not deposited.]—A party desirous of appealing from a decision of a county ct. judge, having given notice of appeal, under 1850 Act, s. 14, within ten days deposited with the registrar a sum equal to the amount for which he was required to give security, for which the registrar gave an acknowledgment, but did not deposit a written memorandum, setting forth the conditions on which the money was deposited, pursuant to 1856 Act, s. 71:—*Held*: the want of such memorandum was no objection to the hearing of the appeal.—*GRIFFIN v. COLEMAN* (1859), 4 H. & N. 265; 28 L. J. Ex. 134; 157 E. R. 840; *sub nom. COLEMAN v. GRIFFIN*, 32 L. T. O. S. 333.

Annotation:—*Folld. Walters v. Coghlan* (1872), L. R. 8 Q. B. 61.

893. — —.]—At the hearing of a plaint before a county ct. judge pltf. was nonsuited. He gave due notice of appeal, & deposited the amount fixed by the registrar, who gave a receipt for it to pltf., stating it to be received to abide the event of the appeal. The parties could not agree on a statement of facts, & pltf. applied to the judge to settle & sign the case, but the judge refused on the ground that no memorandum of the deposit with the conditions on which it was deposited was approved by the registrar left with him & signed by the party or his attorney in accordance with 1856 Act, s. 71:—*Held*: the stat. had been substantially complied with, & the giving of such memorandum was not a condition precedent to the right to appeal.—*WALTERS v. COGHLAN* (1872), L. R. 8 Q. B. 61; 42 L. J. Q. B. 20; 27 L. T. 712; 21 W. R. 444.

894. Time for execution of bond.]—An interpleader summons in a county ct. having been determined against the claimant on Nov. 16, he, on the same day, gave notice of appeal, & tendered a bond with sureties to the registrar; on Nov. 19 he gave notice of the proposed sureties to pltf. Pltf. requiring further information as to the sufficiency of the sureties, & the claimant having been unable to obtain a definite answer from pltf. as to whether or no he objected to the sureties, the registrar, on Jan. 17, fixed Jan. 21 for the execution of the bond & gave notice to pltf. to make his objection, if any, on that day. Pltf. did not appear, & the bond was then executed with the original sureties:—*Held*: although the security had not been completed until after the ten days, yet as the applt. had done all he could to perfect it within that time, & the delay was caused by pltf., applt. had complied with the requirements of 1850 Act, s. 14 & r. 131, & was entitled to have his appeal heard.—*WATERTON v. BAKER* (1868), L. R. 3 Q. B. 173; 9 B. & S. 23; 37 L. J. Q. B. 65; 17 L. T. 468; 16 W. R. 358.

Annotations:—*Distd. Francis v. Dowdeswell* (1874), L. R. 9 C. P. 423; *Blenkaine v. Statter* (1874), 31 L. T. 413.

895. —.]—A plaint was heard in a county ct. on June 13, but no judgment was pronounced until July 11, when the judge gave his reasons at great length. After several abortive attempts to obtain a copy of the judgment, the attorney for the unsuccessful party on July 20 sent a notice of appeal with the names of sureties, & asked for an appointment for applts. & the sureties to attend to execute a bond. The registrar appointed Thursday,

Sect. 8.—Security for costs. Sect. 9: Sub-sects. 1, 2, 3, 4, 5 & 6. Sect. 10.]

July 24, at 4 p.m. Appls. & one surety attended, but the other surety did not attend, neither was the attorney there with the bond. On July 26 applts.' attorney sent a bond to the office, with an intimation that the parties would attend to execute it on Monday, July 28. They did so attend; but, the registrar being absent, a clerk in the office directed them to attend again on July 30, when the registrar would be there. They all accordingly attended on July 30, & the bond was executed:—*Held*: assuming July 24 would under the circumstances have been in time, the execution of the bond on July 30 was not a compliance with 1850 Act, s. 14, & the ct. ordered the case to be struck out. The ct. in a subsequent term refused to re-open the matter, upon affidavits showing that the registrar, upon whose affidavit the ct. had mainly relied, had made a mistake, & that in truth all the parties had attended to execute the bond on the day which had been assumed to be the proper day.—*FRANCIS v. DOWDESWELL* (1874), L. R. 9 C. P. 423; *sub nom. DOWDESWELL v. FRANCIS*, 43 L. J. C. P. 248; 30 L. T. 607; 22 W. R. 755.

896. Amount of—May include costs.]—GRIMSHAW, BAXTER & ELLIOTT, LTD. v. PARKER, No. 879, *ante*.

In admiralty appeals.]—See ADMIRALTY, Vol. I., p. 232, Nos. 1577–1579.

In bankruptcy appeals.]—See BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 533–535.

SECT. 9.—JUDGE'S NOTES.

SUB-SECT. 1.—IN GENERAL.

See 1888 Act, s. 121.

897. Duty of judge to take note—Showing that point of law raised.]—In an action brought in the county ct., to recover the value of a horse killed upon applt. co.'s ry., a question of law was raised as to whether there was evidence of negligence to go before the judge, but no note of any question of law being raised was made by the judge:—*Held*: the question could not be entertained, it not appearing upon the notes that such question was raised before the county ct. judge. *Semble*: the notes should have been referred back to the judge for the question to be noted, & should he have refused, a rule obtained to compel him to amend his notes.—*GREAT EASTERN RY. CO. v. GIDDONS* (1880), 44 J. P. 284, D. C.

898. — Request to take note made—Question of law raised.]—A county ct. judge is only bound to take a note when a question of law is raised & he is asked to take a note of that question of law; then it is his duty to take a note of the question of law raised & of the evidence in relation thereto, & of his decision thereon & of his decision of the action or matter.

If there be more questions of law than one, the request to take a note must be made in respect of each.

If the circumstances be such that there was no possibility of raising the point of law at the trial or of getting a note, then applt. may show by affidavit what happened at the trial (*CAVE, J.*).—*R. v. KERR (COMR.) & HIVES* (1894), 70 L. T. 595; 10 T. L. R. 381, D. C.

899. — Whether request to take note made or not — Large amount involved.]—CHERTSEY URBAN DISTRICT COUNCIL v. BINNS (1905), 49 Sol. Jo. 223; 69 J. P. Jo. 28, D. C.

Annotations:—Reid. Simmons v. Crossley, [1922] 2 K. B.

95. Mentd. Ripon R. D. C. v. Armitage & Hodgson, [1919] 1 K. B. 559.

900. — — —.]—Observations as to the priority of county ct. judges making a note of the evidence & contentions in cases which appear to render it expedient to do so, even where there may be no statutory obligation to make a note.—*SIMMONS v. CROSSLEY*, [1922] 2 K. B. 95; 91 L. J. K. B. 643; 127 L. T. 337; 38 T. L. R. 571; 66 Sol. Jo. 524, D. C.

— — — Proceedings under Workmen's Compensation Act, 1906 (c. 58).]—*See MASTER & SERVANT*.

SUB-SECT. 2.—REQUEST TO TAKE NOTE OF QUESTION OF LAW.

See 1888 Act, ss. 120, 121.

901. Whether condition precedent to appeal—Note actually taken by judge—Although no request made.]—Where at the trial of a cause in a county ct. without a jury, the judge actually took a note of the evidence, but was not required to make a note of any question of law raised at the trial, or of the evidence in relation to it:—*Held*: (1) the unsuccessful party could not appeal by motion under 1875 Act, s. 6, though he applied for a copy of the judge's notes immediately after the judgment, & his ground of appeal was that there was no evidence to warrant the decision of the judge; (2) after an appeal by motion had been rejected, for the reasons above stated, a rule calling on the county ct. judge to state & sign a special case, under 1850 Act, s. 15, would not be granted.—*RHODES v. LIVERPOOL COMMERCIAL INVESTMENT CO.* (1879), 4 C. P. D. 425, D. C.

Annotations:—As to (1) Folld. Pierpoint v. Cartwright (1880), 5 C. P. D. 139. *Consd. Clarkson v. Musgrave* (1882), 9 Q. B. D. 386. *Reid. Smith v. Baker*, [1891] A. C. 325.

902. — — —.]—At the hearing of an interpleader claim in a county ct., the judge was not asked to make a note of any question of law raised or of the facts in evidence as provided by 1875 Act, s. 6. He did, however, take a note of the evidence, & upon being applied to afterwards by the claimant, against whom he decided, furnished him, but under protest, with a copy of the note & his written judgment, in each of which was a statement of the points of law raised & determined:—*Held*: the omission to request the judge to take a note did not deprive the claimant of the right to appeal by motion under s. 6.—*SEYMOUR v. COULSON* (1880), 5 Q. B. D. 359; 49 L. J. Q. B. 604; 28 W. R. 664, C. A.

Annotations:—Expld. & Distd. Morgan v. Rees (1880), 6 Q. B. D. 89. *Consd. Clarkson v. Musgrave* (1882), 9 Q. B. D. 386; *Abrahams v. Dimmock*, [1915] 1 K. B. 662. *Reid. Morgan v. Rees* (1881), 6 Q. B. D. 508; *Gardner v. Ingram* (1889), 61 L. T. 729; *Smith v. Baker*, [1891] A. C. 325.

903. — — —.]—An application to the judge of a county ct. at the trial of any action for a note on any point of law, & of the facts in evidence relating thereto, & of his decision thereon, is, under the terms of 1888 Act, s. 120, the condition precedent for any appeal from such decision being heard. The power of the High Ct., under R. S. C., Ord. 59, r. 8, to admit any evidence or statement of what occurred other than such notes of the judge, only comes into operation when such an application has been made at the trial but no notes of the judge are forthcoming.—*COOK v. GORDON* (1892), 61 L. J. Q. B. 445, D. C.

Annotations:—Consd. Abrahams v. Dimmock, [1915] 1 K. B. 662. *Reid. The Crescent, Great Northern Steamship Fishing Co. v. S.S. Crescent* (1893), 62 L. J. P. 63.

— — —.]—WOHLGEMUTH v. COSTE, No. 790, *ante*.

905. —.]—**ABRAHAMS v. DIMMOCK**, No. 793, *ante*.

906. Sufficiency of—General request.]—**MORGAN v. REES**, No 536, *ante*.

907. — More questions of law than one raised.]—**R. v. KERR** (COMR.) & **HIVES**, No. 898, *ante*.

908. Time for—During or immediately at end of trial—Request made hour & half after judgment.]—1875 Act, prescribing a mode of appeal by motion from the county ct. by s. 6 enacts that at the trial or hearing of the cause the judge, at the request of either party, shall make a note of any question of law raised at such trial or hearing, & of the facts in evidence in relation thereto, & of his decision thereon, & of his decision of the cause:—*Held*: the request for a note must be made during or immediately at the end of the trial or hearing of the cause; & therefore, a request not made until an hour & a half after judgment given was too late.—**PIERPOINT v. CARTWRIGHT** (1880), 5 C. P. D. 139; 42 L. T. 259; 28 W. R. 583, D. C.

SUB-SECT. 3.—AMENDMENT OF.

909. Note not showing that point of law raised.]—**GREAT EASTERN RY. CO. v. GIDDONS**, No. 897, *ante*.

SUB-SECT. 4.—COPIES OF.

910. Duty of appellant to supply—Whether condition precedent to appeal.]—**TAYLOR v. HOLT** (1864), 3 H. & C. 452, 454, n.; 34 L. J. Ex. 1, 2, n.; 11 L. T. 347; 13 W. R. 78; 159 E. R. 607, 608.
Annotation:—*Apld.* **Dene v. Sawyer** (1872), 26 L. T. 6461.

911. —.]—It is an established rule that where a cause in a superior ct. has been tried before a county ct. judge, the notes of the judge must be produced on a motion for a new trial, unless it be made by counsel who was himself present at the trial, or the notes have been applied for & refused.—**DENE v. SAWYER** (1872), 26 L. T. 646.

912. —.]—Ord. 59, r. 13, is repealed by 1888 Act, s. 121, & it is now the duty of the applt., as a condition precedent to the appeal being heard, to furnish the ct. with a copy of the notes.—**MCGRAH v. CARTWRIGHT** (1889), 23 Q. B. D. 3; 58 L. J. Q. B. 331; 60 L. T. 537; 37 W. R. 619, D. C.
Annotation:—*Refd.* **Abrahams v. Dimmock**, [1915] 1 K. B. 662.

913. Duty of judge to supply.]—**R. v. SHEFFIELD COUNTY COURT JUDGE** (1889), 5 T. L. R. 303, D. C.

914. —.]—Where on an appeal from a county ct. a copy of the county ct. judge's notes is sent up for the use of the Ct. of Appeal, the ct. will not accede to an application by one of the parties to the appeal that a copy of the notes should be given to him. Where a party is desirous of obtaining such notes application for a copy must be made to the county ct. judge himself. *Qu.*: whether in such case a county ct. judge is bound to give a copy of his notes to a party.—*Re* **LOCK**, *Ex p.* **POPPLTON** (No. 1) (1891), 8 Morr. 44, D. C.

915. — Action for less than £20.]—**WENN v. MOTT** (1913), 134 L. T. Jo. 572.

SUB-SECT. 5.—SUFFICIENCY OF.

916. Compiled from affidavits after trial—No request to take note.]—**HILL v. PERSSÉ**, No. 817, *ante*.

917. Shorthand writer's notes—Signed by judge.]

—**CROSS v. GRAY, DAWES & Co.** (1889), 5 T. L. R. 377, D. C.

In bankruptcy appeals.]—*See* **BANKRUPTCY & INSOLVENCY**, Vol. IV., p. 536, Nos. 4921–4923.

In admiralty appeals.]—*See* **ADMIRALTY**, Vol. I., p. 233, No. 1586.

SUB-SECT. 6.—EFFECT OF NON-PRODUCTION OF.

918. Power of court to proceed without note—On parties agreeing on facts.]—**TAYLOR v. HOLT** (1864), 3 H. & C. 452; 34 L. J. Ex. 1; 11 L. T. 347; 13 W. R. 78; 159 E. R. 607.

Annotation:—*Foll.* **Dene v. Sawyer** (1872), 26 L. T. 646.

919. —.]—At the hearing of a motion on appeal from a county ct., the ct. may, if it think fit, dispense with a copy of the judge's notes.—**MORGAN v. DAVIES** (1878), 3 C. P. D. 260; 39 L. T. 60; 26 W. R. 816.

Annotations:—*Mentd.* **Barlow v. Teal** (1885), 15 Q. B. D. 501; **Sidebotham v. Holland**, [1895] 1 Q. B. 378.

920. — & hear appeal on other evidence.]—**WOHLGEMUTHE v. COSTE**, No. 790, *ante*.

921. —.]—**ABRAHAMS v. DIMMOCK**, No. 793, *ante*.

— In admiralty appeals.]—*See* **ADMIRALTY**, Vol. I., p. 233.

922. Absence must be satisfactorily explained.]—We are not bound to admit anything but the judge's notes. It is true that by R. S. C., Ord. 59, r. 8, we have power, if the judge's notes are not produced, to determine appeals upon any other evidence or statement of what occurred before him as we may deem sufficient, but we ought to have some reason or explanation given to account for the non-production of the notes—such as that none were taken, or that they have been lost (**HAWKINS, J.**).—**LUMB v. TEAL & Co.** (1889), 22 Q. B. D. 675; 58 L. J. Q. B. 298; 60 L. T. 451, D. C.

Annotation:—*Mentd.* **King v. Charing Cross Bank** (1889), 62 L. T. 42.

923. Whether certificate that no note taken condition precedent to appeal.]—**BROWN v. BOOK** (1892), 8 T. L. R. 227, D. C.

Annotation:—*Consd.* **Abrahams v. Dimmock**, [1915] 1 K. B. 662.

924. —.]—**ABRAHAMS v. DIMMOCK**, No. 793, *ante*.

SECT. 10.—PARTIES.

925. Death of party to appeal—Addition of personal representatives—Appeal from county court.]—If, on an appeal from a county ct., resp. dies before the appeal is heard, applt. will be allowed to proceed with his appeal on giving notice thereof to the representatives of deceased resp., or if no such notice can be given, upon giving notice to the parties interested.—**HEMMING v. WILLIAMS** (1871), L. R. 6 C. P. 480; 40 L. J. O. P. 270; 24 L. T. 755.

Annotation:—*Refd.* **Smith v. Williams**, [1922] 1 K. B. 158.

926. —.]—Where after entry of an appeal from a county ct. one of the parties dies, the High Ct. has jurisdiction to add his personal representative.—**BLAKEWAY v. PATTESHALL**, [1894] 1 Q. B. 247, D. C.

Annotation:—*Foll.* **Haywood v. Farabee** (1915), 59 Sol. Jo. 234.

927. — Appeal from Divisional Court.]—Where an appeal against a decision of a Div. Ct. reversing a decision of a county ct. judge has been set down, but before the hearing of the appeal resp. dies, application for leave to add the legal representative of deceased party can properly be

Sect. 10.—Parties. Sect. 11: Sub-sects. 1 & 2. Sects. 12 & 13.]

made to the Ct. of Appeal.—*HAYWOOD v. FARABEE* (1915), 59 Sol. Jo. 234, C. A.

See, generally, PRACTICE & PROCEDURE.

SECT. 11.—HEARING OF APPEAL.

SUB-SECT. 1.—IN GENERAL.

928. Who begins.]—Applt. in a county ct. appeal has the right to begin.

Costs will not be given to applt., when on an appeal from the ruling of a county ct. judge a new trial is ordered for misdirection.—*GEE v. LANCASHIRE & YORKSHIRE RY. Co.* (1860), 6 H. & N. 211; 30 L. J. Ex. 11; 3 L. T. 328; 6 Jur. N. S. 1118; 9 W. R. 103; 158 E. R. 87.

*Annotations:—*Consd. *Schroder v. Ward* (1863), 1 New Rep. 325. *Mentd.* *Collard v. S. E. Ry.* (1861), 7 H. & N. 79; *O'Hanlan v. G. W. Ry.* (1865), 6 B. & S. 484; *Wilson v. Newport Dock Co.* (1866), L. R. 1 Exch. 177; *Hobbs v. L. & S. W. Ry.* (1875), L. R. 10 Q. B. 111.

Admiralty appeals.]—*See* ADMIRALTY, Vol. I., p. 233, Nos. 1587–1593.

Bankruptcy appeals.]—*See* BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 535, 536.

SUB-SECT. 2.—POWER OF COURT.

929. To order nonsuit—No case against defendant.]—The unsuccessful party in the ct. above upon county ct. appeals must pay the costs.

A. bought of B. 118 sheep, & being unable to pay for the whole went to C. & agreed to sell fifty sheep at £1 each, C. agreeing to give up the sheep to A. on Thursday following upon being paid £46. A. received from C. a post-dated cheque for the £46, & gave the same to B., who could not read, as part payment for the 118. B. presented it, & the bankers refused payment as it was post dated & the day of the date had not arrived. A. not delivering to C. the fifty sheep C. stopped payment of the cheque. B. sued A. & C. in tort in the county ct. for defrauding & deceiving him whereby he was induced to deliver up his 118 sheep, & a verdict was given for pltf. C. appealed:—*Held*: there was no case against C., & the verdict should be set aside & a nonsuit entered.—*WATSON v. POULSOM* (1851), 18 L. T. O. S. 126; 15 Jur. 1111.

930. — Under 1850 Act, s. 14.]—On an appeal from a county ct., where judgment below has been given for pltf., the ct., under 1850 Act, s. 14, has power to order a nonsuit to be entered.—*CHEVELEY v. FULLER* (1853), 13 C. B. 122; 1 W. R. 152; 138 E. R. 1143; *sub nom.* *FULLER v. CHEVELEY*, 2 Saund. & M. 101; 20 L. T. O. S. 278; 17 J. P. 105; 17 Jur. 736.

931. To enter judgment—Under 1875 Act, s. 6.]—Upon an appeal by motion under 1875 Act, s. 6, the Ct. of Appeal has power to order judgment to be entered, the former provision in that respect, 1850 Act, s. 14, not being repealed or varied by 1875 Act, s. 6, which only gives an additional mode of procedure.—*WHITEMAN v. HAWKINS* (1878), 4 C. P. D. 13; 39 L. T. 629; 43 J. P. 272; 27 W. R. 262.

932. — All materials necessary for deciding case before court.]—In an appeal from a county ct. in an action for damages, the ct. has power to give judgment for pltf. for the sum claimed, if satisfied, upon the whole of the evidence before the county ct. judge, that judgment ought to be

so entered, although judgment had been given by the county ct. judge for deft.—*KING v. OXFORD Co-OPERATIVE SOCIETY* (1884), 51 L. T. 94, D. C.

933. — — —.]—Pltf. sued a husband & wife in the county ct. to recover the price of meat supplied to the wife after separation, & the judge at the trial, on hearing the wife's evidence, ruled that she had authority to pledge her husband's credit for the price of the meat. On appeal:—*Held*: this ruling was wrong, & the wife, after the separation, had no implied authority to pledge her husband's credit.

Being satisfied that we have all the materials before us necessary for the determination of the question, it would be a useless expense to the parties to send the case back for a new trial. We, therefore, act upon the wholesome provision of Judicature Act, 1875 (c. 77), Ord. 40, r. 10, & direct that the judgment for pltf. below, be set aside & judgment be entered for deft. (*per cur.*).—*EASTLAND v. BURCHELL* (1878), 3 Q. B. D. 432; 47 L. J. Q. B. 500; 38 L. T. 563; 42 J. P. 502; 27 W. R. 290, D. C.

*Annotations:—*Refd. *Chapman v. Knight* (1880), 5 C. P. D. 308; *Skeate v. Slaters*, [1914] 2 K. B. 429. *Mentd.* *Wilson v. Glossop* (1888), 20 Q. B. D. 354; *Balfour v. Balfour*, [1919] 2 K. B. 571.

934. — Evidence justifying only one verdict.]—On Sept. 14, 1898, the son of G., applt., at 1.30 p.m. loaded twelve cows at D. station on a truck of resp. co. The cows were consigned to C. another station 25 miles distant, & at the time of loading were in good condition. Applt. had on other occasions sent cattle from D. to C. & they had usually arrived by 8 p.m. On this occasion they did not arrive till after midnight, & were then found to be in a damaged & exhausted condition. G. then brought an action against resp. co. in the county ct., on the ground that the injuries had been caused by resps.' negligence. After evidence had been given in support of pltf.'s case, counsel for the defence submitted that there was no evidence of negligence to go to the jury, but the judge held that a *prima facie* case had been made out. Evidence was then given by the co. to the effect that the delay in the arrival of the cattle was due solely to shunting operations to avoid passenger trains. The judge thereupon withdrew the case from the jury, & gave judgment for the company. G. appealed:—*Held*: though the county ct. judge was wrong in withdrawing the case from the jury, & should have left it to them with a strong direction to find a verdict for defts., yet it would be useless to send the case back for trial, as the only verdict that could be found on the evidence must be a verdict for defts.—*GODDARD v. MIDLAND RY. Co.* (1899), 80 L. T. 624, D. C.

No evidence to support judge's findings.]—

See Nos. 828–832, *ante*.

935. To set aside judgment—Action to recover wager—Gaming Acts not pleaded in county court.]—In an action in the county ct. against a book-maker to recover a sum of money won on a bet on a horse race, deft. did not plead the Gaming Acts, but raised a point upon the construction of one of the rules under which he betted. The county ct. judge gave judgment for pltf. Upon appeal by the deft.:—*Held*: the ct. would of its own motion refuse to allow any process of law to be invoked for the purpose of enforcing the bet, & the proper course was to set aside the judgment giving no costs to either party.—*LUCKETT v. WOOD* (1908), 24 T. L. R. 617, D. C.

*Annotations:—**Mentd.* *Soc. Des Hôtels Réunis (Soc. Anon.) v. Hawker* (1913), 29 T. L. R. 578; *Cheshire v. Vaughan* (1920), 25 Com. Cas. 51.

To order new trial.]—See Part VI., Sect. 3, sub-sect. 2, *ante*.

936. To fix amount of damages — Plaintiff wrongly nonsuited.]—C., a gas-stoker, hired a sewing machine, & his wife, a seamstress, used it, & applied the earnings for the maintenance of the household. C. having sued S. his landlord for damages for having wrongfully distrained the machine for arrears of rent due by C.:—*Held*: the county ct. judge, having nonsuited pltf. wrongly, the High Ct., to prevent further litigation, may fix a nominal sum for damages which the county ct. ought to have fixed.—*CHURCHWARD v. JOHNSON* (1889), 54 J. P. 326, D. C.

Annotations: *Consd.* Lavell v. Richings, [1906] 1 K. B. 480. *Refd.* Polley v. Fordham (1904), 91 L. T. 525; Gonsky v. Durrell, [1918] 2 K. B. 71; *Mentd.* Masters v. Fraser (1901), 85 L. T. 611.

937. To allow cross-appeal — For “misdirection” — Judge misdirecting himself.]—By Ord. 59, r. 7, no motion by way of appeal from an inferior ct. shall succeed on the ground merely of misdirection . . . unless, in the opinion of the ct., substantial wrong or miscarriage has been thereby occasioned in the ct. below:—*Held*: in the above rule “misdirection” does not only mean misdirection to a jury, but covers a case where a judge sitting without a jury has misdirected himself.—*TULLIS (J.) & SON, LTD. v. NORTH POLE ICE CO., LTD.* (1915), 32 T. L. R. 114, D. C.

938. To re-hear appeal — Not after judgment drawn up.]—Where a Div. Ct. has heard an appeal from a county ct. in the absence of the resp. & has given judgment for applt. the ct. has no jurisdiction, after the judgment has been drawn up & perfected, to reinstate & re-hear the appeal.—*HESSION v. JONES*, [1914] 2 K. B. 421; 83 L. J. K. B. 810; 110 L. T. 773; 30 T. L. R. 320, D. C.

To hear points not raised in county court.]—See Sect. 1, sub-sect. 2, A. (c), *ante*.

Judges differing in opinion—Whether duty of junior judge to withdraw judgment.]—See JUDGMENTS & ORDERS.

SECT. 12.—JUDGMENT ON APPEAL.

939. Enforcement of — Under Ord. 32, r. 2. Meaning of judgment—Includes order for costs.]—*COWERN v. NIELD*, [1914] W. N. 349, D. C.

SECT. 13.—COSTS.

940. Whether costs follow event—General rule.]—In appeal from the county cts. applt. will have costs if the decision below is reversed.—*HUNT v. WRAY* (1851), 7 Exch. 125, n.; 21 L. J. Ex. 37; 15 J. P. 820; 155 E. R. 884.

941. — — —.]—*WATSON v. POULSON*, No. 929, *ante*.

942. — — —.]—*ROBINSON v. LAWRENCE*, No. 574, *ante*.

943. — — —.]—*OUTHWAITE v. HUDSON*, No. 579, *ante*.

944. — — —.]—It is a universal rule to give costs of the appeal upon the reversal of the decision of the county ct. judge.—*GIBBON v. GIBBON* (1853), 13 C. B. 205; Saund. & M. 94; 22 L. J. C. P. 131; 20 L. T. O. S. 260; 17 J. P. 151; 17 Jur. 416; 138 E. R. 1176.

Annotations:—*Exptd.* Leidmann v. Schultz (1853), 14 C. B. 38; *Foster v. Smith* (1856), 18 C. B. 156. *Consd.* Schroder v. Ward (1863), 13 C. B. N. S. 410.

945. — — —.]—It is an inflexible rule in this ct. to give the successful party on an appeal

from the county ct. the costs of the appeal.—*LEIDEMANN v. SCHULTZ* (1853), 14 C. B. 38; 23 L. J. C. P. 17; 17 J. P. 745; 2 C. L. R. 87; 139 E. R. 17; *sub nom.* *SCHULTZ v. LEIDEMANN*, Saund. & M. 163; 22 L. T. O. S. 101; 18 Jur. 42; 2 W. R. 35.

Annotations:—*Refd.* *Foster v. Smith* (1856), 18 C. B. 156; *Schroder v. Ward* (1863), 13 C. B. N. S. 410. *Mentd.* *Hudson v. Clementson* (1856), 18 C. B. 213; *Tapscott v. Balfour* (1872), L. R. 8 C. P. 46; *Postlethwaite v. Freeland* (1879), 4 Ex. D. 355.

946. — — —.]—*MOUNTNOY v. COLLIER*, No. 284, *ante*.

947. — — —.]—The successful party on an appeal from a decision of a county ct. is entitled to the costs of the appeal.—*FOSTER v. SMITH* (1856), 18 C. B. 156; 20 J. P. 438; 4 W. R. 495; 139 E. R. 1326.

Annotation:—*Consd.* *Schroder v. Ward* (1863), 13 C. B. N. S. 410.

948. — — —.]—*ROBINSON v. VERNON (LORD)*, No. 585, *ante*.

949. — — —.]—*ROBINSON v. VERNON (LORD)*, No. 586, *ante*.

950. — — —.]—*GRAY v. BOMPAS* (1862), 11 C. B. N. S. 520; 5 L. T. 841; 142 E. R. 899.

Annotation:—*Refd.* *Schroder v. Ward* (1863), 13 C. B. N. S. 410.

951. — — —.]—*LEACH v. SOUTH EASTERN RY. CO.*, No. 591, *ante*.

952. — — —. Departed from—Appeal due to fault of judge.]—A county ct. judge stated a case upon appeal, in so confused a manner that the ct. could not discover whether or not he meant to present a question of law for their decision, & the case was remitted to him for amendment in this respect. Upon the case coming back, it clearly appeared to involve no question of law:—*Held*: the ct. in the circumstances would dismiss the appeal without costs.

Our decision must be for resp., but, under the circumstances, I do not think it would be right to dismiss the appeal with costs. The fault was in the judge so inartificially stating the case in the first instance. The probability is that if it had originally been stated as it now is the case would not have been resisted (*COCKBURN, C.J.*).—*LONDON & NORTH WESTERN RY. CO. v. GRACE* (1857), 2 C. B. N. S. 555; 22 J. P. 149; 140 E. R. 533.

Annotation:—*Refd.* *Schroder v. Ward* (1863), 13 C. B. N. S. 410.

953. — — —. Laxity of successful appellants in action for damages for negligence.]—*RICHARDSON v. NORTH EASTERN RY. CO.* (1872), L. R. 7 C. P. 75; 20 W. R. 461; *sub nom.* *NORTH EASTERN RY. CO. v. RICHARDSON & SISSON*, 41 L. J. C. P. 60; 26 L. T. 131.

Annotations:—*Mentd.* *Blower v. G. W. Ry.* (1872), L. R. 7 C. P. 655; *Sutcliffe v. G. W. Ry.*, [1910] 1 K. B. 478; *L. & N. W. Ry. v. Hudson*, [1920] A. C. 324.

954. — — —. Including costs in county court.]—Where an appeal is brought from a county ct. the Ct. of Common Pleas, on reversing the judgment & granting a new trial:—*Held*: they had power to grant applt. not only the costs of the appeal, but also the costs of the first trial below, & would do so, unless there were special circumstances in the case.—*GAGE v. COLLINS* (1867), L. R. 2 C. P. 381; 36 L. J. C. P. 144; 15 W. R. 568.

955. — — —.]—On an appeal from a county ct. the ct. has jurisdiction to allow a successful applt. the costs of the appeal as well as those of the suit in the ct. below, & as a general rule will do so.—*ASHBY v. SEDGWICK* (1873), L. R. 15 Eq. 245; 42 L. J. Ch. 355; 28 L. T. 185; 21 W. R. 455.

Annotation:—*Consd.* *Cook v. Montague* (1873), 21 W. R. 670.

Sect. 13.—Costs. Part IX. Sect. 1: Sub-sect. 1.]

956. — Security given for costs of appeal—Money paid into court.]—Where, on an appeal from a county ct., applt. has paid money into ct. as a security for the costs of the appeal, under 1850 Act, s. 14, & the Ct. of Appeal decides in favour of applt., the ct., in addition to allowing the costs of the appeal, will order the money to be paid out to him.—*KELLY v. WEBSTER* (1852), as reported in 16 J. P. 458; 16 Jur. 838.

Annotation:—Mentd. Hodgson v. Johnson (1858), E. B. & E. 685.

957. — Bond conditioned to pay costs of appeal “whatever be event of appeal.”]—Deft., against whom judgment had been recovered in a county ct. on Jan. 17, gave pltf. notice of appeal on Jan. 22, & the next day entered into a bond with a surety conditioned to pay the costs of the appeal, whatever the event might be & the amount of the judgment in case the appeal were dismissed. On the following day deft. withdrew the notice of appeal, & gave pltf. another notice of appeal, which included additional grounds of appeal. It was objected that as the first notice had been withdrawn the bond was no security for the costs of the second appeal on the amount of the judgment, & that consequently the ct. had no jurisdiction to entertain the appeal:—*Held*: they had jurisdiction to hear the appeal, & would direct judgment to be entered for applt. with costs, notwithstanding the terms of the bond by which the applt. had bound himself to pay the costs of the appeal whatever the event might be.—*DANIELS v. CHARSLEY* (1851), 11 C. B. 739; Cox, M. & H. 535; 21 L. J. C. P. 37; 18 L. T. O. S. 122; 16 J. P. 168; 15 Jur. 1161; 138 E. R. 665.

958. — Appeal on ground of misdirection.]—*GEE v. LANCASHIRE & YORKSHIRE RY. CO.*, No. 928, *ante*.

959. —]—Upon an appeal from the decision of a county ct. judge or the judge of the Sheriffs' Ct. of the City of London on the ground of misdirection applt. if successful is entitled to costs.—*SCHRODER v. WARD* (1863), 13 C. B. N. S. 410; 1 New Rep. 325; 32 L. J. C. P. 150; 7 L. T. 825; 9 Jur. N. S. 1056; 11 W. R. 427; 143 E. R. 162.

Annotations:—Consd. Conybeare v. Farries (1869), 21 L. T. 497. *N.F. Richardson v. N. E. Ry.* (1872), L. R. 7 C. P. 75. *Reid. Budenburg v. Roberts* (1867), L. R. 2 C. P. 292.

960. —]—This ct. is not bound by any invariable rule as to giving costs to a party who is successful in an appeal from a county ct. on the ground of misdirection of the judge.

In an appeal from the City of London Ct. on the ground that the ruling of the judge in respect of the sufficiency of a notice to produce was erroneous, the successful applt. was allowed his costs of appeal.—*CONYBEARE v. FARRIES* (1869), L. R. 5 Exch. 16; 39 L. J. Ex. 26; 21 L. T. 497.

961. — Appeal to Court of Chancery.]—The rule of law that costs should follow the result of an appeal will not be adopted by the Ct. of Ch. in county ct. appeals.—*FALLOWS v. SLATTER* (1869), 38 L. J. Ch. 609; 20 L. T. 513; 17 W. R. 1120.

962. — Judgment for plaintiff in action to

enforce bet—Judgment set aside—No costs on either side.]—*LUCKETT v. WOOD*, No. 935, *ante*.

963. Appeal dismissed for want of jurisdiction—Power of court to deal with costs.]—*CARR v. STRINGER*, No. 696, *ante*.

964. —]—When an appeal from a county ct. is struck out on the ground that the order giving leave to appeal has been granted by a judge at chambers without jurisdiction the Ct. of Appeal from inferior cts. has no power to grant costs to the party who appears to show cause against it.—*BROWN v. SHAW* (1876), 1 Ex. D. 425, D. C.

Annotation:—Mentd. Tennant v. Rawlings (1879), 4 C. P. D. 133.

965. Time for application for costs.]—An application for costs on an appeal from a county ct. will not be entertained unless made at the time the case is disposed of.—*TAYLOR v. GREAT NORTHERN RY. CO.* (1866), L. R. 1 C. P. 430; *sub nom. GREAT NORTHERN RY. CO. v. TAYLOR*, 12 Jur. N. S. 372.

Annotations:—Mentd. Donohoe v. L. & N. W. Ry. (1867), 15 W. R. 792; *Postlethwaite v. Freeland* (1880), 6 App. Cas. 599; *Hick v. Raymond & Reid*, [1893] A. C. 22; *A.-G. v. Manchester Corpn.*, [1906] 1 Ch. 643.

966. What costs allowed—Transcript of shorthand notes used on appeal.]—A county ct. judge ordered shorthand notes of the proceedings before him to be taken, & a transcript of the notes was used on appeal without objection:—*Held*: the cost of taking the transcript of these notes would be allowed in taxation.—*Re BOWDEN, Ex p. SAWYER* (1876), 1 Ch. D. 698; 45 L. J. Bcy. 56; 33 L. T. 759; 24 W. R. 375.

Annotation:—Reid. Hill's Exors. v. Metropolitan District Asylum Managers (1880), 49 L. J. Q. B. 668.

967. —]—On the hearing of an appeal from the City of London Ct. in a case tried with a jury, applt. used a shorthand note of the evidence & the summing up. A new trial was ordered on the ground of misdirection. The practice of the City of London Ct., as stated by the judge, was that the corpn. employed a shorthand writer to take a note of the proceedings, & the parties could obtain a transcript of the shorthand note on payment. On an application by applt. for the costs of the shorthand note:—*Held*: as the case was one in which it was impossible to request the judge to make a note at the time when the point on which the appeal was decided arose, because the point did not arise until after the close of the summing-up, the judge was not bound, under 1888 Act, s. 121, to furnish a copy of his note, & applt. was therefore entitled to obtain & use the transcript of the shorthand note, & the costs ought to be allowed but only the costs of so much of the note as was necessary; in the present case a note of the evidence was necessary; but as a general rule in cases tried with a jury, where it is necessary to use a transcript of the shorthand note, only the costs of the note of the summing-up ought to be allowed.—*BARBER v. BURT*, [1894] 2 Q. B. 437; 63 L. J. Q. B. 700; 71 L. T. 295; 42 W. R. 572; 10 R. 397, D. C.

In admiralty appeals.]—See ADMIRALTY, Vol. I., p. 233, No. 1595.

In bankruptcy appeals.]—See BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 536, 537.

Part IX.—Certiorari, Prohibition and Mandamus.

SECT. 1.—CERTIORARI.

SUB-SECT. 1.—WHEN AVAILABLE.

See 1888 Act, s. 126.

968. What proceedings may be removed—General rule—Not action over which High Court has no jurisdiction—What plaintiff should show.]—To prevent the removal of a plaintiff from the county ct. by *certiorari*, on the ground of want of jurisdiction in the superior ct. to entertain the action if removed, the plaintiff ought to be so framed as to disclose a cause of action over which the superior ct. has no jurisdiction.

A plaintiff was removed from the county ct. by *certiorari*, on the affidavit of deft.'s attorney that difficult questions of law would arise:—*Held*: the ct. would refuse to quash the *certiorari*, though the affidavit of pltf.'s attorney averred that no such difficult questions of law would arise.—*REES v. WILLIAMS* (1851), 7 Exch. 51; Cox, M. & H. 568; 21 L. J. Ex. 24; 18 L. T. O. S. 79; 155 E. R. 852.

969. — Not action for recovery of possession of tenement—Term having expired or been determined by notice.]—A plaintiff entered in the county ct. under 1846 Act, s. 122 for the recovery of a tenement, cannot be removed by *certiorari*.

A question of title is not necessarily involved in a plaintiff for the recovery of tenements.—*PRICE v. PRICE* (1850), Rob. L. & W. 483; Cox, M. & H. 333; 15 L. T. O. S. 142; 14 J. P. Jo. 367.

970. — Not proceedings in replevin.]—*MUNGEAN v. WHEATLEY*, No. 251, *ante*.

971. — Action for sum exceeding £20.]—*Semble*: the power given by the 1846 Act, s. 90 to remove a plaintiff by *certiorari* from a county ct. is not taken away by 1850 Act, s. 16.

Upon the application for such removal it is necessary to bring before the judge all the material facts of the case, in order that he may have the power of imposing such terms upon the parties as he may, in the exercise of his discretion, think fit.—*PARKER v. BRISTOL & EXETER RY. CO.* (1851), 6 Exch. 184; 2 L. M. & P. 136; Cox, M. & H. 435; Rob. L. & W. 559; 20 L. J. Ex. 112; 16 L. T. O. S. 393; 15 J. P. Jo. 99; 155 E. R. 506.

Annotation:—*Reid*. *Re Brookman v. Wenham* (1851), 2 L. M. & P. 233.

972. — — —.] — *BROOKMAN v. WENHAM*, No. 1010, *post*.

973. — Not action for sum not exceeding £5—Split demand.]—A plaintiff was brought in the county ct. to recover £20 for damage done to pltf.'s fields by lime kilns belonging to deft. between Nov. 10, 1843 & Oct. 30, 1849. This plaintiff was removed by *certiorari* on the ground that the lime kilns were of greater value than £20 & that the success of the plaintiff would render them useless. A second plaintiff was then brought to recover £5 for damage done between Nov. 15, 1843 and Nov. 30, 1849. Deft. pleaded in abatement the pendency of the other action, but the judge proceeded with the cause without deciding the question:—*Held*: neither a prohibition nor a *certiorari* lay in respect of the second plaintiff.—*EDWARDS v. ROGERS* (1850), 1 L. M. & P. 196; Cox, M. & H. 373; 19 L. J. Ex. 149; 15 L. T. O. S. 8; 14 Jur. 91; 14 J. P. Jo. 69.

974. — — — Claim of £5 by bailiff for assault coupled with claim of £5 for fine in respect of same assault.]—*BOX v. GREEN*, No. 170, *ante*.

975. — Not interpleader proceedings.] — *MACKELLAR v. SUMMERS*, *Ex p.* SUMMERS, No. 640, *ante*.

See, further, INTERPLEADER.

976. — Not proceedings in which nothing done contrary to Act or rules.]—Where deft. in an action in a county ct. has given notice of appeal & complied with the requirements of the Act, & the judge dies before he has settled the case upon which the parties disagree, the ct. will not issue a prohibition to prevent execution issuing out of the county ct., or a *certiorari*, before something is shown to have been done contrary to the stat. & the rules of practice.—*MCCALLUM v. COOKSON* (1858), 5 C. B. N. S. 498; 23 J. P. 215; 141 E. R. 202; *sub nom.* *MCCALLUM v. COOKSON*, 28 L. J. C. P. 1; *sub nom.* *MCCULLUM v. COOKSON*, 32 L. T. O. S. 76; 7 W. R. 14.

977. — Whether action against friendly society by member.]—The provisions in the Friendly Societies Act, 1875 (c. 60), ss. 22 (d) & 30 (10), for the reference of all disputes between the society & its members to the county ct., are permissive only, & not peremptory; & therefore there is, in a proper case, jurisdiction to remove to the High Ct. by *certiorari* proceedings in an action commenced against a friendly society by one of its members.—*Re ROYAL LIVER FRIENDLY SOCIETY* (1887), 35 Ch. D. 332; 56 L. J. Ch. 821; 56 L. T. 817; 36 W. R. 7.

Annotations:—*Consd.* *Wilkinson v. Jagger* (1887), 20 Q. B. D. 423. *Mentd.* *Stone v. Liverpool Marine Soc.* (1894), 63 L. J. Q. B. 471; *Re Griffin, Griffin v. Griffin*, [1902] 1 Ch. 135.

978. — — —.]—*Re ROYAL LIVER FRIENDLY SOCIETY* (1895), *Times*, Nov. 16.

See, further, FRIENDLY SOCIETIES.

979. — Not when judge of county court has powers of High Court—Bankruptcy proceedings—Order by judge in.]—*Certiorari* does not lie to bring up an order of a county ct. judge made when exercising bkpcy. jurisdiction.—*SKINNER v. NORTHALLERTON COUNTY COURT JUDGE*, [1899] A. C. 439; 68 L. J. Q. B. 896; 80 L. T. 814; 63 J. P. 756; 15 T. L. R. 433; 6 Mans. 274, H. L.; *affg.* *S. C. sub nom. R. v. NORTHALLERTON COUNTY COURT JUDGE*, [1898] 2 Q. B. 680, C. A.

Annotation:—*Reid*. *Savill v. Dalton*, [1915] 3 K. B. 174.

See, generally, BANKRUPTCY & INSOLVENCY, Vol. IV., p. 39.

980. — Action "commenced in county court"—Equitable action transferred from High Court to county court.]—*GENERAL ESTATES CO. v. BEAVER*, No. 402, *ante*.

981. At what stage of proceedings remedy available—After stay of proceedings after judgment.]—P. showed cause against a rule *nisi*, calling on deft. to show cause why the return to a writ of *certiorari* should not be taken off the files of the ct. & the writ quashed, & a *procedendo* awarded, or for this ct. to issue execution on the judgment, on the ground of the return having been irregular. An action had been brought against deft. in the B. ct. of requests, & a judgment recovered on July 9; on July 13 a learned judge made an order to stay proceedings in the cause, upon deft. giving security to the satisfaction of the master. The writ of *certiorari* was sued out on the following June 15:—*Held*: the judge's order operated as a stay of proceedings, & therefore they could neither award a *procedendo* nor issue execution on the judgment.—*WHARRIL v. DRIVER* (1844), 2 L. T. O. S. 314.

Sect. 1.—Certiorari: Sub-sects. 1, 2, 3, 4, 5 & 6.]

982. — After order for new trial.]—By an order made in a plaint in the county ct., it was ordered that the judgment in this case, & all subsequent proceedings thereon be set aside, & a new trial had between the parties, on condition that deft. do first pay the costs of & incidental to this order, & do try at the next county ct. before a jury:—*Held*: the right to apply for a *certiorari* was not taken away.—*HODGES v. (1853), 17 J. P. 680.*

Action against magistrate — After

v. SNEYD, No. 325, ante.

See, now, 1888 Act, s. 175.

984. — After proceedings begun — Winding up petition.]—The High Ct. has jurisdiction to order the transfer of a winding up petition from the county ct. to itself, notwithstanding that the petition has been opened in the county ct.—*Re EAST DULWICH No. 295 STARR-BOWKETT (1890), 39 W. R. 32.*

See, generally, CROWN PRACTICE.

SUB-SECT. 2.—APPLICATION FOR.

See, generally, CROWN PRACTICE.

985. How made—Ex parte to judge.]—A *certiorari* to remove a plaint from the county ct., under 1846 Act, s. 90, may issue upon an *ex parte* application to a judge. It is no objection to such writ that it is tested in the term prior to that in which it is issued.—*SYMONDS v. DIMSDALE (1848), 2 Exch. 533; 6 Dow. & L. 17; 17 L. J. Ex. 247; 12 Jur. 485; 154 E. R. 603; sub nom. SIMMONDS v. DIMSDALE, 12 J. P. Jo. 442.*

Annotations:—Consd. Cherry v. Endean (1886), 55 L. J. Q. B. 292. Rejd. Ex p. G. W. Ry. (1857), 2 H. & N. 557. Mentd. Re Hammersmith Rent-Charge (1849), 4 Exch. 87.

986. — Necessity for laying all material facts before judge.]—*PARKER v. BRISTOL & EXETER Ry. Co., No. 971, ante.*

987. — At chambers.]—An application for a prohibition, or *certiorari* to a county ct. under 1856 Act, must be made in the first instance at chambers.

When a judge at chambers has declined to grant a *certiorari* the ct. will not do so merely because it appears that possibly a serious question of law may arise, as that may be reserved by special case, nor merely because the decision on the particular case, though involving directly only a small sum, may be of great importance to the appct. as likely to affect other cases of a similar nature.—*STAPLES v. ACCIDENTAL DEATH INSURANCE Co. (1861), 10 W. R. 59.*

987a. — —.]—*BOWEN v. EVANS (1848), 3 Exch. 111; 6 Dow. & L. 193; 18 L. J. Ex. 38; 12 L. T. O. S. 177; 12 J. P. 776; 154 E. R. 778.*

See R. S. C., Ord. 54, r. 12.

Time for making.]—*See Nos. 325, 981, 982, 984, ante.*

SUB-SECT. 3.—GROUNDS FOR GRANTING OR REFUSING.

See 1888 Act, s. 126.

988. General rule — Discretion of court — “Shall deem it desirable” that action should be removed.]—In determining whether it is “desirable” within the meaning of 1888 Act, s. 126, that the action should be tried in the High Ct. the test to be applied is whether it is more fit to be

tried in the High Ct. than in the county ct. & the party applying for the order for removal of the action into the High Ct. must establish that point.

Deft., who was the secretary of a local branch of a society, a trade union, was sued on behalf of the society. Pltf., a member of the society, was a poor man &, in an application made by deft. for removal of the action into the High Ct., made allegations of oppressive conduct on the part of the society, which, however, the High Ct. found were not established, with regard to the costs of a former action brought by pltf. against it:—*Held*: it was desirable within the meaning of the sect. that the action should be tried in the High Ct. & the order for removal ought to be made, proper terms for the protection of pltf. being inserted in the order by virtue of the power conferred by the words “upon such terms as to payment of costs . . . or otherwise as the High Ct. or a judge thereof shall think fit to impose” in the sect. *Qu.* whether the alleged oppressive conduct on the part of the society would, if it had been established, have been a matter proper to be taken into consideration in determining whether the action should be tried in the High Ct. instead of the county ct.—*DONKIN v. PEARSON, [1911] 2 K. B. 412; 80 L. J. K. B. 1069; 104 L. T. 643, D. C.*

s. 126, is not confined to cases in which the action which is the subject of the application for removal is in itself more fit to be tried in the High Ct. than in the county ct. The sect. gives an absolute discretion to the High Ct. to consider having regard to all the circumstances, whether it is desirable that the action should be tried in the High Ct. or remain in the county ct.—*CHALLIS v. WATSON, [1913] 1 K. B. 547; 82 L. J. K. B. 529; 108 L. T. 505; 29 T. L. R. 271; 57 Sol. Jo. 285, D. C.*

990. — Grounds of convenience or fair play.]—*GODMANCHESTER RURAL DISTRICT COUNCIL v. HOOLEY (1901), Times, Aug. 5, D. C.*

990a. — Not bias of jury.]—*CLARE RURAL DISTRICT COUNCIL v. COLLEN, No. 447, ante.*

991. Difficult questions of law likely to arise.]—*REES v. WILLIAMS, No. 968, ante.*

992. — Nature of questions not stated in affidavit.]—Where a *certiorari* had been issued by leave of a judge under 1846 Act, s. 90, upon an affidavit which stated generally that difficult questions would arise, but did not state what those questions were, or the grounds upon which they would arise, the ct. refused to set the writ aside, as it did not appear that those particulars were not pointed out to the judge at chambers.—*GOLDING v. CAUDWEIL (1851), 2 L. M. & P. 175.*

993. — Sum claimed as debt & not as legacy.]—Pltf. in a county ct. claimed, by his particulars of demand, £17 8s. due from the deft. as administratrix of D., for that W. by his will bequeathed to D. certain freehold hereditaments & also leasehold & other personal estate, on condition of D. paying unto pltf. 4s. a week during her life; & D., on the death of W., accepted the bequest, & entered into possession, & enjoyed the freehold & personal estate, & duly paid the weekly sum during his life; but since his death deft., although she has possessed herself of the hereditaments, goods, etc., of D., to an amount more than sufficient for the purpose, has refused to pay pltf. It appeared that on the death of D., the freehold estates so bequeathed descended to his nephew & heir-at-law, a minor. On motion for a prohibition:—*Held*: the sum in question was claimed as a debt, & not as a legacy, but although

the subject-matter of the claim was a debt a *certiorari* was granted on account of the legal difficulties in the case.—*Longbottom v. Longbottom* (1852), 8 Exch. 203; 22 L. J. Ex. 74; 17 J. P. 169; 155 E. R. 1320.

994. — Mere possibility of such questions arising not sufficient.]—*LANCASTER v. DE GREY (EARL)* (1855), 19 J. P. Jo. 244.

995. — —.]—*Certiorari* to a county ct. refused, the plaint, being for a sum under £20, although it was sworn that various nice questions of law & fact, important to the applt., would probably arise. *Semble*: now there is a power to raise questions of law by way of appeal, the mere probability that difficult questions of law may arise, is no ground for *certiorari*.—*SOLOMAN v. LONDON, CHATHAM & DOVER RY. CO.* (1861), 10 W. R. 59.

996. — Must be of general importance—Not merely of interest to applicant.]—*STAPLES v. ACCIDENTAL DEATH INSURANCE CO.*, No. 987, *ante*.

997. — —.]—*SOLOMAN v. LONDON, CHATHAM & DOVER RY. CO.*, No. 995, *ante*.

998. — Conflict of judicial opinion as to whether any evidence of negligence.]—*POTTER v. GREAT WESTERN COLLIERY CO., LTD.* (1894), 10 T. L. R. 380, C. A.

999. — Action claiming that site of school formed part of glebe—& that rector entitled to hand school over to education authority as provided school.]—A plaint was issued in the county ct. of D. claiming that the site of a school erected in 1897 formed part of the glebe, & that the rector of E. was entitled to hand it over to the local education authority as a provided school. The late rector of E., who resigned in 1905, believed the school to be built on his own land:—*Held*: an order must be made to show cause why a writ of *certiorari* should not issue, & a stay directed in accordance with 1888 Act, s. 129.—*EVANS v. JACKSON* (1910), 74 J. P. 417.

Actions affecting title to land.]—*See* No. 286, *ante*.

1000. Questions of technical character involved—Necessitating intricate scientific investigation.]—By Employers' Liability Act, 1880 (c. 42), s. 6, every action for recovery of compensation under this Act shall be brought in a county ct. but may upon the application of either pltf. or deft., be removed into a superior ct. in like manner & upon the same conditions as an action commenced in a county ct. may by law be removed.

Pltf. having brought in the county ct. an action against his employers, to recover compensation under the Act for an injury through the breaking of a chain, applied for a *certiorari* to remove the action into the superior ct. on the grounds that his notice given under the Act was defective; that he desired to consolidate the action with one brought by him in the superior ct. to recover damages for the same injury from defts. on their common law liability, & that the questions arising were of considerable complexity & legal difficulty:—*Held*: the power of removal ought only to be exercised in exceptional cases, & no such special grounds had been shown as to induce the ct. in its discretion to grant the application.—*MUNDAY v. THAMES IRONWORKS CO.* (1882), 10 Q. B. D. 59; 52 L. J. Q. B. 119; 47 L. T. 351, D. C.

1001. — —.]—*POTTER v. GREAT WESTERN COLLIERY CO., LTD.* (1894), 10 T. L. R. 380, C. A.

1002. Consolidation with action in High Court—Action in High Court against same defendant in respect of same injury.]—*MUNDAY v. THAMES IRONWORKS CO.*, No. 1000, *ante*.

1003. When leave to appeal refused—Indirect J.—VOL. XIII.

attempt to re-open previous decision.]—*WARNER v. TRENT* (1890), 6 T. L. R. 412, C. A.

See, generally, CROWN PRACTICE.

SUB-SECT. 4.—ON WHAT TERMS GRANTED.

1004. Giving security for costs.]—Action brought in the county ct. by pltf. against deft., a chemist, for a penalty of £20 for practising as an apothecary without having a certificate. Deft. obtained a *certiorari* under the county cts. Act to remove the trial into the superior cts., & the question was whether that *certiorari* should not be quashed:—*Held*: the *certiorari* should be quashed, unless deft. found satisfactory security for the costs within a week.—*APOTHECARIES' CO. v. WELLS* (1849), 13 L. T. O. S. 29.

1005. Payment & scale of costs—Claim over £20.]—On an application by deft. for a *certiorari* to remove from a county ct. a cause in which the demand is over £20, the ct. does not make it a condition that deft., if successful, shall have no more costs than would have been allowed in the county ct.—*Ex p. GREAT WESTERN RY. CO.* (1857), 2 H. & N. 557; 157 E. R. 229; *sub nom. DOWLING v. GREAT WESTERN RY. CO.*, *WILLIAMS v. GREAT WESTERN RY. CO.*, 30 L. T. O. S. 155; 22 J. P. 131.

1006. — Costs ordered to be in discretion of judge trying case.]—Deft. in a county ct. obtained a new trial, the costs of the first trial to abide the event of the new trial. The jury, however, not being able to agree, were discharged, when deft. removed the cause by *certiorari*, but made no provision as to costs:—*Held*: the *certiorari* may be quashed unless deft. consented that the costs should be in the discretion of the judge who tried the cause.—*MANSER v. EASTERN COUNTIES RY. CO.* (1858), 31 L. T. O. S. 101; 22 J. P. 450.

SUB-SECT. 5.—EFFECT OF.

See, generally, CROWN PRACTICE.

1007. On obligation to proceed with action—Removal by defendant.]—Where a deft. has removed from a county ct., by *certiorari*, under 1856 Act, s. 38, a plaint for a sum not exceeding £5, pltf. is not bound to follow out his suit; & if he declines, deft. cannot, after serving notice to declare, under Common Law Procedure Act, 1852 (c. 76), sign judgment for want of a declaration, nor recover from pltf. his costs of removal.—*GARTON v. GREAT WESTERN RY. CO.* (1858), 1 E. & E. 258; 28 L. J. Q. B. 103; 32 L. T. O. S. 126; 5 Jur. N. S. 595; 7 W. R. 63; 120 E. R. 906.

Annotation:—*Apprvd. Harrison v. Bull & Bull*, [1912] 1 K. B. 612.

1008. — Removal by agreement of parties.]—An action commenced in the county ct. was removed under an agreement of the parties into the K. B. Div. by a writ of *certiorari*. Pltf. not having taken any step in the action after the removal, defts. took out a summons for directions under Ord. 30:—*Held*: pltf. could not be compelled to proceed with the action in the K. B. Div., & defts. were not entitled to an order upon the summons taken out by them.—*HARRISON v. BULL & BULL*, [1912] 1 K. B. 612; 81 L. J. K. B. 656; 106 L. T. 396; 28 T. L. R. 223; 56 Sol. Jo. 292, C. A.

SUB-SECT. 6.—REFUSAL TO OBEY.

1009. Liability of judge to attachment.]—*MUNGEAN v. WHEATLEY*, No. 251, *ante*.

Sect. 1.—*Certiorari*: Sub-sect. 6. Sect. 2: Sub-sects. 1 & 2, A. & B.; sub-sect. 3, A.]

1010. — Writ served on registrar's clerk.]—The writ of *certiorari* to remove a cause from the county ct. in which the amount claimed is between £20 & £50 is not taken away by 1850 Act, s. 16.

Service of the *certiorari* on a person acting as clerk at the office of the chief clerk of the county ct. is good service on the judge; though not sufficient to ground an attachment against the judge where the writ does not come to the judge's knowledge until after the return day has passed. The judge should be ruled to return the writ.—**BROOKMAN v. WENHAM** (1851), 2 L. M. & P. 233; Rob. L. & W. 539; 20 L. J. Q. B. 278; 16 L. T. O. S. 492; 15 Jur. 249.

SECT. 2.—PROHIBITION.

SUB-SECT. 1.—WHEN AVAILABLE.

See, generally, CROWN PRACTICE.

1011. Action for less than £5.]—EDWARDS v. ROGERS, No. 973, ante.

1012. Existence of alternative remedy.]—An erroneous decision in point of law, as the misconstruction of an Act of Parliament, is not a sufficient ground for issuing a prohibition to the judge of an inferior ct., even though his jurisdiction to deal with the case may depend upon that decision, when another immediate remedy is open to the applicant.—**Re TAMERLANE v. BOWEN** (1851), 18 L. T. O. S. 62.

1013. —.]—The Ct. of Q. B. will not grant a writ of prohibition to the judge of a county ct. to restrain him from executing a *fi. fa.* which has issued irregularly on the goods of a deft. under an order of the county ct. The remedy is, to apply to the ct. itself out of which the execution issued to stay proceedings.—**HERMAN v. SHELDRY** (1854), 2 W. R. 455.

1014. —.]—A notice was given by deft. to pltf. by letter on Nov. 8, stating that he would apply on Nov. 12 for a new trial. Pltf. refused to accept this notice as being too short, & did not attend at the hearing on Nov. 12.

The fact that pltf. objected to the notice was brought before the judge, who, however, made an order for a new trial. Pltf. applied for a prohibition to restrain the judge from hearing the case on the new trial:—

Held: a prohibition ought not to be granted, as the proper proceeding to have been adopted would have been to have made an application to the judge to set aside the order for a new trial as irregular.—**JONES' TRUSTEES v. GITTINS** (1884), 51 L. T. 599, D. C.

1015. —.]—CHANNEL COALING Co. v. ROSS No. 441, *ante*.

—.]—*See, also, Nos. 433, 516, ante.*

— **Under Workmen's Compensation Act, 1906 (c. 58).]—See MASTER & SERVANT.**

1016. Judge invested with powers of High Court—Under statute—Companies (Winding up) Act, 1890 (c. 63), s. 1 (6).]—By above Act it is provided that every ct. having jurisdiction under that Act to wind up a co. shall for the purposes of that jurisdiction have all the powers of the High Ct. The judge of a county ct. to which the above-mentioned provision applied, having made an order of committal for disobedience of an order made by him in the course of the winding up of a co. an application was made for a prohibition to him on the ground that the provisions of Ord. 25, r. 40 (b), with regard to service of the order sought

to be enforced had not been complied with & he therefore had not jurisdiction to make an order for committal:

Held: inasmuch as the county ct. judge was invested for the purposes of the winding up jurisdiction with the powers of the High Ct. a prohibition to him could not be granted.—**Re NEW PAR CONSOLS, LTD.** (No. 2), [1898] 1 Q. B. 669; 67 L. J. Q. B. 598; 78 L. T. 312; 46 W. R. 369; 14 T. L. R. 287; 5 Mans. 277, C. A.

Annotation:—*Const. R.* (on the prosecution of *Skinner*) v. Northallerton County Court Judge, [1898] 2 Q. B. 680.

Judge sitting as arbitrator—Under Workmen's Compensation Act, 1906 (c. 58).]—See MASTER & SERVANT.

SUB-SECT. 2.—APPLICATION FOR.

A. In General.

See 1888 Act, ss. 127, 128.

1017. How made—Affidavit—How intitled.]—**WHITEHOUSE v. HOWELLS** (1851), 17 L. T. O. S. 169.

1018. — Must be on facts raised in county court.]—Upon an application for a writ of prohibition to restrain a county ct. after trial from further proceeding with a suit, on the ground that the title to premises came in question on the suit, it appeared that no such objection was taken in the ct. below:—**Held:** the rule must be refused, on the ground that the point was not raised in the court below.

It will never do to allow a party to make one case before the judge of the county ct. & then come to this ct. on an entirely new state of facts & seek for a writ of prohibition (*CROMPTON, J.*).—**Ex p. SHERRING** (1852), 20 L. T. O. S. 115; 17 J. P. 16.

1019. — At chambers—During sittings & vacation.]—Application for a prohibition to a county ct. may, notwithstanding Ord. 59, r. 8a, R. S. C., be made at chambers, as well during the sittings as in vacation, under 1888 Act, s. 127.

Ord. 50, r. 20, is not rendered *ultra vires* by, nor is it inconsistent with, 1888 Act, s. 119, which gives power to a county ct. judge to award costs on the higher scale in the three classes of actions there specified.—**KING v. CHARING CROSS BANK** (1889), 24 Q. B. D. 27; 59 L. J. Q. B. 24; 62 L. T. 42; 38 W. R. 287, D. C.

1020. Service of rule—Sufficiency of—Service on plaintiff's solicitor—Order for service on plaintiff.]—

Where a rule for a prohibition to a county ct. was directed to be served on pltf. in the county ct. & on the judge of that ct., service on the judge & the attorney of pltf. in the county ct. is insufficient.

L. had obtained a rule for a prohibition to the judge of the B. county ct. to prevent his proceeding in a suit. The rule was directed to be served on pltf. in the county ct. & on the judge of that ct. No cause being shown, L. now moved to make the rule absolute, stating that service had been effected on the judge, & on the attorney who acted for pltf. in the county ct.:—

Held: this was insufficient & rule was enlarged in order that service might be effected according to its terms.—**Re BLOOMSBURY COUNTY COURT, MASSEY v. BURTON** (1857), 3 Jur. N. S. 1108; *subsequent proceedings, sub nom. MASSEY v. BURTON*, 2 H. & N. 597.

1021. Form of order—Need not state grounds upon which court acted.]—It is not necessary that the grounds for issuing it should appear in a rule or order for a prohibition.—**EVERSFIELD v. NEWMAN** (1858), 4 C. B. N. S. 418; 140 E. R. 1147;

nom. Re EVERSFIELD, EVERSFIELD v. NEWMAN, 31 L. T. O. S. 135; *sub nom. Ex p. EVERSFIELD*, 22 J. P. 450.

1022. Costs—On discharge of rule.]—A. proceeded by plaint in the county ct. to recover £20 for damage done to his fields by some lime-kilns of deft., from Nov. 10, 1843, to Oct. 30, 1849. That cause having been removed by *certiorari* into this ct. on the ground that the lime-kilns were of greater value than £20, & that deft.'s property in them would be destroyed if the pltf. were to succeed, he commenced a second plaint in the

1843, to Nov. 30, 1849:—

Held: no prohibition lay; & no *certiorari* lay.

Costs awarded on discharging a rule are not necessarily a punishment for misconduct in the party moving it, but are given to reimburse the opposite party for the expense to which he has been put by the application.—*EDWARDS v. ROGERS* (1850), 1 L. M. & P. 196; Cox, M. & H. 373; 19 L. J. Ex. 149; 15 L. T. O. S. 8; 14 Jur. 91.

1023. — When ordered against solicitor personally.]—The order for the costs of prohibition will not be made against pltf.'s solr. personally, unless the rule has been moved for in that form & the solr. has had an opportunity of showing cause.—*ROGERS v. LONDON, CHATHAM & DOVER Ry. Co.* (1877), 26 W. R. 192.

B. Time for.

1024. Before trial—Title in question.]—*SEWELL v. JONES*, No. 273, *ante*.

1025. — —.]—*BOURNE v. SOUTH EASTERN Ry. Co.*, No. 63, *ante*.

1026. — Dispute between friendly society & member—Enforcement of arbitrator's award.]—By one of the rules of an industrial society it was provided that disputes between the society and its members should be settled by arbn. Deft., a member of the society, who had filled the office of salesman, having resigned his post, disputes between him & the society, in respect of his accounts with them, arose, & were referred to arbitrators, who found that the sum of £18 was due from deft. to the society; & payment of the sum was then sought to be enforced by the society by plaint in the county ct., under 18 & 19 Vict. c. 63, s. 41. Deft. thereupon, & before the matter came before the county ct. judge, applied for a prohibition, upon the ground that the matters in difference between himself & the society were not the subject of arbitration:—*Held*: the question of jurisdiction was one for the county ct. judge, & the application, being made before the judge had an opportunity of deciding the question, was premature.—*SKIPTON INDUSTRIAL CO-OPERATIVE SOCIETY, LTD. v. PRINCE* (1864), 33 L. J. Q. B. 323; 11 Jur. N. S. 11.

1027. Before condition precedent to trial by county court judge fulfilled—Dispute between friendly society & member—Appointment of arbitrator—No failure of arbitrator to come to decision.]—*SHEA v. UNITED SICK & BURIAL SOCIETY OF ST. PATRICK*, No. 108, *ante*.

1028. After judgment—& payment of debt & costs.]—Where an action was brought in a county ct. & deft. appeared & made no objection to the jurisdiction & allowed the ct. to act down to payment of damages & costs:—*Held*: it was too late to apply for a prohibition unless the want of jurisdiction appeared upon the face of the proceedings.—*YATES v. PALMER* (1849), 6 Dow. & L.

283; Rob. L. & W. 87; Cox, M. & H. 314; 14 L. T. O. S. 109.

Annotations:—*Reid. Re Knowles v. Holden* (1855), 24 L. J. Ex. 229; *Farquharson v. Morgan*, [1894] 1 Q. B. 552.

1029. — —.]—*DENTON v. MARSHALL*, No. 316, *ante*.

1030. — In action alleged to form one cause of action—With subsequent action in which prohibition sought.]—*ADKIN v. FRIEND*, No. 176, *ante*.

1031. After execution.]—A summons in a plaint in a county ct., under 1846 Act, having been served at a wrong place, deft. had no knowledge of the proceedings until his goods were taken in execution. Before judgment, proof was given, to the satisfaction of the judge, that the summons had been served as required by sect. 80. The judge refused to set aside the proceedings, except on terms to which deft. declined to accede:—*Held*: the judge had jurisdiction over the matter, & a prohibition would not lie.—*ROBINSON v. LENAGHAN* (1848), 2 Exch. 333; 5 Dowl. & L. 713; Cox, M. & H. 97; 17 L. J. Ex. 174; 11 L. T. O. S. 129; 12 Jur. 399; 154 E. R. 520; *sub nom. Re LENEGHAN*, 12 J. P. 709.

1032. — Defect not apparent on face of proceedings.]—Prohibition will not issue after judgment & execution, in a case where the defect does not appear on the face of the proceedings.

Where two plaints had been entered on the same day by same pltf., against the same deft., for goods sold & delivered; & judgment had been given & execution levied but not satisfied:—*Held*: this was a sufficient defect apparent on the face of the proceedings to enable the superior ct. to issue a prohibition against proceeding in the second action.—*ACWORTH v. DOWSETT* (1848), Cox, M. & H. 118; *sub nom. ACKWORTH v. DOWSEY*, 12 J. P. Jo. 324.

1033. — —.]—After execution has been awarded in the county ct., & deft.'s goods have been taken, but not sold, prohibition will go to restrain the ct. from proceeding further, if it appear upon affidavit, though not on the face of the proceedings in the county ct., that title to corporeal hereditaments came in question in the cause, so that the judge had no jurisdiction under 1846 Act, s. 58.—*MARSDEN v. WARDLE* (1854), 3 E. & B. 695; 23 L. J. Q. B. 263; 18 J. P. 648; 18 Jur. 578; 2 W. R. 455; 2 C. L. R. 1707; 118 E. R. 1302. *Annotations*:—*Consd. Jackson v. Beaumont* (1855), 3 W. R. 521; *Farquharson v. Morgan*, [1894] 1 Q. B. 552. *Reid. Denton v. Marshall* (1863), 1 H. & C. 654; *London Corpn. v. Cox* (1867), L. R. 2 H. L. 239.

1034. After warrant of possession executed—Rule nisi obtained before warrant—Made absolute after warrant.]—*JONES v. OWEN*, No. 193, *ante*.

1035. After appeal.]—In cases of ejectment under 1846 Act, s. 122, the county cts. have jurisdiction where the annual rent of the premises does not exceed £50, no fine having been paid, although the annual value does exceed £50. *Qu.*: whether the power of appeal, given by 1850 Act, s. 14, extends to proceedings under 1846 Act, s. 122. *Semble*: a prohibition can be moved for after an appeal.—*Re HARRINGTON (EARL) v. RAMSAY* (1853), 8 Exch. 879; 22 L. J. Ex. 326; 21 L. T. O. S. 187; 17 J. P. 440; 1 W. R. 456; 1 C. L. R. 719; 155 E. R. 1610; *subsequent proceedings, sub nom. Re HARRINGTON (EARL)*, 2 E. & B. 669.

Annotation:—*Reid. Barker v. Palmer* (1881), 30 W. R. 59.

SUB-SECT. 3.—GROUNDS FOR GRANTING OR REFUSING.

A. In General.

See, generally, CROWN PRACTICE.

1036. To raise questions on record—Affidavits

Sect. 2.—Prohibition: Sub-sect. 3, A. & B. (a) & ii.

conflicting.]—Where there had been an application to a county ct. judge for a new trial, & the affidavits were conflicting respecting what took place on the application, this ct. ordered a rule for a prohibition in order that the questions might be raised upon record.—*MOSSOP v. GREAT NORTHERN RY. Co.* (1855), 16 C. B. 580; 25 L. T. O. S. 182; 19 J. P. 405; 2 Jur. N. S. 22, n.; 139 E. R. 886; *subsequent proceedings, sub nom. GREAT NORTHERN RY. Co. v. MOSSOP*, 17 C. B. 130.

1037. Nothing shown to have been done contrary to County Court Acts & Rules.]—*MCCALLUM v. COOKSON*, No. 976, *ante*.

B. Judge acting without Jurisdiction.

(a) Absence of Jurisdiction apparent on Face of Proceedings.

1038. Court bound to grant writ—Notwithstanding acquiescence by applicant.]—If total want of jurisdiction appears on the face of the proceedings in an inferior ct., the ct. is bound to grant prohibition, although the applicant may have acquiesced. In a lease by A. to B., it was provided that at the end of the tenancy compensation should be allowed for matters outside the Agricultural Holdings Act, 1883 (c. 61), & the procedure of the Act should apply to any claim for such compensation. At the end of the tenancy cross claims were referred to arbn. & an award was made by an umpire on the face of which it appeared that he had given B. compensation for matters both within & outside the Act. A county ct. judge made an order under sect. 24 of the Act to enforce the award by execution. On an application by A. for prohibition:—*Held*: as it was apparent on the face of the proceedings that the county ct. judge had no jurisdiction to make an order under s. 24 of the Act to enforce payment of so much of the award as related to matters outside the Act the writ must issue notwithstanding the agreement in the lease & that the lessor had by his conduct acquiesced in the exercise of jurisdiction by the county ct.—*FARQUHARSON v. MORGAN*, [1894] 1 Q. B. 552; 63 L. J. Q. B. 474; 70 L. T. 152; 58 J. P. 495; 42 W. R. 306; 10 T. L. R. 240; 9 R. 202, C. A.

Annotations:—*Consd.* *Alderson v. Palliser*, [1901] 2 K. B. 833; *Re Cundall & Vavasour* (1906), 95 L. T. 483; *R. v. Kensington Income Tax Comrs., Ex p. Edmond de Polignac*, [1917] 1 K. B. 486. *Distd.* *Clarke v. Knowles*, [1918] 1 K. B. 128. *Consd.* *Smythe v. Wiles*, [1921] 2 K. B. 66; *Simpson v. Crowle*, [1921] 3 K. B. 243. *Refd.* *Lee v. Cohen* (1894), 71 L. T. 824; *R. v. Tristram*, [1902] 1 K. B. 816.

1039. ———.]—An affidavit in support of an appln. for leave to issue a judgment summons out of the district of the county ct. in which judgment had been obtained was defective as not being in accordance with Form 52A of rules. Leave was granted & an order for commitment made. On an appln. for a writ of prohibition:—

Held: the want of jurisdiction appeared on the face of the proceedings, & could not be waived.

It is said that in spite of these facts prohibition should not go, because there was a waiver of the objection by reason that the judgment debtor, in compliance with the invitation contained in the note at the foot of the summons, sent an affidavit in which he stated that he had no means, and asked the ct. to make an order that he should only pay 2s. a month. I will assume, for the purpose of this judgment, that this action on the part of the judgment debtor amounted to waiver, if there could be waiver, though I must not be taken to say that it did amount to waiver. In

my judgment the action taken by the judgment debtor does not prevent the issue of a writ of prohibition, because, as is shown by the decisions, there can be no waiver of a want of jurisdiction appearing on the face of the proceedings (*VAUGHAN WILLIAMS, L.J.*).—*ALDERSON v. PALLISER*, [1901] 2 K. B. 833; 70 L. J. K. B. 935; 85 L. T. 210; 49 W. R. 706; 17 T. L. R. 742; 45 Sol. Jo. 722, C. A.

Annotations:—*Refd.* *Channel Coaling Co. v. Ross & Marshall* (1906), 76 L. J. K. B. 145; *Smythe v. Wiles*, [1921] 2 K. B. 66.

1040. ———.]—Pltfs., who carried on business at W. H., sued deft., who carried on business at C., to recover damages for breach of contract. Pltfs. began their action in the county ct. of W. H., & in their affidavit in support of an application to serve deft. out of the district, stated that the cause of action arose in part within the district, owing to the fact that they had posted at W. H. an order for goods to deft. at C. Deft.'s solr. asked for further particulars of the claim without prejudice to his right to object to the jurisdiction, & on receipt of particulars applied for a writ of prohibition to restrain the W. H. ct. from dealing with the claim:—*Held*: (1) the posting of the order for goods did not constitute part of the cause of action; (2) the demand for particulars of pltfs.' claim did not by itself constitute an acquiescence in the jurisdiction of the ct. or a waiver of deft.'s right to object; & prohibition must issue.

Where, upon the face of the record itself, it is apparent that there is a total lack of jurisdiction, deft. may obtain a writ of prohibition, even though he may have acquiesced in the proceedings down to the time when he applies for the writ (*LUSH, J.*).—*CLARKE BROTHERS v. KNOWLES*, [1918] 1 K. B. 128; 87 L. J. K. B. 189; 118 L. T. 253, D. C.

Annotation:—*Refd.* *Smythe v. Wiles*, [1921] 2 K. B. 66.

See, also, No. 1028, *ante*.

Loss of right to writ by acquiescence or waiver generally, *see* Sub-sect. 4, *post*.

(b) Absence of Jurisdiction not apparent on Face of Proceedings.

i. In General.

1041. General rule—Writ of right.]—The writ of prohibition, to restrain a judge of a county ct. from further proceeding in a matter over which he has no jurisdiction, is a writ of right.—*JACKSON v. BEAUMONT* (1855), 11 Exch. 300; 24 L. J. Ex. 301; 25 L. T. O. S. 185; 19 J. P. 532; 3 W. R. 521; 156 E. R. 844.

As to locality.]—*See* Part III., Sect. 2, *ante*.

As to amount of claim or value of subject-matter.]—*See* Part III., Sect. 3, sub-sects. 2, 3, *ante*.

— In remitted actions.]—*See* Part IV., Sect. 2, sub-sect. 1, B., sub-sect. 2, B., *ante*.

As to actions for malicious prosecution.]—*See* Nos. 64, 65, 66, *ante*.

As to actions affecting land.]—*See* Part III., Sects. 4, 13, sub-sect. 1, *ante*.

As to equitable actions.]—*See* Part III., Sect. 6, *ante*.

As to actions in which title in question.]—*See* Part III., Sect. 13, sub-sect. 1, *ante*.

As to actions in which special remedy provided.]—*See* Part III., Sect. 13, sub-sect. 6, *ante*.

As to admiralty causes.]—*See* ADMIRALTY, Vol. I., pp. 243 *et seq.*

As to disputes between friendly societies & their members.]—*See* FRIENDLY SOCIETIES.

As to proceedings to enforce award under Agricultural Holdings Act, 1883 (c. 61).]—*See* AGRICULTURE, Vol. II., p. 48, Nos. 263, 264.

As to power to order high bailiff of foreign court to pay damages.]—See No. 246, *ante*.

As to matters of practice & procedure—Proof of service of summons.]—See Part V., Sect. 3, sub-sect. 3, *ante*.

—Amendment at trial.]—See Part VI., Sect. 1, sub-sect. 3, B., *ante*.

—Alteration of verdict.]—See No. 572, *ante*.

Granting new trial.]—See Part VI., Sect. 3, *ante*.

Appointment of receiver.]—See Part VI., Sect. 4, sub-sect. 6, *ante*.

—Awarding costs on higher scale.]—See Part VII., Sect. 1, sub-sect. 3, *ante*.

—Committal for contempt.]—See Part X., Sect. 1, *post*.

—Issue of judgment summons & committal thereon.]—See BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1032, 1033, 1034, 1036, 1038, 1040–1042, Nos. 8438, 8448, 8462, 8471, 8484, 8497–8499, 8501, 8503, 8512–8514.

ii. Assumption of Jurisdiction on Erroneous View of Law.

1042. General rule—Erroneous construction of statute.]—In 1843, B., being a trader owing debts amounting in the whole to less than £300, obtained an order for protection under 5 & 6 Vict. c. 116, s. 1. The debts specified in the schedule to his petition exceeded £200, & remained unpaid in 1851, when, having incurred fresh debts, exceeding £200, he petitioned the county ct. for protection. The judge of the county ct. decided, that the debts incurred at the time of the order for protection in 1843 were not to be taken into account, & therefore B. was entitled to protection as a trader “owing debts amounting in the whole to less than £300,” within 5 & 6 Vict. c. 116, s. 1:—

Held: the construction of the statute in this respect was a matter within the jurisdiction of the county ct. judge, & therefore, if erroneous, a prohibition could not issue.—*Re BOWEN* (1851), 21 L. J. Q. B. 10; 15 Jur. 1196.

1043. — No dispute as to facts.]—*ELSTON v. ROSE*, No. 191, *ante*.

1044. Decision on technical objection—Sufficiency of particulars.]—An interpleader summons, having been taken out in a county ct., was heard, when the execution creditor, objected that the particulars of claim delivered under r. 145 were insufficient, & the judge decided in his favour, & dismissed the summons:—*Held*: (1) a prohibition properly issued to restrain the further proceedings of the county ct.; (2) the jurisdiction of the judge was suspended by the interpleader summons; (3) he could not give himself jurisdiction by deciding upon a technical objection.—*ROBERTS v. WARDELL, Ex p. M'FEE* (1853), Saund. & M. 159; 22 L. T. O. S. 89; 17 J. P. Jo. 742.

1045. Construction of Rule.]—The words “travelling expenses” in Ord. 25, r. 26 (3) (b), mean not only the expenses to be incurred by the debtor in attending the ct., but also, those of his return journey to his home.

On an application under this rule the registrar fixed as “a sum reasonably sufficient to cover the travelling expenses of the debtor to attend the ct.” the amount of the third-class single railway fare from the town where the debtor resided to that in which the county ct. was situated:—*Held*: the registrar had made a mistake in principle, & a writ of prohibition should, therefore, be granted, directed to the county ct. judge & to the judgment creditor to prohibit them from further proceeding in the action or on the order for commitment which was made against the debtor.

If the registrar had merely made a mistake in amount, & not one in principle, I should have been of opinion that we could not entertain this application; but it is conceded that the registrar considered that the words “travelling expenses of the debtor to attend the ct.” meant the expenses of travelling from his place of residence to the ct., & nothing more. In that he made a mistake in regard to the meaning of the rule (*BAILHACHE, J.*).—*WARD v. NIELD*, [1917] 2 K. B. 832; 87 L. J. K. B. 54; 117 L. T. 447, [1917] H. B. R. 225, D. C.

iii. Assumption of Jurisdiction on Erroneous View of Facts.

1046. General rule.]—If on the face of a plaint in the county ct. the subject-matter stated is clearly within its jurisdiction; this ct. will not interfere to review the decision of the judge, where the fact on which his jurisdiction depends rests upon conflicting evidence.—*JOSEPH v. HENRY* (1850), 1 L. M. & P. 388; Rob. L. & W. 495; 19 L. J. Q. B. 369; 15 L. T. O. S. 210; 14 J. P. 755; 15 Jur. 104.

1047. —.]—*ELSTON v. ROSE*, No. 191, *ante*.

1048. Whether title in question.]—*LILLEY v. HARVEY, OWEN v. PEARSE*, No. 261, *ante*.

1049. —.]—A declaration in prohibition stated that A. sued a plaint out of the county ct. against B. for use & occupation of a field that B. insisted that the ct. had not cognisance of the plaint, because the title to the field was in question, & that in truth the title to the field was in question, but that the judge proceeded to hear & determine the plaint. The plea stated that on B.'s insisting that the title was in question, A. denied it; & that the judge, after hearing the evidence & arguments on both sides, decided that the title was not in question, & proceeded to hear & decide the case,

that on the hearing neither party adduced any evidence or argument other than those adduced before. On general demurrer:—*Held*: the plea was bad, for that it either admitted that the title was in fact in question, in which case the opinion of the judge that it was not so would not give him jurisdiction under 1846 Act, s. 58, or it set up the decision of the judge on that question as conclusive, which it is not, but is open to review by prohibition.—*THOMPSON v. INGHAM* (1850), 14 Q. B. 710; 1 L. M. & P. 216; Rob. L. & W. 209; Cox, M. & H. 348; 19 L. J. Q. B. 189; 15 L. T. O. S. 23; 14 Jur. 429; 14 J. P. Jo. 129; 117 E. R. 274.

Annotations:—*Expld. & Distd.* *Joseph v. Henry* (1850), 1 L. M. & P. 388. *Distd.* *Kimpton v. Willey* (1850), 9 C. B. 719; *Re Bowen* (1851), 21 L. J. Q. B. 10. *Expld.* *Chew v. Holroyd* (1852), 8 Exch. 249; *Messon v. Alcard* (1852), 22 L. J. Ex. 45. *Apld.* *Marsden v. Wardle* (1854), 3 E. & B. 695. *Consd.* *Re Baker* (1857), 2 H. & N. 219. *Expld.* *R. v. Dayman* (1857), 7 E. & B. 672; *Barber v. Nottingham & Grantham Ry.* (1864), 33 L. J. C. P. 193; *Brown v. Cocking* (1868), 9 B. & S. 503. *Consd.* *Elston v. Rose* (1868), L. R. 4 Q. B. 4. *Refd.* *R. v. Goodrich* (1850), 15 L. T. O. S. 248; *Pears v. Wilson* (1851), 20 L. J. Ex. 381; *De Haber v. Portugal (Queen)*, *Wadsworth v. Spain (Queen)* (1851), 16 Jur. 164; *Graham v. Furber* (1853), 14 C. B. 134; *Hardy v. Walker, Ex p. McFee* (1853), 9 Exch. 261; *R. v. Cridland* (1857), 3 Jur. N. S. 1213; *R. v. Nunneley* (1858), E. B. & E. 852; *Ex p. Vaughan* (1866), L. R. 2 Q. B. 114; *R. v. Allen* (1866), 7 B. & S. 902; *London Corp'n v. Cox* (1867), L. R. 2 H. L. 239; *Colonial Bank of Australasia v. Willan* (1874), L. R. 5 P. C. 417. *Mentd.* *Wilson v. Franklin* (1851), 15 J. P. 404; *Adey v. Trinity House Deputy Master* (1852), 16 J. P. 807; *Mason v. Mitchell* (1865), 11 L. T. 714.

Ouster of jurisdiction when title in question generally, see Part III., Sect. 13, sub-sect. 1, *ante*.

1050. Annual value of premises—Action for ejectment.]—*BROWN v. COCKING*, No. 190, *ante*.

Jurisdiction in actions affecting land generally, see Part III., Sects. 4, 13, sub-sect. 1, *ante*.

Sect. 2.—Prohibition: Sub-sect. 3, C. & D.; sub-sects. 1 & 2.]

C. Judge acting within Jurisdiction.

1051. General rule—Prohibition does not lie.]—The ct. has no power to issue a prohibition to the judge of a county ct., in a matter that is within his jurisdiction.—*TOFT v. RAYNER* (1847), 5 C. B. 162; 2 New Pract. Cas. 444; Cox, M. & H. 39; 10 L. T. O. S. 163; 136 E. R. 837; *sub nom. Ex p. RAYNER*, 5 Dow. & L. 342; 17 L. J. C. P. 16; 11 Jur. 1018.

Annotation:—*Reid. Thompson v. Ingham* (1850), 19 L. J. Q. B. 189.

1052. — Misreception of evidence.]—The ct. will not issue a prohibition to a county ct. under the 9 & 10 Vict. c. 95, on the ground that the judge of that ct. has received improper evidence in a cause before him.

The judge of the county ct. tried the plaint without any legal evidence of the original record. Deft. afterwards claimed a set-off & the judge made an order in favour of pltf.:—*Held*: deft. had waived the irregularity of proof by not objecting to it at the time.—*Re DUNFORD* (1848), 12 Jur. 361.

Annotation:—*Reid. R. v. Greenwich County Court Judge* (1888), 60 L. T. 248.

1053. — If jurisdiction to enter upon cause.]—If the judge of the county ct. has jurisdiction to enter upon the cause, he has jurisdiction to decide it; the want of jurisdiction, if existing at all, existing at the commencement of the trial.—*STEVENSON v. SHICKLE* (1849), 12 L. T. O. S. 408; 13 Jur. 1103.

1054. — However erroneous judge's decision.]—*LEXDEN & MUNSTER UNION GUARDIANS v. SOUTHGATE*, No. 520, *ante*.

1055. — Prohibition will not lie to the county ct., however erroneous its decision, where there is jurisdiction.]—*NORRIS v. CARRINGTON* (1864), 16 C. B. N. S. 396; 143 E. R. 1181.

1056. — Point in dispute involving mere matter of procedure.]—*BARKER v. PALMER*, No. 433, *ante*.

1057. — Hooper v. Hill, No. 516, ante.]—

What matters within jurisdiction—Actions.]—See Parts III., IV., *ante*.

Practice & procedure.]—See Parts V., VI., *ante*.

D. Judge acting partly without and partly within Jurisdiction.

1058. General rule.]—Where a plaint contains two claims, one of which is within & the other without the jurisdiction of the county ct., a prohibition may be granted as to one only.—*R. v. WESTMORELAND COUNTY COURT JUDGE* (1887), 58 L. T. 417; 36 W. R. 477, D. C.

1059. Non-delivery of cargo without jurisdiction—Non-delivery of shipping documents within jurisdiction.]—Cargo was sold to pltf. to be delivered at any port in the United Kingdom; the price to be paid on delivery of the shipping notes & policy of insurance. A demand of the shipping notes & policy was made at L., & refused, but the cargo was ordered to be delivered at D. Thereupon pltf. sued in the county ct. at L., & in the particulars annexed to the plaint, alleged his claim to be for £43 damages for non-delivery of the cargo. On motion for prohibition:—*Held*: pltf., not having a cause of action for non-delivery of the cargo arising within the jurisdiction of the L. county ct., the writ must go to restrain the proceedings as to that, but that, as pltf. had a cause of action arising at L. for not delivering the

shipping notes & policy, the writ would not be a general prohibition as to the whole cause, for pltf. could apply to the county ct. to amend his particulars of demand.—*WALSH v. IONIDES* (1853), 1 E. & B. 383; 1 Saund. & M. 84; 22 L. J. Q. B. 137; 20 L. T. O. S. 218; 17 J. P. Jo. 52; 17 Jur. 596; 118 E. R. 479.

Annotations:—*Reid. Taylor v. Addyman* (1853), 13 C. B. 309; *Covas v. Bingham* (1853), 2 E. & B. 836; *Borthwick v. Walton* (1855), 15 C. B. 501.

SUB-SECT. 4.—LOSS OF RIGHT TO.

1060. By acquiescence or waiver—Taking part in proceedings—Claiming set-off.]—*WINSOR v. DUNFORD* (1848), 12 Q. B. 603; Cox, M. & H. 132; 18 L. J. Q. B. 14; 11 L. T. O. S. 472; 12 Jur. 629; 12 J. P. Jo. 403; 116 E. R. 996.

1061. — Applying for adjournment.]—This was a rule *nisi* for a prohibition to the judge of the county ct. of S., on the ground that deft. lived out of the jurisdiction, & that the summons had been issued without leave of the ct. It appeared that deft. appeared to the summons, & objected to the jurisdiction of the judge to entertain the case. The judge, however, decided that deft. precluded himself from taking the objection by having delivered a notice of special plea of the Stat. Limitations. Upon this deft. applied for an adjournment to enable him to answer pltf.'s case on the merits. It was adjourned, & eventually an order was made against deft. for £9 1s. The claim was for £20, but the plea of the Stat. Limitations barred the greater part of the claim. The present rule having been obtained:—*Held*: rule should be discharged.

I think there is no question that the ct. had jurisdiction over deft., as he appeared in the ct. after a summons being served upon him. Here as he came into the ct. & then asked for an adjournment, leave of the ct. was in fact given; & if there was an irregularity in the summons having been issued without leave of the ct. first had & received, I think the circumstances in the case amount to a waiver by deft., of that irregularity (*WIGHTMAN, J.*).—*BARKER v. WALLEY* (1848), 12 J. P. Jo. 487.

1062. — Admitting jurisdiction.]—A rule for a prohibition moved for on the ground that title came in question. It appeared that what took place at the trial amounted to an admission of the jurisdiction:—*Held*: rule should be discharged.—*WALKER v. DRAKE* (1848), 11 L. T. O. S. 247.

1063. — Yates v. Palmer, No. 1028, ante.]—

1064. — Giving notice of special defence.]—In Dec. 1847, an order was made by a judge of a county ct., under 1846 Act, s. 60, for suing deft., who was then residing out of the jurisdiction. It did not appear whether thereupon any summons issued, but in Jan. 1850, a summons in an action in which the same parties were pltf. & deft. issued & was served, together with the before-mentioned order upon deft., who was then residing out of the jurisdiction. Upon this deft. gave notice, as provided for by sect. 76 of his intention to plead the Stat. Limitations; but, before the day of trial, he moved the Bail Ct. for a writ of prohibition, on the ground that the county ct. had no jurisdiction, there being no valid order to support the summons:—

Held: whether or not the order of 1847 was sufficient to support the summons in 1850, deft. had waived the objection by appearing & giving notice of his plea.—*JONES v. JAMES* (1850), 1

L. M. & P. 65; Cox, M. & H. 290; Rob. L. & W. 197; 19 L. J. Q. B. 257; 14 L. T. O. S. 424.

Annotations:—*Fold*. Moore v. Gamgee (1890), 25 Q. B. D. 244. *Re* Wadsworth v. Spain (Queen) (1851), 17 Q. B. 171; *Re* Knowles v. Holden (1855), 24 L. J. Ex. 223; Farquharson v. Morgan, [1894] 1 Q. B. 552; Alderson v. Palliser, [1901] 2 K. B. 833.

1065. ——— **Resisting application for new trial.**—Motion for a writ of prohibition to the judge of the county ct. of S. & pltf., to restrain them from enforcing a judgment. On June 19, 1851, a verdict was given for deft. The next ct. day was July 17, up to which time no further steps were taken. On Aug. 2 pltf. gave notice of his intention to apply at the next ct. which was held Aug. 14 for a new trial. Deft. attended on Aug. 14 & resisted the application which was granted by the judge. A second trial took place, which deft. also attended without objection, & at which the verdict passed for pltf.:—*Held*: the grant of the new trial upon Aug. 14 was an excess of jurisdiction, but cured by deft.'s appearance.—*BEACH v. REES* (1851), 18 L. T. O. S. 75.

1066. ——— **Requesting judge to state case.**—*JACKSON v. BEAUMONT*, No. 120, *ante*.

1067. ——— **Consenting to reference.**—Where the parties to a plaint in the county ct. appeared before the judge, & consented to a reference, without objecting to the want of jurisdiction, but one of them, during the progress of the reference, objected to the jurisdiction of the arbitrators, on the ground that title to land came in question & the arbitrators proceeded with the reference:—*Held*: he was, nevertheless, entitled to a prohibition.—*KNOWLES v. HOLDEN* (1855), 24 L. J. Ex. 223; 19 J. P. 580.

Annotations:—*Distd.* R. v. Shropshire County Court Judge (1887), 20 Q. B. D. 242. *Re* London Corpn. v. Cox (1867), L. R. 2 H. L. 239; R. v. Rogers (1887), 57 L. J. Q. B. 143; Farquharson v. Morgan, [1894] 1 Q. B. 552. *Mentd.* Combe v. De La Bere (1882), 22 Ch. D. 316.

1068. ——— **Consenting to remittal order.**—The ct. will not grant a writ of prohibition where an action has been remitted to the county ct. by consent, even though the deft. may have counter-claimed for an unliquidated amount.—*MOUFLET v. WASHBURN* (1886), 54 L. T. 16; 2 T. L. R. 295, D. C.

Annotations:—*Re* Farquharson v. Morgan, [1894] 1 Q. B. 552; Alderson v. Palliser, [1901] 2 K. B. 833.

1069. ———.]—*R. v. SHROPSHIRE COUNTY COURT JUDGE*, No. 246, *ante*.

1070. ———.]—Pltfs. commenced an action against deft. in a county ct., within the district of which deft. had carried on business within six months before the commencement of the action, but did not dwell or carry on business at the time of commencing the action. Leave to sue in that ct. had not been obtained. Deft. appeared, & the case was heard & partly determined & adjourned to a future day. At the second hearing deft. for the first time objected to the jurisdiction of the ct.:—*Held*: deft., by appearing & contesting the action, had waived the objection. Deft. applied for a prohibition:—*Held*: the objection to the jurisdiction was one which could be waived, & deft. had waived it, & was not entitled to a prohibition.—*MOORE v. GAMGEE* (1890), 25 Q. B. D. 244; 59 L. J. Q. B. 505; 38 W. R. 669, D. C.

Annotations:—*Re* Alderson v. Palliser, [1901] 2 K. B. 833; Suckan v. Weiner (1901), 17 T. L. R. 494. *Mentd.* Smythe v. Wiles, [1921] 2 K. B. 86.

1071. ——— **Objecting to form of award sought to be enforced.**—*FARQUHARSON v. MORGAN*, No. 1038, *ante*.

1072. ——— **Making affidavit as to means & payment of debt by instalments.**—*ALDERSON v. PALLISER*, No. 1039, *ante*.

1073. ——— **Applying for further particulars**

—**Without prejudice to right to object to jurisdiction.**—*CLARKE BROTHERS v. KNOWLES*, No. 1040, *ante*.

By delay.—*See* Nos. 316, 1028, *ante*.

SUB-SECT. 5.—APPEALS FROM.

1074. Right to appeal—From order of Divisional Court.—An appeal lies from the decision of the Div. Ct. on an application for a prohibition to a county ct.; for 1856 Act, s. 42, relates to procedure only, & does not enact that the judgment of the Div. Ct. shall be final.—*BARTON v. TITMARSH* (1880), 49 L. J. Q. B. 573; 42 L. T. 610; 28 W. R. 821, C. A.

1075. ——— **Without leave.**—*LISTER v. WOOD*, No. 610, *ante*.

1076. To what court—From order of judge in chambers.—An appeal from an order of a judge at chambers upon an application for a writ of prohibition to a county ct. is to a Div. Ct. of the Q. B. Div.—*WATSON v. PETTS*, [1899] 1 Q. B. 54; 67 L. J. Q. B. 970; 79 L. T. 330; 47 W. R. 68; 15 T. L. R. 31; 43 Sol. Jo. 27, C. A.

Annotations:—*Consd.* Morton v. Emanuel (1898), 43 Sol. Jo. 97; Long v. G. N. Ry., [1902] 1 K. B. 813. *Appld.* *Re* Frere & Staveley Taylor & North Shore Mill Co., [1905] 1 K. B. 366. *Consd.* *Re* Marchant, [1908] 1 K. B. 998. *Mentd.* Yonge v. Toynbee, [1910] 1 K. B. 215; *Re* Jackson, [1915] 1 K. B. 371.

1077. ——— **No Divisional Court sitting.**—*CAMPBELL v. FAIRLIE*, [1880] W. N. 17, C. A.

SECT. 3.—MANDAMUS OR ORDER IN LIEU OF MANDAMUS.

SUB-SECT. 1.—WHEN AVAILABLE.

See, now, 1888 Act, s. 131.

1078. Against judge of City of London Court.—*BLADES v. LAWRENCE*, No. 369, *ante*.

1079. Against judge acting under special statute.—A dispute having arisen between the sewers board & the Hove Comrs. with respect to the mode of carrying out the provisions of the special Act, & the sewers board requiring it to be referred to the county ct. judge:—*Held*: the county ct. judge was bound to hear & determine the matter, & mandamus was the proper course to compel him to do so, and not a rule or order under 1856 Act, s. 43, this not being a matter within his ordinary jurisdiction, but a special duty imposed upon him by statute.—*Re BRIGHTON SEWERS ACT* (1882), 9 Q. B. D. 723, D. C.

SUB-SECT. 2.—APPLICATION FOR.

1080. No affidavit—When summons issued—Filed before summons returnable.—Pltf. having been nonsuited in a case in the county ct., gave due notice of appeal, & after the lapse of several months a case stated on appeal was agreed to & signed by the attorneys on both sides. The case so signed was presented to the county ct. judge for his signature, but he thought that as the case was not presented to him at the ct. holden next after the expiration of twelve clear days from the day on which judgment was given, the delay was a fatal objection to his signing the case, & also that the question was one of fact only, & refused to sign the case. Pltf. took out a summons at chambers under 1856 Act, s. 43, calling upon the county ct. judge & deft. to show cause why the former should not sign the case. There was no

Sect. 3.—Mandamus or order in lieu of mandamus:
Sub-sects. 2 & 3, A. (a) & (b) i. & ii., (c).]

affidavit of the facts when the summons was taken out, but afterwards & before the day on which it was returnable such an affidavit was sworn & filed. The county ct. judge did not attend the summons, & the judge made the order. This order was disobeyed & a rule for attachment was obtained:—*Held*: the want of an affidavit, if any affidavit were necessary when the summons was taken out, was an irregularity only, & that the order was valid.—*FURBER v. STURMEY* (1858), 3 H. & N. 521; 27 L. J. Ex. 453; 31 L. T. O. S. 183; 22 J. P. 435; 4 Jur. N. S. 956; 6 W. R. 625; 157 E. R. 576.

Annotations:—*Consd.* *Irving v. Askew* (1870), L. R. 5 Q. B. 208. *Refd.* *Hacking v. Lee* (1860), 2 E. & E. 906.

1081. How made—Not to single judge.]—An application under 1858 Act, s. 4, for an order directing a county ct. judge to sign a case on appeal, should be made to the Superior Ct., & not to a single judge thereof.—*CLARKE v. ROCHE* (1876), 35 L. T. 705.

See Crown Office Rules, 1906, rr. 49, 69.

1082. Time for making—Reasonable time—Not after twelve months' delay.]—Upon a trial in a county ct. the judge directed the jury that pl'ts. were entitled to a verdict, but for nominal damages only; the jury, however, returned a verdict for £10, whereupon the judge directed a verdict for 1s. to be entered. More than a year was suffered to elapse when the pl'ts. moved this ct. for a rule calling upon the county ct. judge to enter the verdict pursuant to the finding of the jury:—*Held*: the application was too late.—*COKE v. JONES* (1861), 4 L. T. 306; 7 Jur. N. S. 545; *sub nom.* *COOK v. JONES*, 9 W. R. 618.

1083. To whom order should be directed—Refusal by officer to perform duty—No application to or refusal by judge to direct officer.]—*Ex p.* *WHITDALE* (1851), 15 J. P. Jo. 370.

1084. ——— Application to & refusal by judge to direct officer.]—*R. v. FLETCHER*, No. 1117, *post*.

1085. Costs—Power of court to set aside order as to—Made by judge on refusing to try.]—A county ct. judge having refused to hear an interpleader summons, & ordered money to be paid out of ct., with costs to be paid by the claimant, on the ground of the insufficiency of the particulars, a rule was obtained, under 1856 Act, s. 43, calling on the county ct. judge to hear the summons. No cause being shown the ct. made the rule absolute ordering the costs of the rule to abide the event of the interpleader issue, & discharging the claimant from the costs in the ct. below.—*WHITEHEAD v. PROCTER* (1858), 3 H. & N. 532; 31 L. T. O. S. 205; 157 E. R. 580.

Annotations:—*Consd.* *Churchward v. Coleman* (1866), L. R. 2 Q. B. 18. *Refd.* *Gage v. Collins* (1867), L. R. 2 C. P. 381. *Mentd.* *Richardson v. Wright* (1875), L. R. 10 Exch. 367.

1086. ——— ———.]—The authority given by 1856 Act, s. 43, & 1858 Act, s. 4, to the superior cts., to grant a rule calling upon the judge of a county ct., or an officer of such ct., to show cause why they should not do an act relating to their respective offices, does not confer any jurisdiction to interfere with an order of the judge of the county ct. as to costs.

Therefore, where the judge of a county ct. erroneously decided that the claimants under an interpleader summons had not given a sufficient particular of their claim, & ordered them to pay costs, the ct. refused to set aside the order as to the costs, although it ordered the judge to hear &

adjudicate upon the claim.—*CHURCHWARD v. COLEMAN* (1866), L. R. 2 Q. B. 18; 7 B. & S. 843; 36 L. J. Q. B. 57.

Annotations:—*Consd.* *Gage v. Collins* (1867), L. R. 2 C. P. 381. *Apprvd.* *R. v. Mellor*, [1914] 2 K. B. 588. *Mentd.* *Richardson v. Wright* (1875), L. R. 10 Exch. 367.

1087. ——— Power of court to order judge to pay—Costs thrown away in county court by refusal to try.]—*R. v. MELLOR*, No. 360, *ante*.

1088. ——— Costs of mandamus proceedings.]—*R. v. MULLIGAN* (JUDGE) (1915), 50 L. J. C. C. 61, D. C.

SUB-SECT. 3.—GROUNDS FOR GRANTING OR REFUSING.

A. Refusal of Judge to perform Duty.

(a) In General.

1089. Discretion of High Court—Rule equivalent to indirect appeal.]—The ct. will not grant a rule to compel a county ct. judge to do his duty, *e.g.* to allow execution to issue, when he has acted under a particular impression as to a point of law in a case involving a small amount, & the effect of granting rule would be to give the party moving an indirect appeal when the statute has forbidden a direct one.—*BROWN v. TAYLOR* (1868), 18 L. T. 657.

1090. ——— No question of law involved.]—*SHARROCK v. LONDON & NORTH WESTERN RY. CO.*, No. 820, *ante*.

1091. ——— Case disposed of between immediate parties—Third party notices issued.]—*R. v. DEWSBURY COUNTY COURT JUDGE* (1889), 88 L. T. Jo. 44, D. C.

1092. Case in which judge has no jurisdiction.]—*Re BROWN v. LONDON & NORTH WESTERN RY. CO.*, No. 87, *ante*.

1093. Necessity for absolute refusal—Qualified or temporary refusal not sufficient.]—The ct. will not grant an order, under 1856 Act, s. 43, to compel a county ct. judge to do his duty, unless it appear that he has absolutely refused to act in some matter wherein he ought to have acted. A mere qualified or temporary refusal, as by suggesting an adjournment, with a view to an arrangement, is no ground for issuing such an order, which, being of the same nature as a mandamus, is to be governed by the same rules.

Rule 192 is not repugnant to 1850 Act, s. 15, & is therefore valid.—*IRVING v. ASKEW* (1869), 20 L. T. 584; *subsequent proceedings* (1870), L. R. 5 Q. B. 208.

Annotation:—*Mentd.* *Mowlem v. Dunne* (1912), 106 L. T. 611.

— **What amounts to refusal to try.]—**See Sub-sect. 3, A. (b) ii., *post*.

1094. After failure of alternative remedy.]—*RHODES v. LIVERPOOL COMMERCIAL INVESTMENT CO.*, No. 901, *ante*.

(b) Refusal to try Case.

i. In General.

1095. Mistaken opinion that preliminary requisite not complied with—Sufficiency of particulars of claim.]—If a judge of a county ct. declines to hear a cause upon a mistaken opinion that some preliminary requisite has not been complied with, the Superior Ct. will interfere by mandamus to require him to hear.—*R. v. OSWESTRY COUNTY COURT JUDGE*, *Ex p.* *HARPER* (1851), Cox, M. & H. 492; 17 L. T. O. S. 55; 15 J. P. 275; *sub nom.* *R. v. RICHARDS, DAVIES v. HOLBROOK*, Rob. L. & W. 571; 20 L. J. Q. B. 351; 15 Jur. 358.

Annotations:—*Distd.* *Milner v. Rhoden* (1851), Cox, M. & H. 532. *Refd.* *Richardson v. Wright* (1875), 44 L. J. Ex. 230. *Mentd.* *R. v. London JJ.* (1895), 64 L. J. M. C. 100; *R. v. Hudson*, [1915] 1 K. B. 133.

1096. ———.]—Particulars of claim upon a summons in the county ct. recited a deed assigning all the goods then or thereafter being upon the debtor's premises; & claimed all & singular the said goods, etc., mentioned & intended to be assigned by the deed, & which said goods, etc., or some part thereof have been seized, etc. The judge of the county ct. having refused to adjudicate upon the claim, on the ground that the particulars should have contained a schedule or inventory of the goods:—*Held*: a mandamus would lie to compel him to adjudicate upon the claim.—*R. v. STAPYLTON* (1851), 2 L. M. & P. 603; 21 L. J. Q. B. 8; 15 Jur. 1177.

1097. ———.]—*WHITEHEAD v. PROCTER*, No. 1085, *ante*.

1098. ———.]—*CHURCHWARD v. COLEMAN*, No. 1086, *ante*.

Interpleader generally, *see* INTERPLEADER.

1099. ——— Personal service of default summons.]—*DAVIS v. PEARCE*, No. 437, *ante*.

1100. With jury—First trial without jury—No statement on application for new trial that trial to be by jury.]—*R. v. HARWOOD*, No. 496, *ante*.

1101. Refusal to hear witnesses—After failure to obey order to leave court—Plaintiff electing thereon to be nonsuited.]—To enable the Superior Ct. to interfere under 1856 Act, s. 43, the county ct. judge must have refused to exercise the jurisdiction vested in him; but where upon his refusal to hear certain witnesses tendered by pltf., after their failure to leave the ct. in accordance with his order, pltf. elected to be nonsuited:—*Held*: the ct. had no power to command him to hear them, as the nonsuit while it stood left the judge no case upon which he could act.—*FORTESCUE v. PATON* (1860), 3 L. T. 268; *sub nom.* *FORTESCUE v. CLAYTON*, 24 J. P. 712.

1102. Judge sitting as arbitrator—After withdrawal of juror by consent—Defendant subsequently withdrawing consent.]—*NORBURN v. HILLIAM*, No. 523, *ante*.

ii. What amounts to Refusal to try.

1103. Refusal to try action—On ground that preliminary requisite not complied with—Absence of particulars of claim.]—If on the hearing of a summons the judge declines to hear the case, on the ground that the claim is barred by reason of the particulars of claim required by the rules not having been given, that is a decision on the claim, & the ct. will not interfere by mandamus to compel the judge, but if the judge says, "I will not hear the case at all," that is a refusal to hear, & the ct. will interfere.—*Ex p. TANNER* (1850), 14 J. P. Jo. 254; *subsequent proceedings, sub nom.* *R. v. CHILTON*, 15 Q. B. 220.

1104. ——— Affidavit of debt sworn by wrong party.]—*R. v. PONTYPOOL COUNTY COURT JUDGE & TOMPKINS*, No. 425, *ante*.

1105. ——— After hearing so much of action as related to jurisdiction—Plaintiff nonsuited.]—Where the judge of a county ct., after having heard the facts of a case, nonsuits pltf. on the ground that he has no jurisdiction, that is such a decision on the facts that the superior ct. will not interfere by mandamus, even though the judge was wrong in his view of the law.—*MILNER v. RHODEN* (1851), Cox, M. & H. 532; 18 L. T. O. S. 98; 15 J. P. 772; *sub nom.* *Re MILNER v. RHODEN, Ex p. MILNER*, 15 Jur. 1037.

Annotations:—*Consd.* *R. v. Southampton County Court Judge & Fisher* (1891), 65 L. T. 320. *Held.* *R. v. City of London Court Judge & S.S. Michigan* (1890), 6 T. L. R. 364; *R. v. London JJ.* (1895), 64 L. J. M. C. 100.

1106. ———.]—A mandamus is directed to an inferior tribunal in a case only where

such tribunal has refused to do that act required to be performed by such mandamus.

Upon the hearing of a plaint under 1846 Act, s. 60, the fact that the whole cause of action arose within the jurisdiction to which deft. is summoned is a material one for the decision of the judge.

Deft. living within the county ct. district of A. was summoned under sect. 60 to the district of B., it being alleged that the whole cause of action arose within the latter district. After hearing the evidence for pltf. the county ct. judge decided that the whole cause of action did not arise within this district, & nonsuited pltf. with costs. A rule for a mandamus to compel him to hear & adjudicate upon the plaint was moved for, upon the ground that he was wrong in deciding that he had no jurisdiction:—*Held*: as the fact of the whole cause of action having arisen within his jurisdiction was one necessary for his decision in the case, & as the judge had heard all the evidence in support of it, & the superior ct. was not a ct. of appeal in such cases, the decision of the judge was final, & a mandamus ought not to issue.—*KERNOT v. BAILEY* (1856), 2 Saund. & M. 148; 27 L. T. O. S. 153; 21 J. P. 20; 4 W. R. 608.

1107. ———.]—*R. v. ESSEX COUNTY COURT JUDGE* (1853), 18 J. P. Jo. 6.

1108. ———.]—A county ct. judge, after hearing so much of a case as related to the jurisdiction, declined to hear & determine it, erroneously believing that he had no jurisdiction:—*Held*: an order in the nature of a mandamus would lie to compel him to hear & determine it.—*R. v. SOUTHAMPTON COUNTY COURT JUDGE & FISHER & SONS, LTD.* (1891), 65 L. T. 320, D. C.

1109. ——— After hearing part of defendant's case — Plaintiff nonsuited—Without consent.]—*KERSHAW v. CHANTLER*, No. 576, *ante*.

1110. Action in which third party notices served—Notices held invalid—Action tried as between plaintiff & defendant.]—*R. v. DEWSBURY COUNTY COURT JUDGE* (1889), 88 L. T. Jo. 44, D. C.

See, also, No. 1093, *ante*.

(c) Refusal of Judge to do other Acts.

1111. To receive verdict.]—Pltf. brought an action in the county ct. to recover £6 10s. for wine supplied. At the trial he was nonsuited, but at the next ct., having brought a fresh action, he obtained a verdict. A new trial was granted, & the jury were discharged without being able to agree upon a verdict. The action was tried a fourth time, when the jury returned their verdict as follows: "In the absence of any order in writing for the wine, we find a verdict for pltf." The judge refused to receive the verdict, & ordered the jury to retire & reconsider it. They said they had considered all the evidence, & their unanimous opinion was that there should be a verdict for pltf., & that it was of no use their retiring. The judge refused to receive the verdict, & discharged the jury:—*Held*: a rule *nisi* might be granted calling upon the judge, registrar & defts. to show cause why the verdict should not be received & entered upon the minutes, why judgment should not be given for pltf., & why execution should not issue thereupon.—*JARDINE v. SMITH* (1860), 8 W. R. 464.

1112. To review taxation of costs.]—Upon an application for a rule to compel a county ct. judge to review the taxation of costs in a plaint tried before him:—*Held*: the review of taxation of costs was in the discretion of the judge & the refusing by him to review was not the refusing to do an act relating to the duties of his office within

Sect. 3.—Mandamus or order in lieu of mandamus:
Sub-sect. 3, A. (c), B. & C.; sub-sects. 4 & 5.

the meaning of 1856 Act, s. 43.—*CLIFTON v. FURLEY* (1862), 7 H. & N. 783; 31 L. J. Ex. 170; 26 J. P. 409; 10 W. R. 358; 158 E. R. 685.

To issue execution.]—*See* No. 1089, *ante*.

1113. To issue judgment summons.]—In a county ct. action against three defts. upon a joint & several promissory note, judgment was given against all defts. jointly. Upon default in payment of the judgment debt a judgment summons was issued against all three defts., but service could only be effected on one, against whom a committal order was made but suspended on payment of certain monthly instalments. Application was subsequently made for leave to issue a judgment summons against one of the other defts., but was refused by the county ct. judge on the ground that he had no jurisdiction to give leave to issue a judgment summons against one joint debtor while a committal order was still in existence against his co-deft. to which no return had been made:—*Held*: the county ct. judge had jurisdiction to allow the summons to issue, & a mandamus must issue to him to determine the application for leave upon the merits.—*R. v. BIRMINGHAM COUNTY COURT JUDGE*, [1902] 2 K. B. 283; 71 L. J. K. B. 881; 87 L. T. 296; 51 W. R. 75; 18 T. L. R. 698, D. C.

Judgment summonses generally, *see* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1032–1034.

B. Erroneous Performance by Judge of Duty.

1114. Adjournment of petition *sine die*.—After application to withdraw petition for alleged statutory defect.]—An insolvent filed his petition in a county ct. & obtained an order for protection from process until the day appointed for his first examination. On that day his attorney applied to the county ct. judge for leave to withdraw the petition, on the ground that the date on which it was presented did not appear upon it. The application was opposed by several creditors, & the county ct. judge refused it, & adjourned the examination of the insolvent *sine die*:—*Held*: the county ct. judge having adjudicated upon the matter, the superior ct. had no power, under 1856 Act, s. 43, to order him to remove the petition from the file, or dismiss it, or name a day for the hearing.—*CORBETT* (1859), 4 H. & N. 452; 28 L. J. Ex. 254; 33 L. T. O. S. 152; 157 E. R. 916.

C. Refusal of Officer to perform Duty.

1115. Sheriff.—To issue execution—Judgment set aside.]—Where a sheriff has set aside a judgment in the county ct.:—*Held*: whether he could do so or not a mandamus could not be granted to compel

him to issue execution on the judgment.—*ELDRIDGE v. FLETCHER* (1835), 1 Har. & W. 199.

1116. Registrar.—To issue execution—No application to judge to direct registrar to issue.]—*Ex p. CHRISTCHURCH OVERSEERS*, No. 746, *ante*.

1117. ——— Refusal by judge to order registrar to issue.]—If pltf. in the county ct., having obtained judgment for debt & costs, receives payment of the debt only, he may, under 1846 Act, s. 94, require the clerk of the county ct. to issue execution against the debtor's goods for the costs only, although the judge's order in the cause directed that payment should be made to the clerk at the court-house, & the debt was not paid there or to the clerk at any place. A mandamus to issue execution in such case is properly directed to the clerk, not to the judge.

As the judge, when applied to, had declined to order the writ, the rule against the clerk ought not to be drawn up if within a week he issues an execution as prayed (*per* CUR.).—*R. v. FLETCHER* (1852), 2 E. & B. 279; 118 E. R. 772; *sub nom. R. v. SURREY COUNTY COURT CLERK*, Cox, M. & H. 613; 21 L. J. Q. B. 310; 19 L. T. O. S. 136; 16 J. P. 664; 17 Jur. 179.

Annotation:—*Mentd. Davies v. Fletcher* (1853), 2 E. & B. 271.

For costs—Debt paid.]—*See* Nos. 746, 1115, 1117, *ante*.

1118. ——— To issue summons—No application to judge to direct registrar to issue.]—The registrar of a county ct. declined to issue a summons under the Bills of Exchange Act, 1855 (c. 67), & pltf. applied to the High Ct., under 1888 Act, s. 131, for an order calling upon him to show cause why such act should not be done:—*Held*: this was the proper course to adopt, & an application to the county ct. judge would have been futile, since, having no cause before him, he had no jurisdiction over the registrar.—*R. v. SOUTHAMPTON COUNTY COURT REGISTRAR & SMIRK* (1892), 61 L. J. Q. B. 706; 36 Sol. Jo. 667, D. C.

——— To receive judgment.]—*See* No. 1111, *ante*.

SUB-SECT. 4.—REFUSAL TO OBEY.

1119. Liability of judge to attachment—Summons for order having issued without affidavit—Case which judge ordered to sign improperly stated.]—*FURBER v. STURMEY*, No. 1080, *ante*.

SUB-SECT. 5.—APPEALS FROM.

1120. Right to appeal—Order of Divisional Court refusing to make order.]—*MORGAN v. REES*, No. 536, *ante*.

See, also, 1888 Act, s. 132.

Part X.—Contempt of Court.

SECT. 1.—IN GENERAL.

See 1888 Act, s. 162.

1121. Jurisdiction of judge—Limited to cases within 1846 Act, s. 113.]—By 1846 Act, s. 3, the county cts. were established & were made cts. of record. By sect. 113 the judge was empowered to impose a fine not exceeding £5, or to imprison for a term not exceeding seven days, for any contempt committed in ct.:—*Held*: the jurisdiction of the judge of a county ct. was confined by sect. 113 to contempts committed in ct.; & he had no power to proceed against a person for a

contempt committed out of ct. *Semble*: inferior cts. of record have only power over contempts *in facie curiae*.

I think that the judge of the county ct. has no authority to punish for contempt not committed in the face of the ct. (*COCKBURN, O.J.*).—*R. v. LEFROY* (1873), L. R. 8 Q. B. 134; 37 J. P. 56; *sub nom. Ex p. JOLLIFFE*, 42 L. J. Q. B. 121; *sub nom. Re COUNTY COURT JUDGE, Ex p. JOLLIFFE*, 28 L. T. 132; *sub nom. Re LEFROY, Ex p. JOLLIFFE*, 21 W. R. 332.

Annotations:—*Consd. R. v. Brompton County Court Jud* [1893] 2 Q. B. 195. *Held. Ex p. Martin* (1879), 4 Q. B.

212; *R. v. Clarke, Ex p. Crippen* (1910), 103 L. T. 636.
Mentd. Lewis v. Owen, [1894] 1 Q. B. 102.

1122. — Limited to cases within 1888 Act, s. 162—Unqualified person acting as solicitor.]—Solicitors Act, 1860 (c. 127), s. 26, does not confer any jurisdiction on a county ct. judge to commit an unqualified person for acting as a solr. The only power to punish for contempt possessed by the county ct. is that given by above Act, s. 162.—*R. v. BROMPTON COUNTY COURT JUDGE*, [1893] 2 Q. B. 195; 62 L. J. Q. B. 604; 68 L. T. 829; 57 J. P. 648; 41 W. R. 648; 37 Sol. Jo. 513; 5 R. 462; *sub nom. R. v. STONOR* (JUDGE OF BROMPTON COUNTY COURT), 9 T. L. R. 475.

1123. What constitutes "wilful insult."—*R. v. STAFFORDSHIRE COUNTY COURT JUDGE*, No. 1126, *post*.

1124. Witness wishing to be sworn on his own testament.]—A county ct. judge refused to allow a witness who was a doctor to be sworn on a book which he produced, & which he stated was a testament, holding that, if the doctor preferred not to kiss the court testament, he might take the oath in the Scottish form.

I am of opinion on these facts that the county ct. judge could have compelled the witness to take the oath in one of these two ways by exercising

1869 (c. 62) not applicable.]—The superior ct. will decline to exercise any appellate jurisdiction over the county ct. in matters of fine or committal for contempt, except where there is no reasonable evidence of any contempt having been committed, & the liberty of the subject requires protection.

In cases of committal for imprisonment simply, or for imprisonment in default of payment of a fine, the form of warrant No. 297 is the only one applicable, & the gaoler has no power to receive the fine or to discharge the prisoner upon its payment, but the fine must be paid into ct., & application be made to the judge who committed the prisoner to order his discharge. The form of the order for commitment under Debtors Act, 1869 (c. 62), given in Form 55 does not apply to imprisonments in default of the payment of a fine.

A warrant for committal to prison of a person guilty of wilful insult during the sitting of a county ct. issued at the rising of the ct. is regular, although the judge orally sentenced him to pay a fine with imprisonment in default & the sentence was entered in the registrar's book.

To observe to a judge, in the course of & in reference to his judgment, that that is a most unjust remark is an insult to the ct. in whatever manner expressed, & if not withdrawn, it amounts to such a "wilful insult" as is contemplated by

III.,

4.

CONTEMPT OF COURT, ATTACHMENT & COMMITTAL.

SECT. 2.—VALIDITY OF WARRANT.

1125. Form of warrant—Whether particulars necessary—Of insult to judge.]—Warrant of commitment granted by the judge of a county ct. under 1846 Act, s. 113, recited that the party committed had wilfully insulted the judge, who thereupon ordered him into custody & it proceeded "these are therefore to require you" etc. to deliver him to the keeper of the house of correction, to be kept for seven days in custody:—

Held: the warrant was good & justified the judge & officers of the ct. in imprisoning the party; it was unnecessary to show what species of insult had been committed; & the word "therefore" did not render it uncertain whether the commitment was for the insult, or because the judge had ordered the party into custody. *Semble*: the county cts., constituted by 1846 Act, s. 113, though cts. of record, are not superior cts.—*LEVY v. MOYLAN* (1850), 10 C. B. 189; 1 L. M. & P. 307; *Rob. L. & W.* 459; *Cox, M. & H.* 398; 19 L. J. C. P. 308; 16 L. T. O. S. 235; 14 J. P. 706; 14 Jur. 983; 138 E. R. 78.

Annotations:—*Reid. Rainy v. Sierra Leone JJ.* (1853), 8 Moo. P. C. C. 47; *Re Rea* (1878), 14 Cox. C. C. 139.

— Of breach of order.]—*See* No. 220, *ante*.

1126. — Form given in County Court Rules must be followed—Form given in Debtors Act,

R. v. JORDAN, 36 W. R. 797, C. A.

Annotations:—*Mentd. O'Shea v. O'Shea & Parnell* (1890), 15 P. D. 59; *Scott v. Scott*, [1912] P. 241.

1127. Issue of warrant—May be at rising of court—Although oral sentence of fine passed.]—*R. v. STAFFORDSHIRE COUNTY COURT JUDGE*, No. 1126, *ante*.

See, generally, CONTEMPT OF COURT, ATTACHMENT & COMMITTAL.

SECT. 3.—PAYMENT OF FINE AND APPLICATION FOR RELEASE.

See, now, 1888 Act, s. 162.

1128. Fine—Must be paid into cou gaoler.]—*R. v. STAFFORDSHIRE COUNTY COURT JUDGE*, No. 1126, *ante*.

1129. Application for release—Must be made to judge.]—*R. v. STAFFORDSHIRE COUNTY COURT JUDGE*, No. 1126, *ante*.

See, generally, CONTEMPT OF COURT, ATTACHMENT & COMMITTAL.

SECT. 4.—APPEALS.

— of superior court—General rule.]—*R. v. STAFFORDSHIRE COUNTY COURT*

OF COURT, ATTACHMENT & COMMITTAL.

Part XI.—Rules and Fees.

SECT. 1.—RULES.

SUB-SECT. 1.—IN GENERAL.

See, now, 1888 Act, s. 164, & 1919 Act, s. 24.

1131. Definition of Rule.]—ROBINSON *v.* GELL, No. 33, *ante*.

1132. Validity of Rule—Consistent with statute.]
—By r. 39, framed under 1846 Act, s. 78, which empowers the judges to make all the general rules for regulating the practice & proceedings of the county cts., any person claiming goods taken in execution, not being the party against whom process issued, shall deliver a particular of the goods alleged to be his property, & the grounds of his claim:—*Held*: (1) the judges, in making the above rule, acted within s. 78; (2) a notice by the claimant that the goods are & were my own property, & not the property of R., did not comply with the rule; & therefore the judge of the county ct. was right in refusing to hear & adjudicate upon the claim.—*R. v. CHILTON* (1850), 15 Q. B. 220; *Cox, M. & H.* 293; *Rob L. & W.* 352; 15 L. T. O.S. 135; 117 E. R. 441; *sub nom. CULLUM v. ROSS Ex p. TANNER*, 19 L. J. Q. B. 318; *sub nom. R. v. LAMBETH COUNTY COURT JUDGE, CULLUM v. ROSS*, 14 Jur. 696.

Annotations:—*As to* (1) *Refd.* *R. v. Oswestry County Court Judge, Ex p. Harper* (1851), *Cox, M. & H.* 492; *Ex p. Smith* (1852), 19 L. T. O. S. 191. *As to* (2) *Distd.* *R. v. Richards* (1851), 2 L. M. & P. 263.

1133. ———.]—By 1850 Act, s. 14, either party to a cause in a county ct., who is dissatisfied with its decision, may appeal against the decision to any of the superior cts. provided he, within ten days of the decision, gives notice of such appeal to the other party, or his attorney, & also gives security for costs; & if he be deft., for the amount of the judgment. S. 15 enacts, that such appeal shall be in the form of a case agreed on by both parties or their attorneys, & if they cannot agree the judge of the county ct., upon being applied to by them or their attorneys, shall settle the case & sign it. R. 145 framed by the county ct. judges appointed by the Lord Chancellor for the purpose, under 1856 Act, s. 32, provides that all cases of appeal shall, unless the judge shall otherwise order, be presented to him for signature at the ct. holden next after the expiration of twelve clear days from the day on which judgment was pronounced, & shall then be signed by the judge, & be sealed with the seal of the ct.; & if applt. do not comply with this rule the successful party may proceed on the judgment, unless the judge shall otherwise order:—*Held*: a county ct. judge is bound, on the application of an applt. who has complied with the requirements of 1850 Act, s. 14, to settle & sign a case for appeal, though presented to him for that purpose at a ct. subsequent to that holden next after twelve clear days from the day on which judgment was pronounced; the effect of r. 145 being not to take away the right of appeal on a failure to comply with the rule, but merely to subject a non-complying applt. to execution, notwithstanding the appeal. *Qu.*: whether, had the rule taken away the right of appeal, it could have overridden the express provisions of the statute.—*HACKING v. LEE* (1860), 2 E. & E. 906; 29 L. J. Q. B. 204; 2 L. T. 321; 6 Jur. N. S. 952; 8 W. R. 495; 121 E. R. 338.

Annotation:—*Refd.* *Irving v. Askew* (1870), L. R. 5 Q. B.

1134. ———.]—*WETHERFIELD v. NELSON*, No. 20, *ante*.

1135. ———.]—*IRVING v. ASKEW*, No. 1093, *ante*.

1136. ———.]—*POYSER v. MINORS*, No. 562, *ante*.

1137. ———.]—Ord. 33, r. 11, is not *ultra vires*.

This rule clearly relates to the practice or form of proceedings in the cts., within 1888 Act, s. 164, under which these rules were made (*AVORY, J.*).—*SALBSTEIN v. ISAACS & SON*, [1916] 1 K. B. 1; 85 L. J. K. B. 109; 114 L. T. 235; 60 Sol. Jo. 106, D. C.

See, now, Ord. 33, r. 11 (Feb. 19, 1917).

1138. Cannot be modified by local practice—Ord. 50, r. 16.]—*THE CASHMERE*, No. 683, *ante*.

Compare, No. 682, ante.

SUB-SECT. 2.—APPLICATION OF HIGH COURT PRACTICE.

See, now, 1888 Act, s. 164.

1139. “Principles of practice” —1888 Act, s. 164.]—*Held*: the words “principles of practice” in the above sect. did not refer to specific rules of the High Ct., & the time limit of six weeks under R. S. C., Ord. 64, r. 14, was not a “principle of practice” within the sect.—*MCCREAGH v. FREARSON* (1921), 91 L. J. K. B. 365; 126 L. T. 601.

Power of judge—To admit party to sue in formâ pauperis.]—*See Part V., Sect. 12, ante.*

1140. ——— To appoint special bailiff—To execute process against high bailiff.]—*BELLAMY v. HOYLE*, No. 23, *ante*.

1141. ——— To stay or dismiss frivolous & vexatious action.]—*NORMAN v. MATHEWS*, No. 443, *ante*.

1142. ——— To hear application in camera.]—*NORMAN v. MATHEWS*, No. 443, *ante*.

1143. ——— To entertain application for new trial—Without affidavit in support.]—*GEILDART v. BLEAZARD & SONS*, [1916] W. N. 417, D. C.

1144. Objections of form—To be taken at earliest opportunity.]—*SARGENT v. WEDLAKE*, No. 430, *ante*.

SECT. 2.—FEES.

See, now, 1888 Act, ss. 165, 166.

1145. How recoverable—Return to writ of certiorari.]—Deft., having obtained a writ of *certiorari* for the removal of an action in the county ct., in which he was deft., into the Q. B., delivered it to the clerk of the registrar at the county ct. office, without his being asked for or paying any fees at the time. The registrar duly made the return to the writ, & upon deft. refusing afterwards, when it was demanded, to pay the fee, sued him in the county ct. & obtained judgment. It was proved that it was the custom of the registrar's office to give credit to respectable solrs. in respect of the payment of fees of which in strictness prepayment ought to have been required, & that deft. was a well-known solr. in the district:—*Held*: the fee was one within the authority of the comrs. to make, & not illegal; the making a return to a writ of *certiorari* was a proceeding taken in the county ct. within s. 79, & deft. was the party on whose behalf the proceeding was taken within s. 78; the circumstances under which prepayment was not enforced were evidence

of a tacit agreement by debt. to pay afterwards on which he might be sued.

Debt. not having prepaid the fee as required by the Act, an action at common law would lie against him by the registrar who had made the return, for its recovery, independently of the

other remedy for default of payment given in s. 78 (LUSH, J.).—*BATT v. PRICE* (1876), 1 Q. B. D. 264; 45 L. J. Q. B. 170; 33 L. T. 808; 24 W. R. 318, D. C.

Annotations :—*Mentd. Langridge v. Lynch* (1876), 34 L. T. 695; *Lamplough v. Norton* (1889), 58 L. J. Q. B. 279.

Part XII.—Statutes Conferring Special Jurisdiction.

Agricultural Holdings Acts, 1908 (c. 28) & 1920 (c. 76).—*See* AGRICULTURE, Vol. II., p. 46, No. 253, p. 47, No. 255, p. 48, No. 264.

Alkali, etc., Works Regulation Act, 1906 (c. 14).—*See* FACTORIES & SHOPS.

Allotments Extension Act, 1882 (c. 80).—*See* SMALL HOLDINGS & SMALL DWELLINGS.

Allotments & Cottage Gardens Compensation for Crops Act, 1887 (c. 26).—*See* SMALL HOLDINGS & SMALL DWELLINGS.

Army Acts, 1881 (c. 58), 1901 (c. 2).—*See* ROYAL FORCES.

Ballot Act, 1872 (c. 33).—*See* ELECTIONS.

Bankruptcy Acts, 1883 (c. 52) & 1914 (c. 59).—*See* BANKRUPTCY & INSOLVENCY, Vol. IV., p. 39, Nos. 336 *et seq.*

Bills of Sale Act (1878) Amendment Act, 1882 (c. 43).—*See* BILLS OF SALE, Vol. III., pp. 83 *et seq.*

Brine Pumping (Compensation for Subsidence) Act, 1891 (c. 40).—*See* MINES, MINERALS & QUARRIES.

Building Societies Act, 1874 (c. 42).—*See* BUILDING SOCIETIES, Vol. VII., pp. 493 *et seq.*

Charitable Trusts Acts, 1853 (c. 137) to 1891 (c. 17).—*See* CHARITIES, Vol. VIII., p. 391, Nos. 2112 & 2113.

Clergy Discipline Act, 1892 (c. 32).—*See* ECCLESIASTICAL LAW.

Coal Mines Acts, 1911 (c. 22) & 1914 (c. 50).—*See* MINES, MINERALS & QUARRIES.

1146. Collecting Societies & Industrial Assurance Companies Act, 1896 (c. 26).—Jurisdiction limited to disputes regarding policies originally granted for less than £20.]—Above Act, s. 1 (b), applies to industrial assurance cos. granting policies of life assurance for a less sum than £20 & receiving premiums by means of collectors at a greater distance than ten miles from the registered office or principal place of business of the co., at less periodical intervals than two months. By s. 7, disputes between an industrial insurance co. & a member or person insured or a person claiming through him may be settled by the county ct. or by a ct. of summary jurisdiction:—*Held*: the jurisdiction of a county ct. or ct. of summary jurisdiction was limited to disputes arising with regard to policies originally granted for a less sum than £20. *Qu.*: whether an industrial assurance co. issuing policies for £20 & upwards as well as policies for sums less than £20 comes within the provisions of s. 7 so as to give any jurisdiction over disputes to a county ct. or ct. of summary jurisdiction.—*COWLING v. TOPPING*, [1906] 1 K. B. 466; 75 L. J. K. B. 176; 94 L. T. 209; 70 J. P. 95; 54 W. R. 423; 22 T. L. R. 219; 50 Sol. Jo. 191, D. C.

See, generally, INDUSTRIAL, PROVIDENT & SIMILAR SOCIETIES.

Commons Act, 1876 (c. 56).—*See, generally*, COMMONS & RIGHTS OF COMMON, Vol. XI., pp. 46 *et seq.*

Companies (Consolidation) Act, 1908 (c. 69).—*See* COMPANIES.

Corrupt & Illegal Practices Prevention Act, 1883 (c. 51).—*See* ELECTIONS.

County Courts Admiralty Jurisdiction Acts, 1868 (c. 71) & 1869 (c. 51).—*See* ADMIRALTY, Vol. I., p. 243, No. 1709 *et seq.*

1147. Court of Probate Act, 1858 (c. 95).—How value of estate estimated—No allowance for charges.]—In estimating the value of the real estate to which deceased was entitled at the time of his death for the purpose of deciding whether the county ct. has jurisdiction, charges upon such estate cannot be taken into consideration.

If the estate be of the value of £300, but the value of the deceased's interest in it is reduced by mtge. to less than £300, the county ct. has no jurisdiction.—*DAVIES v. BRECKNELL* (1870), L. R. 2 P. & D. 177; 40 L. J. P. & M. 15; 23 L. T. 569; 35 J. P. 104; 19 W. R. 136.

1148.—No jurisdiction when deceased entitled to real estate of value of £300—Although persons interested in realty not cited.]—The county ct. has no jurisdiction over a probate suit where deceased died seised or beneficially entitled to real estate of the value of £300, although the persons interested in the realty have not been cited.—*THOMAS v. NURSE* (1870), 39 L. J. P. & M. 80; 22 L. T. 727; 34 J. P. 518; 18 W. R. 471.

See, generally, EXECUTORS & ADMINISTRATORS.

Customs Consolidation Act, 1876 (c. 36).—*See* REVENUE.

Debtors Act, 1869 (c. 62).—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1021 *et seq.*

Deeds of Arrangement Act, 1914 (c. 47).—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1056 *et seq.*

Divided Parishes & Poor Law Amendment Act, 1876 (c. 61).—*See* POOR LAW.

Employers & Workmen Act, 1875 (c. 90).—*See* MASTER & SERVANT.

Employers' Liability Act, 1880 (c. 42).—*See* MASTER & SERVANT.

Explosives Act, 1875 (c. 17).—*See* EXPLOSIVES.

Extraordinary Tithe Redemption Act, 1886 (c. 54).—*See* ECCLESIASTICAL LAW.

1149. Factory & Workshop Act, 1891 (c. 75).—Cost of carrying out works—Division between lessor & lessee.]—Where the lessor of a factory sues the lessee in the county ct., on a covenant by the lessee to pay all charges & outgoings which may be charged or imposed on the lessor in respect of the premises, to recover the expenses to which he has been put in complying with the requirements of the sanitary authority under above Act, s. 7, the county ct. judge has jurisdiction, whatever may be the legal effect & construction of the covenant to make such order apportioning the expense between the parties as may seem just & equitable to him under all the circumstances of the case.—*MONK v. ARNOLD*, [1902] 1 K. B. 761; 71 L. J. K. B. 441; 86 L. T. 580; 50 W. R. 667; 46 Sol. Jo. 340, D. C.

Annotations :—*Consd. Goldstein v. Hollingsworth*, [1904] 2 K. B. 578. *Apprvd. Horner v. Franklin*, [1905] 1 K. B. 479. *Consd. Monro v. Burghclere*, [1918] 1 K. B. 291. *Reid. Shephard v. Barber* (1902), 67 J. P. 238; *Morris v.*

Beal (1904), 73 L. J. K. B. 830 ; *Stuckey v. Hooke* (1906), 94 L. T. 723.

Factory & Workshop Act, 1901 (c. 22).—See FACTORIES & SHOPS.

Finance Act, 1894 (c. 30) & 1896 (c. 28).—See ESTATE & OTHER DEATH DUTIES.

Finance (1909-10) Act, 1910 (c. 8).—See REVENUE.

1150. Finance Act, 1912 (c. 8).—Proportion of increase of duty payable by lessor—Determination of amount—No jurisdiction as to liability.—*Held*: the jurisdiction of the county ct. under that sect. was confined to determining the amount, & did not extend to the determination of the existence of the circumstances under which the liability of the grantor arose, or to the giving of judgment for the recovery by the lessee of the amount when determined.—*TRATT v. GOOD*, [1915] 3 K. B. 59 ; 84 L. J. K. B. 1550 ; 113 L. T. 556 ; 79 J. P. 413 ; 31 T. L. R. 441, D. C.

See, generally, REVENUE.

Fines & Recoveries Act, 1833 (c. 74).—See HUSBAND & WIFE.

Friendly Societies Act, 1896 (c. 25).—See FRIENDLY SOCIETIES.

Government Annuities Acts, 1864 (c. 43) & 1882 (c. 51).—See REVENUE.

Guardianship of Infants Act, 1886 (c. 27).—See INFANTS & CHILDREN.

Highways & Locomotives (Amendment) Act, 1878 (c. 77).—See HIGHWAYS, STREETS & BRIDGES.

Hosiery Manufacture (Wages) Act, 1874 (c. 48).—See MASTER & SERVANT.

Housing of the Working Classes Acts, 1890 (c. 70) & 1903 (c. 39).—See PUBLIC HEALTH & LOCAL ADMINISTRATION.

Inclosure, etc. Expenses Act, 1868 (c. 89).—See COMMONS & RIGHTS OF COMMON, Vol. XI., pp. 58 *et seq.*

Increase of Rent & Mortgage Interest (Restrictions) Act, 1920 (c. 17).—See LANDLORD & TENANT.

1151. Industrial & Provident Societies Act, 1893 (c. 39).—Winding up.—*Held*: enactments from time to time in force for the winding-up of cos. in the Ch. Div. applied to the winding up of a registered industrial society which was pending in a county ct. at the passing of the above Act & had not been transferred to the High Ct. under s. 59 of that Act.—*Re FERNDAL INDUSTRIAL CO-OPERATIVE SOCIETY LTD.*, [1894] 1 Q. B. 828 ; 70 L. T. 448 ; 42 W. R. 430 ; 10 T. L. R. 325 ; 38 Sol. Jo. 309 ; 1 Mans. 303 ; 10 R. 199, D. C.

1152. — Recovery of debt due from members of society.—Although amount in excess of ordinary jurisdiction.—*Held*: where a member had contracted a debt to the society of an amount in excess of the ordinary jurisdiction of the county ct., the society might recover it in the county ct. under the above sect., although the debtor had ceased to be a member at the time of action brought.—*GWENDOLEN FREEHOLD LAND SOCIETY v. WICKS*, [1904] 2 K. B. 622 ; 73 L. J. K. B. 815 ; 91 L. T. 440 ; 53 W. R. 219 ; 20 T. L. R. 593 ; 48 Sol. Jo. 574, D. C.

See INDUSTRIAL PROVIDENT & SIMILAR SOCIETIES.

Inebriates Acts, 1879 (c. 19), 1888 (c. 19) & 1898 (c. 60).—See INTOXICATING LIQUORS.

Intestates Acts, 1873 (c. 52) & 1875 (c. 27).—See DESCENT & DISTRIBUTION.

Judicial Trustee Act, 1896 (c. 35).—See TRUSTS & TRUSTEES.

Land Transfer Act, 1875 (c. 87).—See SALE OF LAND.

Law of Distress Amendment Acts, 1888 (c. 21) & 1895 (c. 24).—See DISTRESS.

Licensing (Consolidation) Act, 1910 (c. 24).—See INTOXICATING LIQUORS.

Literary & Scientific Institutions Act, 1854 (c. 112).—See LITERARY & SCIENTIFIC INSTITUTIONS.

Loan Societies Act, 1840 (c. 110).—See LOAN SOCIETIES.

Local Government Act, 1888 (c. 41).—See ELECTIONS.

Local Loans Act, 1875 (c. 83).—See LOCAL GOVERNMENT.

1153. Locomotives Act, 1898 (c. 29).—Expenses of extraordinary traffic—Caused by light locomotives.—An action lies in the county ct. to recover expenses of extraordinary traffic not exceeding £250 caused by light locomotives within the meaning of Locomotives on Highways Act, 1896 (c. 36), s. 1, as extended by the Heavy Motor Car Ord., 1904, inasmuch as expenses of extraordinary traffic not exceeding £250 ceased by virtue of the Locomotives Act, 1898, s. 12 (1), to be recoverable summarily under Highways & Locomotives (Amendment) Act, 1878 (c. 77), s. 23 & became recoverable in the county ct. ; & Locomotives Act, 1898, s. 17 (2), means that nothing in that Act is to affect light locomotives as distinguished from other vehicles, but it does not mean that light locomotives, as far as they have characteristics in common with other vehicles, one of which is that they may cause extraordinary traffic, are not to be dealt with by the new procedure established by Locomotives Act, 1898, s. 12 (1).—*R. v. JAMES (JUDGE) & MIDLAND RY. CO.*, *Ex p. BATH RURAL COUNCIL*, [1908] 1 K. B. 958 ; 6 L. G. R. 160 ; *sub nom. R. v. BATH COUNTY COURT JUDGE & MIDLAND RY.*, *Ex p. BATH RURAL COUNCIL*, 77 L. J. K. B. 402 ; 98 L. T. 505 ; 72 J. P. 67, D. C.

1154. — Not exceeding £250.—Above Act, 1898, s. 12 (1), provides that Highways & Locomotive (Amendment) Act, 1878 (c. 77), s. 23, which relates to the recovery of expenses of extraordinary traffic, shall be amended as follows : expenses under that sect. shall cease to be recoverable in a summary manner, but may be recovered if not exceeding £250 in the county ct., & if exceeding that sum in the High Ct. :—*Held*: an action could not be brought in the High Ct. under this sect., where the expenses sought to be recovered did not exceed £250.—*RIPON RURAL DISTRICT COUNCIL v. ARMITAGE & HODGSON*, [1919] 1 K. B. 559 ; 88 L. J. K. B. 728 ; 120 L. T. 611 ; 83 J. P. 112 ; 17 L. G. R. 264.

HIGHWAYS, STREETS & BRIDGES.

London Building Act, 1894.—See METROPOLIS.

1155. Lunacy Act, 1890 (c. 5).—No power to make vesting order for transfer of stock standing in name of lunatic.—A county ct. judge has no jurisdiction under above Act, s. 132, to make a vesting order for the transfer of stock standing in the name of a lunatic.—*Re NOYCE*, [1892] 1 Q. B. 642 ; 61 L. J. Q. B. 628 ; 66 L. T. 331 ; 56 J. P. 564 ; 40 W. R. 371 ; 8 T. L. R. 431 ; 36 Sol. Jo. 345, C. A.

Annotation :—*Consd. Re Shortridge*, [1895] 1 Ch. 278.

See, generally, LUNATICS & PERSONS OF UNSOUND MIND.

Married Women's Property Act, 1882 (c. 75).—See HUSBAND & WIFE.

Married Women's Reversionary Interests Act, 1857 (c. 57).—See HUSBAND & WIFE.

Matrimonial Causes Act, 1857 (c. 85).—See HUSBAND & WIFE.

Mental Deficiency Act, 1913 (c. 28).]—See LUNATICS & PERSONS OF UNSOUND MIND.

Merchant Shipping Act, 1906 (c. 48).]—See SHIPPING & NAVIGATION.

Money-lenders Act, 1900 (c. 51).]—See MONEY & MONEY LENDING.

Municipal Elections (Corrupt & Illegal Practices Act, 1884 (c. 70).]—See ELECTIONS.

National Insurance Acts, 1911 (c. 55) & 1913 (c. 37).]—See WORK & LABOUR.

Naval Billeting etc. Act, 1914 (c. 70).]—See ROYAL FORCES.

Open Spaces Act, 1906 (c. 25).]—See OPEN SPACES & RECREATION GROUNDS.

1156. Parliamentary Elections (Returning Officers) Act, 1875 (c. 84).—Accounts of returning officer—Review of registrar's taxation.]—Where the accounts of a returning officer have been taxed by the registrar of a county ct. under above Act, s. 4, the county ct. judge has no jurisdiction to review the registrar's taxation.—*R. v. LAMBETH COUNTY COURT JUDGE* (1886), 17 Q. B. D. 96, D. C.

See, generally, ELECTIONS.

Partition Acts, 1868 (c. 40) & 1876 (c. 17).]—See PARTITION.

Pharmacy Acts, 1852 (c. 56), 1868 (c. 121) & 1869 (c. 117).]—See MEDICINE & PHARMACY.

Pilotage Act, 1913 (c. 31).]—See SHIPPING & NAVIGATION.

Poisons & Pharmacy Act, 1908 (c. 55).]—See MEDICINE & PHARMACY.

Poor Law Amendment Acts, 1834 (c. 76) & 1848 (c. 110).]—See POOR LAW.

Private Street Works Act, 1892 (c. 57).]—See HIGHWAYS, STREETS & BRIDGES.

Public Health Act, 1875 (c. 55).]—See PUBLIC HEALTH & LOCAL ADMINISTRATION.

Public Health (London) Act, 1891 (c. 76).]—See METROPOLIS.

Public Trustee Act, 1906 (c. 55).]—See TRUSTS & TRUSTEES.

Regulation of Railways Act, 1871 (c. 78).]—See RAILWAYS & CANALS.

Registration of Business Names Act, 1916 (c. 58).]—See TRADE MARKS, TRADE NAMES & DESIGNS.

Riot (Damages) Act, 1886 (c. 38).]—See CRIMINAL LAW & PROCEDURE.

Rivers Pollution Prevention Acts, 1876 (c. 75) & 1895 (c. 31).]—See WATERS & WATERCOURSES.

Sale of Exhausted Parish Lands Acts, 1876 (c. 62).]—See LOCAL GOVERNMENT.

1157. Settled Land Act, 1882 (c. 38).—No jurisdiction where whole of settled estate exceeds £500.]—*Re MALTHOUSE CLOSE & SETTLED LAND ACT* (1890), 89 L. T. Jo. 325.

Settled Land Acts, 1882 (c. 38)—1890 (c. 69).]—See REAL PROPERTY & CHATTELS REAL.

Shipowners Negligence (Remedies) Act, 1905 (c. 10).]—See SHIPPING & NAVIGATION.

Small Dwellings Acquisition Act, 1899 (c. 44).]—See SMALL HOLDINGS & SMALL DWELLINGS.

Attorneys & Solicitors Act, 1870 (c. 28).]—See SOLICITORS.

Stannaries Court (Abolition) Act, 1896 (c. 45).]—See COURTS ; MINES, MINERALS & QUARRIES.

Succession Duty Act, 1853 (c. 51).]—See ESTATE & OTHER DEATH DUTIES.

Telegraph Acts, 1863 (c. 112) & 1878 (c. 76).]—See TELEGRAPHS & TELEPHONES.

Telegraph (Construction) Act, 1916 (c. 40).]—See TELEGRAPHS & TELEPHONES.

Tenants Compensation Act, 1890 (c. 57).]—See SMALL HOLDINGS & SMALL DWELLINGS.

1158. Tithes Act, 1891 (c. 8).—Recovery of redemption money & expenses.]—A county ct. has jurisdiction under above Act, sect. 2, 10 (4), to make an order for recovery of redemption money & expenses.—*R. v. PATERSON*, [1895] 1 Q. B. 31 ; 64 L. J. Q. B. 20 ; 71 L. T. 671 ; 43 W. R. 127 ; 11 T. L. R. 11 ; 39 Sol. Jo. 28, D. C.

See, generally, ECCLESIASTICAL LAW.

Trade Union Act, 1913 (c. 30).]—See TRADE & TRADE UNIONS.

Trustee Act, 1893 (c. 53).]—See TRUSTS & TRUSTEES.

Workmen's Compensation Act, 1906 (c. 58).]—See MASTER & SERVANT.

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